

THE
ALL INDIA
CRIMINAL DIGEST
1904-1940
(In 3 Volumes)

VOL. I
(A to Cr. P. C., S. 240.)

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LAW BOOK DEPOT,
KRISHNA NAGAR, LAHORE.

1941

Published by
Mr. H. D. Lall Bir, B. Com.,
for Law Book Depot,
Krishna Nagar,
LAHORE.

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10875.

Printed by
Ram Bheja Kapur,
at the Lahore Art Press,
16, Anarkali, Lahore.

PUBLISHER'S NOTE

The necessity of an All India Criminal Digest has been keenly felt by the members of the Bar. In fact, certain lawyer friends of the Publisher requested him to remove this long-felt want. He is, therefore, in response to this call, bringing out the present Digest, the first volume of which is before the learned reader. How far he has succeeded in doing this job efficiently is for the members of the learned fraternity to judge and not for the publisher to claim. He can, however, safely say that he has spared no pains to make the publication useful to those for whom it is meant. The Headnotes, the learned reader will find, are both copious and comprehensive and so also are the Catch-words. It is true that a Headnote cannot be a substitute for the judgment, but it is equally certain that it is not always possible for a busy lawyer to read the entire judgment in order to know exactly what law has been laid down. Hence the importance of a copious Headnote cannot be overrated. Wherever necessary, the reasoning of the Hon'ble Judges and *Obiters* have also been incorporated in the Headnotes. The subscribers of the Cr. L. J. will appreciate this publication most as the rulings cited therein start from 1904, a year which saw the birth of that journal. Similarly the subscribers of the All India Reporter will find references of that journal not from 1921 but from 1914 which enhances the value of the publication to them as no other Digest, so far published, does the same. The references to the Provincial Periodicals are also invariably given as no publication can afford to ignore them except at its own cost.

In spite of enormous increase in the price of the material, the Publisher has done his best to give a nice get-up to the publication.

In the end, the Publisher has to thank his friends Messrs. Malik Ram Lal Anand, S. C. Manchanda and H. L. Soni, Advocates of the Lahore High Court for their help in the shape of valuable suggestions and even otherwise.

LIST OF ABBREVIATIONS

REPORTS

A. or All.	...	Indian Law Reports, Allahabad.
A. L. J.	...	Allahabad Law Journal.
A. I. R. 1940 All.	...	All India Reporter, 1940, Allahabad.
I. R. (1930) All.	...	Indian Rulings (1930), Allahabad.
12 R. A.	...	Indian Rulings (Vol. 12), Allahabad.
B. or Bom.	...	Indian Law Reports, Bombay.
Bom. L. R.	...	Bombay Law Reporter.
A. I. R. (1940) Bom.	...	All India Reporter (1940), Bombay.
I. R. (1930) Bom.	...	Indian Rulings (1930), Bombay.
12 R. B.	...	Indian Rulings (Vol. 12), Bombay.
Bur. L. J.	...	Burma Law Journal.
Bur. L. T.	...	Burma Law Times.
C. or Cal.	...	Indian Law Reports, Calcutta.
C. L. J.	...	Calcutta Law Journal.
Cr. L. J.	...	Criminal Law Journal.
C. W. N.	...	Calcutta Weekly Notes.
A. I. R. (1940) Cal.	...	All India Reporter (1940), Calcutta.
I. R. (1930) Cal.	...	Indian Rulings (1930), Calcutta.
12 R. C.	...	Indian Rulings (Vol. 12), Calcutta.
I. A.	...	Law Reports, Indian Appeals.
I. C. or Ind. Cas.	...	Indian Cases.
L. or Lah.	...	Indian Law Reports, Lahore.
L. B. R.	...	Lower Burma Rulings.
L. W.	...	Law Weekly (Madras).
Luck.	...	Indian Law Reports, Lucknow.
A. I. R. (1940) Lah.	...	All India Reporter (1940), Lahore.
I. R. (1930) Lah.	...	Indian Rulings (1930), Lahore.
12 R. L.	...	Indian Rulings (Vol. 12), Lahore.
Lah. L. J. or L. L. J.	...	Lahore Law Journal.
M. or Mad.	...	Indian Law Reports, Madras.
M. L. J.	...	Madras Law Journal.
M. L. T.	...	Madras Law Times.
M. W. N.	...	Madras Weekly Notes.
A. I. R. (1940) Mad.	...	All India Reporter (1940), Madras.
I. R. (1930) Mad.	...	Indian Rulings (1930), Madras.
12 R. M.	...	Indian Rulings (Vol. 12), Madras.
N. L. J.	...	Nagpur Law Journal.
N. L. R.	...	Nagpur Law Reports.
A. I. R. (1940) Nag.	...	All India Reporter, 1940, Nagpur.
I. R. (1930) Nag.	...	Indian Rulings (1930), Nagpur.
12 R. N.	...	Indian Rulings (Vol. 12), Nagpur.
O. C.	...	Oudh Cases.
O. L. R.	...	Oudh Law Reports.
O. L. J.	...	Oudh Law Journal.
O. W. N.	...	Oudh Weekly Notes.
A. I. R. (1940) Oudh	...	All India Reporter (1940), Oudh.
I. R. (1930) Oudh	...	Indian Rulings (1930), Oudh.
12 R. O.	...	Indian Rulings (Vol. 12), Oudh.
P. R.	...	Punjab Record.

P. L. R.	...	Punjab Law Reporter.
P. W. R.	...	Punjab Weekly Reporter.
P. or Pat.	...	Indian Law Reports, Patna.
A. I. R. (1940) Pat.	...	All India Reporter (1940), Patna.
I. R. (1930) Pat.	...	Indian Rulings (1930), Patna.
12 R. P.	...	Indian Rulings (Vol. 12), Patna.
A. I. R. (1940) P. C.	...	All India Reporter (1940), Privy Council.
I. R. (1930) P. C.	...	Indian Rulings (1930), Privy Council.
B. R.	...	Bihar Reports.
Pat. L. J. or P. L. J.	...	Patna Law Journal.
Pat. L. W. or P. L. W.	...	Patna Law Weekly.
Pat. L. T. or P. L. T.	...	Patna Law Times.
Pat. L. R.	...	Patna Law Reporter.
R. or Rang.	...	Indian Law Reports, Rangoon.
A. I. R. (1940) Rang.	...	All India Reporter (1940), Rangoon.
I. R. (1930) Rang.	...	Indian Rulings (1930), Rangoon.
12 R. Rang.	...	Indian Rulings (Vol. 12), Rangoon.
R. D.	...	Revenue Decisions.
S. L. R.	...	Sind Law Reporter.
A. I. R. (1940) Sind.	...	All India Reporter (1940), Sind.
I. R. (1930) Sind.	...	Indian Rulings (1930), Sind.
Kar. (I. L. R.)	...	Indian Law Reports, Karachi.
12 R. S.	...	Indian Rulings (Vol. 12), Sind.
U. P. L. R.	...	United Provinces Law Reporter.
U. B. R.	...	Upper Burma Rulings.

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ALL INDIA CRIMINAL DIGEST (1904-1940) Volume I

A

ABATEMENT.

ABATEMENT, of Proceedings
See Criminal Trial.

ABDUCTION

See Penal Code, Ss. 361, 366.

ABETMENT

- (i) *See* Cr. P. Code, Ss. 237, 239.
- (i) Evidence Act, S. 30.
- (ii) Penal Code, Ss. 107, 109, 114.

———*Aiding offender, after commission of offence, whether abetment.*

A wrong entry made long after an alleged embezzlement by another person would not make the scribe guilty of abetment of embezzlement. At the worst he would only be an accessory after the fact, and as such, could not be punished under the Indian Law for abetment of the offence. *Pritchard v. Emperor.*

30 Cr. L. J. 18 :
I. R. 1929 Lah. 97 :
112 I. C. 850 : A. I. R. 1928 Lah. 382.

———*Charge of abetment not framed—Conviction of abetment, whether legal.*

A conviction of an accused for abetment of an offence of murder is illegal in the absence of a charge to that effect. *Kishen Das v. Emperor.*

30 Cr. L. J. 944 :
I. R. (1929) Nag. 265 :
118 I. C. 473 : A. I. R. 1929 Nag. 325.

———*Charge for substantive offence—Conviction for abetment.*

Where the proof of abetment of an offence must necessarily differ from the proof of the substantive offence and the attention of the accused has not been directed at the time of framing the charges or during the trial to the fact that he might have to meet a charge of abetment, it is highly unfair for a Court of Appeal to alter a conviction for a substantive offence into one for abetment of the offence. *Pritchard v. Emperor.*

30 Cr. L. J. 18 :
I. R. (1929) Lah. 97 :
112 I. C. 850 : A. I. R. 1928 Lah. 382.

———*Conspiracy—Duty of prosecution.*

Per *Sundra Aiyar, J.*—In a case of abetment by conspiracy the prosecution has to prove an agreement between the alleged conspirators to do the criminal act. *National Bank of India, Ltd. v. Kothandarama Chetty.*

14 Cr. L. J. 529 :
(1913) M. W. N. 728 : 14 M. L. T. 200 :
21 I. C. 129.

ABETMENT.

———*Intention—Absence of knowledge of nature of act aided—Act or omission, whether abetment.*

A mere giving of an aid or omission to give it will not make the act an abetment of an offence if the person who gave the aid did not know that an offence was being committed or contemplated. There must be an intention to aid an offence or to facilitate the commission of an offence and there must be knowledge or belief that the act being committed was an offence. *Shevanti v. Emperor.*

29 Cr. L. J. 561 :
10 A. I. Cr. R. 358 :
109 I. C. 497 : A. I. R. 1928 Nag. 257.

———*Of an offence—What is necessary to constitute—Instigation or joining in conspiracy or intentional aiding on the part of abettor—Intentional aiding constituted by some act or illegal omission on the part of the abettor.*

To constitute abetment of an offence there must have been instigation or joining in a conspiracy, or intentional aiding on the part of the abettor. The facts proved were as follows : K was sitting with others looking at a *poo*. The appellant, who had been seen earlier on the night in C's company, approached the spot where K sat, closely followed by C. The accused asked in an ordinary voice and manner where K was, whereupon C got behind K and, saying "Here" he drove a spear into K's back killing him on the spot. The men nearest him ran away, with the exception of T. This man said something about a man having been stabbed, whereupon the appellant and C each seized one of his hands and questioned him as to whether he had seen anything. They released him on being told to do so by M. A relation of the deceased saw that later on he passed the accused and C at some distance from the spot where the murder was committed and he overheard the appellant ask C why he had overdone it, to which C replied that if he had not finished K the latter would have retaliated. Held that, the facts did not disclose any case of instigation to murder on the part of the appellant, nor did they disclose any act or illegal omission on his part, which could be considered intentional aiding by him in C's act which constituted the murder. Held also that, there were not sufficient materials on which to base a conclusion that the appellant engaged with C in a conspiracy to injure K. *Tha La Aung v. Emperor.*

3 Cr. L. J. 437 :
12 Bur. L. R. 70.

ABETMENT.

———*Omission, when amounts to.*

In order that an omission may amount to an abetment, it must be shown that the omission involved a breach of legal obligation. *Shevanti v. Emperor.* 29 Cr. L. J. 561 :

10 A. I. Cr. R. 358 :

109 I. C. 497 : A. I. R. 1928 Nag. 257.

———*Principal offence substantiated—Conviction for abetment, legality.*

Where a person is charged with having committed an offence, and another is charged with having abetted him in the commission thereof, and the prosecution fail to substantiate the commission of the principal offence, there can be no conviction for abetment. *Raja Khan v. Emperor.* 22 Cr. L. J. 448 :

32 C. L. J. 478 : 166 I. C. 73 :

A. I. R. 1920 Cal. 834.

———*Punishment.*

Punishment for abetment is same as for offence itself. 38 Cr. L. J. 277.

———*Omission to raise alarm by co-accused whether abetment.*

Where in a murder case, a co-accused stated that she remained an unwilling spectator while the offence was being committed by the other accused : *Held*, that the alleged omission of a co-accused to intervene or raise an alarm did not constitute an abetment of murder, inasmuch as her inaction did not constitute criminality. *Sarju Prasad v. Emperor.*

15 Cr. L. J. 617 :

A. I. R. 1914 Oudh 262 : 21 I. C. 625 :

1 O. L. J. 369.

———*Proof.*

Where the circumstances of a case point to the conclusion that the accused committed the offence, but there is also a reasonable probability compatible with his innocence, there is no sufficient justification for the conviction of the accused. *Sarju Prashad v. Emperor.*

15 Cr. L. J. 617 :

1 O. L. J. 360 : 21 I. C. 625 :

A. I. R. 1914 Oudh 262.

———*Principal accused causing grievous hurt—Liability of abettor.*

Where A. urged B. to attack C., and B. stabbed C. with a knife, but there was no proof that B. had the knife in his hand at the time of A.'s urging him on or that A. knew in any other way that B. would be likely to use a knife :

Held, that A. could not be convicted of abetting an offence under S. 326 of the Indian Penal Code, but only of abetting assault. *Tha Mya v. Emperor.* 8 Cr. L. J. 472.

ABETTOR

See (1) Abetment.

(2) Penal Code, Ss. 109 and 114.

ABKARI ACT (V of 1878), S. 43.

———*Offence of sale, requisites of—simultaneous conviction for sale and possession.*

Possession is not a necessary part or element of the sale of an excisable article and on the same facts an accused person may be convicted of possession of an excisable article of selling such article or part of it. *Emperor v. Jabar Sherbaz.* 34 Cr. L. J. 1151 :

(1933) Cr. Cas. 332 (2) : 6 R. S. 55 :

146 I. C. 39 : A. I. R. 1933 Sind 134 (2).

ACCOMPLICE.**ABSCONDER**

See Criminal Procedure Code, 1898.

30 Cr. L. J. 99.

ABSCONDING

———*Effect of—Presumption.*

The fact that an accused person has absconded does not raise any presumption as to his guilt. *Fatta v. Emperor.* 14 Cr. L. J. 601 :

21 I. C. 473 : 31 P. W. R. 1913 Cr. :

314 P. L. R. 1913.

———*Inference.*

The fact that a person absconded is of little importance where the evidence is practically worthless and consists of very little if anything beyond the fact that he absconded. *Mahla Singh v. Emperor.* 32 Cr. L. J. 522 :

32 P. L. R. 259 : I. R. (1931) Lah. 282 :

130 I. C. 140 : A. I. R. 1931 Lah. 38.

ABSOLUTE PRIVILEGE

See Penal Code, 1860, S. 499.

ABUSIVE LANGUAGE

———*Use of—In private defence.*

There is no right to use abusive language in private defence. 11 Cr. L. J. 213.

ACCESS

See Evidence Act, 1872, S. 112.

ACCESSORY AFTER FACT

See Criminal trial.

38 Cr. L. J. 286.

ACCIDENT

———*Burden of proof.*

The onus of proving that a gun went off by accident is on the person setting up such a plea. *Gurditta Shah v. Emperor.*

28 Cr. L. J. 328 :

104 I. C. 444 : A. I. R. 1927 Lah. 713.

ACCOMPLICE

———*After event.*

———*Corroboration.*

———*Evidence.*

———*Retracted statement.*

———*Spy or detective.*

———*Who is.*

See also (i) Approver.

(ii) Confession.

(iii) Cr. P. C., 1898, S. 337.

(iv) Criminal trial.

(v) Evidence.

(vi) Evidence Act, 1872, Ss. 114, 111. (b), 133.

———*After event.*

Witnesses who helped the accused to dispose of the corpse of the deceased on being threatened with death by the accused are accessories after the commission of the crime and their evidence cannot be accepted as proving the guilt of the accused without corroboration in material particulars by independent witnesses. *Brijpal Singh v. Emperor.* 37 Cr. L. J. 1065 :

1936 O. W. N. 892 :

1936 O. L. R. 596 : 9 R. O. 157 :

165 I. C. 138 : A. I. R. 1936 Oudh 413.

ACCOMPLICE.

Corroboration.

An accomplice is a competent witness and there is no absolute rule of law which enacts that a conviction based on the evidence of an accomplice is bad, but there is an established practice, founded on the judicial experience of generations, which requires corroboration by same untainted evidence in a material particular pointing not only to the crime but to the participation of the accused in that crime. *Munassar Ahir v. Emperor*. 15 Cr. L. J. 438 : 24 I. C. 174 : 18 C. W. N. 550 : A. I. R. 1915 Cal. 73.

Corroboration.

Corroborative evidence must be independent and must connect accused with crime. It may be direct or circumstantial. *Khairati Ram v. Emperor*. 33 Cr. L. J. 324 : I. R. 1932 Sind 49 :

136 I. C. 753 : A. I. R. 1932 Sind 100.

Corroboration.

Evidence of accomplice against two prisoners—corroboration as to one prisoner's crime is no corroboration as regards the other. *Khairati Ram v. Emperor*. 33 Cr. L. J. 324 : I. R. 1932 Sind 49 :

136 I. C. 753 : A. I. R. 1932 Sind 100.

Corroboration.

It is salutary rule that the evidence of an accomplice should be corroborated. When a trial takes place before a Judge and a jury, it is the duty of the Judge to warn the jury that it is unsafe to act upon the uncorroborated evidence of an accomplice. In the same way when a trial takes place before Commissioners who are the Judges both of law and of facts, it is right and proper and indeed obligatory upon them that they should warn themselves that it is unsafe to act on the uncorroborated testimony of the accomplice. The question whether the evidence of an accomplice has been sufficiently corroborated is largely a matter for the Court which is trying the case. *Moti Lal Roy v. Emperor*. 37 Cr. L. J. 999 (F. B.) :

164 I. C. 779 : 39 C. W. N. 754 : 9 R. C. 298 (F. B.).

Corroboration—Hearsay evidence.

Although a conviction based on the uncorroborated evidence of an accomplice is not illegal, the Court should require corroboration of that evidence in some material particulars. Hearsay evidence, cannot be admitted as corroboration of the evidence of an accomplice. *Ah Tat v. Emperor*. 13 Cr. L. J. 424 :

U. B. R. (1911), 196 : 14 I. C. 968.

Corroboration—Nature of.

Before a conviction can be sustained on the evidence of an accomplice, there must be corroboration in material particulars by means of independent testimony. The degree or amount of corroboration required depends upon the facts of each case. The position, connection and general conduct of an accused cannot be taken as affording sufficient corroboration; nor can the circumstances elicited in the accomplice's evidence be held in themselves as affording sufficient corroboration. *Emperor v. Chhotalal Babar*. 13 Cr. L. J. 542 :

14 Bom. L. R. 147 : 36 B. 524 : 14 I. C. 970.

ACCOMPLICE.

Corroboration—Necessity of.

Per Sir S. Subrahmaniam Aiyer, C. J.—The rule that an accomplice must be corroborated in a material particular is a mere rule of general and usual practice, the application of which is for the discretion of the Judge by whom the case is tried. The rule has no application in the case of an accomplice who is merely a youthful tool in the hands of one who stood to him in loco parentis. *Ramaswami Gounden v. Emperor*. 1 Cr. L. J. 641 : S. C. 14 M. L. J. 2226 : I. L. R. 27 Mad. 271 : 2 Weir 203.

Corroboration—Necessity of.

Per V. Bhashyam Aiyangar, J.—The conviction of an accused on the uncorroborated testimony of an accomplice is perfectly legal, and a direction to the Jury that it will be their duty to convict the accused if they believed the accomplice and gave credit to his evidence is a perfectly legal direction. A direction to the Jury that the evidence of an accomplice is not sufficient to find the accused guilty will be a misdirection. *Ramaswami Gounden v. Emperor*. 1 Cr. L. J. 641 :

S. 14 M. L. J. 226 : I. L. R. 27 Mad. 271 : 2 Weir 203.

Corroboration—Necessity of.

An accomplice is unworthy of belief, unless he is corroborated in material particulars and similarly the evidence of one accomplice is not available as corroboration of another. Consequently, the convictions cannot be sustained upon the uncorroborated testimony of the approver. *Bhabhuti v. Emperor*. 37 Cr. L. J. 1096 :

1936 O. L. R. 595 : 9 R. O. 164 : 165 I. C. 144.

Corroboration—Rule as to.

The evidence of an accessory must be corroborated in some material particular not only bearing upon the facts of the crime but upon the accused's implication in it and the evidence of one accomplice is not available as corroboration of another. This rule as to corroboration, being a rule of practice, is now virtually a rule of law and is a rule of the greatest possible importance in a case where there are three persons all implicated in a crime and one of them or two of them exculpates himself or themselves by fastening the guilt upon the other and all the persons concerned had originally given false statements and belonged to a class of persons who are at the best not reliable witnesses. *Mahadeo v. The King*. 37 Cr. L. J. 914 (P. C.).

44 L. W. 253 : (1936) A. L. J. 869 : 40 C. W. N. 1164 : (1936) M. W. N. 889 : (1936) Cr. C. 757 : 9 R. P. C. 51 : 38 Bom. L. R. 1101 (P. C.) : 163 I. C. 681 : A. I. R. 1936 P. C. 242.

Corroboration—Rule of law.

There is no rule of law or practice that the self-incriminating portion of the evidence of an accomplice is unworthy of belief unless corroborated. The credibility of a witness who says that he and another joined in committing an offence stands *per se* so far as his self-accusation is concerned on the same footing as that of a witness who says that he alone committed an offence though in the latter instance there

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would be a narrow basis for cross-examination to test his own self-accusation. What must first be decided is whether the witness in question is in truth an accomplice or is merely posing as an accomplice. When it is once established that he is an accomplice then the next practical question arises who are the other accomplices and it is at that stage when his evidence implicating others has to be weighed, and when comes into application the maxim that it is unsafe to convict upon the evidence of an accomplice unless he is corroborated in material particulars both as to the circumstances of the offence and the identity of the person whom he implicates. *Emperor v. Hanmant Vasudeo Mulgund*. 1 Cr. L. J. 412 : S. C. 6 Bom. L. R. 443.

—————Corroboration—Uncorroborated evidence—Value of.

It is not safe to convict an accused person on the uncorroborated testimony of an accomplice even if the former is the father or brother of the latter. *Hira v. Emperor*.

12 Cr. L. J. 5 :
1 P. W. R. 1911 Cr. :
19 P. L. R. 1911 : 9 I. C. 39.

—————Corroboration—Uncorroborated evidence, value of.

It is unsafe to rely on the uncorroborated evidence of a complainant where he is also an accomplice in committing the offence. *Hulas Chand Baid v. Emperor*.

28 Cr. L. J. 2 :
99 I. C. 34 : 44 C. L. J. 216 :
A. I. R. 1927 Cal. 63.

—————Evidence—Value of.

All accomplices are not condemned by law as wholly unworthy of credit. *Ramchand v. Emperor*.

14 Cr. L. J. 262 :
19 I. C. 534 : 6 S. L. R. 195.

—————Evidence—Value of.

The rule of evidence contained in S. 133, Evidence Act, and in S. 114 (b) amounts to nothing more than a direction to all Judges and Magistrates that a fact cannot be held proved, within the meaning of S. 3, if there be no other evidence of it than the statement of an unreliable witness. *Ramchand v. Emperor*.

14 Cr. L. J. 262 :
19 I. C. 534 : 6 S. L. R. 195.

—————Evidence—Value of.

Per *Boddam, J.*—An accomplice is unworthy of credit unless he is corroborated in material particulars. Where there is no such corroboration, it will be the duty of a Judge to direct the Jury that there is no sufficient evidence before them upon which they will be justified in finding an accused guilty. A Judge who combines the functions of Judge and Jury is equally bound to scrutinise an accomplices evidence with great care and to consider whether there is any corroborating evidence when the main evidence is of an accomplice character. *Ramaswami Gounden v. Emperor*.

1 Cr. L. J. 641 :
S. C. 14 M. L. J. 226 : I. L. R. 27 Mad. 271 :
2 Weir 203.

—————Retracted statement.

The statement of an accomplice before the Committing Magistrate, though retracted in the Sessions Court, can be treated as sub-

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stantial evidence, on the same footing as any other evidence on the record. But this evidence must be treated with caution in so far as it implicates any particular accused or assigns him a particular part in the actual crime. *Punhu v. Emperor*, 16 Cr. L. J. 233 : 8 S. L. R. 203 : 27 I. C. 905 : A. I. R. 1914 Sind 117.

—————Spy or detective—Evidence of—Corroboration.

Although the testimony of a spy does not stand in need of corroboration in order to be acted upon, it is entirely for the Judge of facts to decide in each particular case what weight he will attach to this kind of evidence, the question depending upon the character of each individual witness. *Emperor v. Chatturbhuj Sahu*.

11 Cr. L. J. 560 :
15 C. W. N. 171 : 38 C. 96 : 8 I. C. 119.

—————Spy or detective—Difference between—Evidence of spy—Corroboration.

One who as a spy or a detective associates with criminals solely for the purpose of discovering and making known their crimes, and who acts throughout with this purpose and without any criminal intent, is not an accomplice and it is immaterial that he encouraged or aided the commission of the crime. *Emperor v. Chatturbhuj Sahu*.

11 Cr. L. J. 560 :
15 C. W. N. 171 : 38 C. 96 : 8 I. C. 119.

—————Spy or detective, evidence of—Corroboration.

If a witness has made himself an agent for the prosecution before associating with the wrong-doers or before the actual perpetration of the offence, he is not an accomplice, and his evidence does not stand in need of corroboration; but he may be an accomplice if he extends no aid to the prosecution until after the offence has been committed. An Excise Deputy Collector deputed B to purchase cocaine from the accused and B purchased it with money supplied by the Excise Sub-Inspector and handed the same over to the Deputy Collector. The accused was tried for illicit sale of cocaine. B in the evidence deposed to the purchase of cocaine from the accused under instructions from the Excise Deputy Collector who stated that he gave such instructions and received the cocaine from him. The accused was convicted upon the uncorroborated testimony of B: *Held*, that B was not an accomplice and the conviction was good. *Emperor v. Chatturbhuj Sahu*.

11 Cr. L. J. 560 :
15 C. W. N. 171 : 38 Cal. 96 : 8 I. C. 119.

—————Who is.

Held by Sir S. Subrahmaniam Aiyar, Offg. C. J. and Sir V. Bhaskiyam Aiyangar, J., (*Boddam, J.*, dissenting).—A person who has helped the accused to conceal the corpse of a person murdered or has omitted to give information of the murder is not an accomplice although he may be guilty of an offence either under S. 201 or S. 202 of the Indian Penal Code. *Ramaswami Gounden v. Emperor*.

1 Cr. L. J. 641 :
S. C. 14 M. L. J. 226 : I. L. R. 27 Mad. 271 :
2 Weir 203.

—————Who is.

Persons present when money is given to

ACCOUNTS.

bribe-taker cannot be said to be accomplices, unless they have co-operated in the payment of the bribe or taken some part in the negotiations for its payment. Where, therefore, the accused, a Sub-Inspector of Police, was charged with extorting a bribe from one N. and it was found that one of the prosecution witnesses from his own showing took an active share in raising the money for the payment of the bribe, knowing for what purpose the money was required, while another interceded for N. and induced the accused to accept a certain sum instead of the large sum he was claiming and yet another took an active part in the negotiations for the payment of the bribe: *Held*, that these witnesses could not be regarded as independent and their evidence was not wholly free from taint. *Khadam Ali v. Emperor*. 20 Cr. L. J. 258 : 15 P. W. R. 1919 Cr. : 50 I. C. 18 : A. I. R. 1919 Lah. 284.

Who is.

Per *S. Subrahmaniam Aiyar, Offg. C. J.*—An accomplice is a person who is a guilty associate in crime, or who sustains such a relation to the criminal act that he can be jointly indicted with the defendant (principal). *Ramaswami Gounden v. Emperor*. 1 Cr. L. J. 641 : S. C. 14 M. L. J. 226 : I. L. R. 27 Mad. 271 : 2 Weir 203.

ACCOUNTS

Value.

The questions of the value of accounts as evidence is one of fact. *Abdul Rahman v. Emperor*. 36 Cr. L. J. 982 : 62 Cal. 749 : 8 R. C. 21 : 156 I. C. 678 : A. I. R. 1935 Cal. 316.

ACCUSED

Discharge of, effect.

Discharge of accused is no bar to fresh proceedings. 1 Cr. L. J. 176, 867.

Examination of.

See also Cr. P. C., S. 342. 6 Cr. L. J. 74.

Examination of—Questioning of accused—Question in the nature of cross-examination.

A Sessions Judge has no power to question the prisoner at a stage when no evidence has been recorded which he could be required to explain. It is not justifiable to put questions to the accused which are in the nature of cross-examination. Where the answers to such questions appeared to amount to a confession of an offence but no plea of guilty on the charge was made by the accused and recorded. *Held*, that the conviction was bad and must be set aside and new trial ordered. *Sadayan, In re*. 11 Cr. L. J. 193 : 4 I. C. 1126 : 5 M. L. T. 216.

Examination of.

Accused's examination under S. 342, Criminal Procedure Code, is imperative in all cases. 1 Cr. L. J. 737.

Meaning of.

The word accused does not necessarily mean and include any person over whom a Magistrate or other Court is exercising jurisdiction. *Hirananda Ojha v. Emperor*. 2 Cr. L. J. 15, 575 : 9 C. W. N. 127, 983 : 2 C. L. J. 149.

ACQUITTAL.

—Notice to accused person necessary before order in his favour can be set aside.

An order by a Magistrate directing payment of compensation to the accused ought not to be set aside on appeal without notice to the accused. It will also be safer to give notice to the officer appointed by the Local Government referred in S. 422 of the Code of Criminal Procedure. *Emperor v. Palaniappavelan*. 3 Cr. L. J. 459 : I. L. R. 29 Mad. 187.

Privilege of.

See (i) Penal Code, 1860, S. 182.

(ii) Cr. P. C., 1898, S. 342.

Right of, to cross-examine.

Accused has a right to cross-examine prosecution witnesses before charge. 1 Cr. L. J. 838.

—Right of—Cross-examination of prosecution witnesses—Charges framed, reasonable opportunity to be given to get legal assistance. 16 Cr. L. J. 786 : 31 I. C. 642 : A. I. R. 1916 Mad. 933.

—Silence of—Incriminating force of such silence—Rules of Evidence.

The maxim *qui tacet consentire videtur*, (He who is silent, appears to consent) must be taken with considerable qualification even in a civil suit, much more when it is used to establish the guilt of an accused. For silence to carry incriminating force, there must be circumstances which not only afford the accused an opportunity to speak, but naturally and properly call for a declaration from him. *Emperor v. Bal Gangadhar Tilak*. 1 Cr. L. J. 305 : S. C. 6 Bom. L. R. 324 : I. L. R. 28 Bom. 479.

ACQUIESCENCE

Effect.

Acquiescence cannot confer jurisdiction. *Emperor v. Ram Udil*. 33 Cr. L. J. 511 : 9 O. W. N. 319 : (1932) Cr. Cas. 592 (1) : I. R. (1932) Oudh 263 :

137 I. C. 625 : A. I. R. 1932 Oudh 251 (1).

—Unauthorised erection—Order of demolition—Payment of rates in respect of erection pending negotiations for compromise, if acquiescence in disobedience to order.

The accused built his house in deviation from the plan sanctioned by the Commissioners. An order of demolition was passed, and while negotiations were going on between the accused and the Corporation, the latter received rates and taxes on a re-assessment of the whole premises, including the portions objected to : *Held*, that the mere acceptance of rates, pending the negotiations, did not amount to an acquiescence on the part of the Municipality in continuous disobedience to the order for demolition. *Bholaram v. Corporation of Calcutta*. 11 Cr. L. J. 695 : 8 I. C. 654 : 37 C. 837 Note.

ACQUITTAL

See also (i) Criminal Procedure Code, Sec. 403, 423.

(ii) Criminal trial.

—By Court without legal jurisdiction—Subsequent trial by competent Court, legality of. Previous acquittal of an offence by a Court having no local jurisdiction to try the offence is

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not a bar under S. 403, Criminal Procedure Code, to the trial of the accused by a competent Court. *Shanker Tulshiram Navle, In re.*

30 Cr. L. J. 54 :
113 I. C. 79 : 30 Bom. L. R. 1435 :
I. R. 1929 Bom. 78 : 53 B. 69 :
A. I. R. 1928 Bom. 530.

———*Acquittal under S. 182, I. P. C.—Trial under S. 211 if barred.*

———*Acquittal under section 182, Penal Code, does not bar a trial under section 211, Penal Code.*

11 Cr. L. J. 420.

———*Charge of conspiracy—Subsequent trial of others on charge of same conspiracy—Statement of acquitted accused if admissible.*

It is a very dangerous principle to adopt to regard a verdict of not guilty as not fully establishing the innocence of the person to whom it relates. Where a person was acquitted of the charge of conspiracy to wage war against the King, what he said or did cannot be admitted in evidence at a subsequent trial of other persons on an identical charge. *Emperor v. Noni Gopal.*

12 Cr. L. J. 326 :
11 I. C. 580 : 15 C. W. N. 645.

———*Charge under S. 211, Penal Code—No subsequent trial under S. 182.*

Once a person is acquitted of a charge under S. 211, Penal Code, he cannot be subsequently tried on the same facts for an offence under S. 182 of the Penal Code. *Ganapati Bhatia v. Emperor.*

14 Cr. L. J. 214 :
19 I. C. 310 : 24 M. L. J. 463 : 13 M. L. T. 360 :
36 M. 308.

———*Court without jurisdiction—Acquittal order not proper.*

Order of acquittal is not the proper order to pass where Court has no jurisdiction.

11 Cr. L. J. 253.

———*Order of—High Court, interference by.*

Unless the setting aside of an order of acquittal is urgently demanded in the interests of public justice, the High Court will not, in the exercise of its powers of revision, set aside such an order. *Pramatha Nath v. P. C. Laliri.*

22 Cr. L. J. 5 :
59 I. C. 37 : 47 Cal. 818.

———*Revision—Interference.*

Where no appeal has been preferred by Government, it is very rarely correct to interfere on revision with an acquittal. *Munshi v. Emperor.*

5 Cr. L. J. 348 :
2 P. W. R. Cr. 25 : 72 P. L. R. 1908.

———*Revision—Private complainant—Locus standi to be heard by High Court.*

A private complainant, in a proper case, may well be heard by the High Court when it is called upon to exercise its powers of revision against an order of acquittal. *Asutosh Das Gupta v. Purna Chandra Ghosh.*

24 Cr. L. J. 206 :
71 I. C. 670 : A. I. R. 1923 Cal. 11 :
50 Cal. 159 : 36 C. L. J. 287.

ACT OF LEGISLATURE

———*High Court can consider if an Act is within powers of Legislature but cannot consider the propriety of such legislation if it is*

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within its powers. *Jitendra Nath v. Chief Secretary of the Bengal Government.*

34 Cr. L. J. 245 :
36 C. W. N. 1088 : 60 Cal. 364 :
(1932) Cr. Cas. 796 : I. R. (1933) Cal. 198 :
141 I. C. 866 : A. I. R. 1932 Cal. 753.

ACT

———*Repeal of Act, effect of.*

An offence punishable under an Act and committed while the Act is in force cannot be punished after the Act is repealed. *Ram Richpal v. Emperor.*

18 Cr. L. J. 896 :
41 I. C. 1003 : 41 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 280.

ADEN CIVIL AND CRIMINAL JUSTICE REGULATION, S. 35 (3)

———*It is doubtful if Sessions Judge can convert acquittal into conviction especially at instance of party who could have appealed. If he does so, his powers are abused and High Court can interfere under general powers of superintendence. L. M. Marino v. Emperor.*

37 Cr. L. J. 23 :
37 Bom. L. R. 658 : 59 B. 663 : 8 R. B. 164 :
159 I. C. 90 : A. I. R. 1935 Bom. 393.

ADEN COURTS ACT (II of 1864) Ss. 29, 30.

———*Court Resident at Aden—Review of Criminal case by Bombay High Court—Certificate of the Advocate-General—High Court can go only into questions of law.*

There is nothing in S. 29 which can operate either by express words or by necessary implication, to limit the application of Ss. 29 and 30 to cases tried by the Resident as a Court of Session or to exclude appeals from their purview. S. 30 empowers and requires the High Court of Bombay to review the case or such part of it as may be necessary with reference only to the points of law specified in the certificate of the Advocate-General, and the section does not contemplate that any decision by the Resident on a point of fact should be questioned in review, save in so far as such decision may be dependent for its validity on the determination of a point of law mentioned in the certificate. *Emperor v. Bhagwandas.*

5 Cr. L. J. 309 :
9 Bom. L. R. 331 : I. L. R. 31 Bom. 335.

ADJOURNMENT

See Criminal Procedure Code, Ss. 344, 526.

———*Of case after address to jury whether improper.*

There is nothing illegal in adjourning a case after the Government Pleader and the Pleader of the accused have addressed the Jury and there is no provision in law for a fresh address on resumption of the hearing. *Sur Nath Dhaduri v. Emperor.*

28 Cr. L. J. 950 :
105 I. C. 662 : L. R. 8 A. 140 Cr. :
25 A. L. J. 1077 :

8 A. I. Cr. R. 342 : A. I. R. 1927 All. 721.

———*Granting adjournments in petty criminal cases, propriety of.*

Magistrates should refrain from granting adjournments in criminal cases save in cases where they are clearly necessitated for the purposes of justice. In petty criminal cases

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both parties should appear on the first day of hearing ready for the completion of the entire trial at a single hearing. *Narayan Maharana v. Emperor*. 31 Cr. L. J. 789 : 120 I. C. 134 : 9 Pat. 113 : A. I. R. 1930 Pat. 241.

ADMIRALTY

—*Collision—Negligence—Principles regulating determination of liability—Method of investigating into cause of accident—Prosecution under Calcutta Pilot Act, XII of 1889.*

In every collision case, whether it occurs on land or at sea, the same tests are to be applied for the purpose of ascertaining the cause of the accident, although, where the Court is of opinion that the damage was caused by the fault of two or more vessels, the rule in admiralty for assessing liability is different, for the Court in that event must allocate the liability to make good the loss or damage "in proportion to the degree in which each was in fault." If the cause of the damage is the combined operation of more acts than one, such acts need not be synchronous, for in order to establish that the damage was caused by more acts than one it is essential to prove, not that the damage was the result of two or more simultaneous acts, but that it was the effect of the concurrent operation of those acts which in combination were the cause of it. In investigating the cause of an accident the Court must be careful to keep the material incidents in their true perspective, and not to attach undue importance to the particular times and exact situations to which witnesses on various occasions have deposed. The circumstances attending a collision should thoroughly be examined, and great care should be exercised by the authorities concerned before a prosecution in respect of it is launched against a pilot under Act XII of 1889. *In re, Rabenfels*, 31 Cr. L. J. 215 : 13 A. I. Cr. R. 316 :

121 I. C. 312 : 56 C. 763 : A. I. R. 1930 Cal. 97.

ADMIRALTY JURISDICTION

—*Nature and extent of.*

The jurisdiction of an Admiralty Court begins where the tide touches the shore, and extends all over the world to the coast of every country, and up every bay, and river so far as great ships go and it is not necessary to show that the tide reaches the spot if it is accessible to ocean-going vessels. *Francis Xavier Fernandes v. Emperor*. 37 Cr. L. J. 314 :

160 I. C. 375 : A. I. R. 1936 Sind 3 : 29 S. L. R. 281 : 8 R. S. 122.

ADMIRALTY OFFENCES (COLONIAL) ACT (12 & 13 Vict. C. 96), S. 1.

—*"Sea", meaning of.*

The word "sea" in S. 1 means only that part of the sea over which the Admiral or Admirals has or have jurisdiction, that is to say, territorial waters. *Punja Guni v. Emperor*. 19 Cr. L. J. 337 :

44 I. C. 449 : 20 Bom. L. R. 98 : 42 B. 234 : A. I. R. 1918 Bom. 249.

ADMISSIBILITY

See also Evidence.

—*Statements of accused in Police custody.* *Sankaran Nair, J.*—Statements made by ac-

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cused while in Police custody are notoriously untrustworthy and no reliance can be placed on such statements. *Vaithinatha Pillai, In re*. 14 Cr. L. J. 465 : 20 I. C. 721 : (1912) M. W. N. 825.

—*Statement of witness or accused, to police during investigation.*

Statement of witness and of accused person made to Police officer during investigation cannot be taken in evidence. 11 Cr. L. J. 612.

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See also Confession. 2 Cr. L. J. 811.

—*Accused's written statement—Conviction based on partial statement, legality of.*

It is settled law that the case for the prosecution must be proved by the evidence of the Crown witnesses and cannot be based upon the partial admission of the accused in his defence. A written statement filed by the accused is either to be accepted *in toto* or to be rejected *in toto* and a portion of the contents of that statement cannot be used to base the conviction of the accused. *Rameshwar v. Emperor*. 29 Cr. L. J. 763 :

110 I. C. 795 : 5 O. W. N. 601 : A. I. R. 1928 Oudh 373 : 11 A. I. Cr. R. 41.

—*By accused—Charge of giving false evidence.*

When a person charged with giving false evidence has admitted both in his examination and in his defence that he made the statement which is alleged to be false, the conviction is not necessarily illegal by reason of the fact that no evidence of the identity of the accused with the person who made the alleged false statement was adduced. *Abbas Ali v. Emperor*. 4 Cr. L. J. 471 :

3 L. B. R. 208 (F. B).

—*By witness that previous statement is false.*

Where in cross-examination a witness admits that a statement previously made by him relative to a certain fact is a false statement, he ought to be asked in re-examination by the prosecution, or at any rate by the Court, why he made a statement which was false. The mere fact that the witness acknowledges the previous statement to be false is no justification for rejecting such previous statement, if on other grounds the Court is able to reach the conclusion that that statement is in substance true. *Sushil Chandra v. Emperor*. 20 Cr. L. J. 465 :

51 I. C. 449 : 6 O. L. J. 210 : A. I. R. 1919 Oudh 160.

—*By one accused—Admissibility against other.*

Admission by one of the accused is not to be admitted against others. 11 Cr. L. J. 96.

—*Document—Proof.*

To be an admission, it is not necessary that a document should have been written by the person against whom it is sought to be used ; it is sufficient if it be proved that the document has been in his possession and that his conduct in reference to it has been such as to create an inference that he was aware of its contents and admitted their accuracy. Unless this be done, the document cannot be used as proof of its

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contents. What conduct would properly give rise to such an inference must necessarily depend on the circumstances of each case. Mere possession of letters would not ordinarily go for such, and the value of such possession must largely depend upon whether it can be shown that their contents have been recognized and adopted by the replies they may have elicited, or the conduct they may have inspired. If no such consequence can be traced, their value must necessarily be materially discounted. *Barindra Kumar v. Emperor*. 11 Cr. L. J. 453 : 7 I. C. 359 : 37 Cal. 467 : 14 C. W. N. 1114.

Document in possession of accused.

For a document to amount to an admission, it is not necessary that it should have been written by the person against whom it is sought to be used. Mere possession of the document would not ordinarily go for much ; but it is sufficient if it be proved that the document has been in his possession, and that his conduct in reference to it has been such as to create an inference that he was aware of its contents and admitted their accuracy. The rule would apply more strongly where the document was received or written by the person against whom it is sought to be used. *Lalit Chandra v. Emperor*.

13 Cr. L. J. 433.
15 I. C. 65 : 39 Cal. 119.

ADULTERY

———*Conviction for rape set aside—Subsequent conviction for adultery in absence of husband's complaint.*

Where accused was convicted of rape but the conviction is set aside, he cannot be subsequently convicted for adultery without husband's complaint. 14 Cr. L. J. 284.

ADVOCATE

See also Legal Practitioners' Act.

———*Barrister—Inam or present, arrangement for—Supplemental fee—Non-appearance—Professional misconduct.*

It is disgraceful on the part of an Advocate to arrange to get from his client, in addition to the fee agreed upon, an *inam* or a present if he is successful in the case. A Barrister does not get rid of his original obligation to his client and the Court if he fails in his attempt to extort from his clients a supplemental fee. Where an Advocate demanded from his client a supplemental fee at the last moment and, on the client's failure to satisfy the demand, did not appear and argue a criminal appeal in which he had been duly engaged : *Held*, that the Advocate's demand under the circumstances was nothing less than an attempt to levy blackmail and that his conduct amounted to gross misconduct of his profession. *Advocate-General v. Rustomji B. Sunawalla*.

13 Cr. L. J. 916 :
14 Bom. L. R. 691 : 16 I. C. 780.

———*Lien*—An Advocate has no lien for costs on property recovered by his exertion. The only possible ground for supporting such a lien is the express agreement to that effect. *P. Krishnamachariar v. The Official Assignee of Madras*.

(1932) M. W. N. 8, 62 M. L. J. 185 :
35 L. W. 166 : 55 M. 455 :
I. R. (1932) Mad. 410 :
137 I. C. 571 : A. I. R. 1932 Mad. 256.

ADVOCATE.

———*Misconduct—Publication of articles in a newspaper by the Advocate defaming Judges.*

Any act which tends to discredit or bring into contempt the order of Advocates or the Court amounts to misconduct of which the High Court can take notice. Acts which on the part of a private individual offend against the dignity of the Court or are calculated to prejudice the course of Justice and are in his case contempts of Court do not cease to be acts of misconduct because they are committed by an Advocate. Rather are they aggravated inasmuch as the Advocate is bound to uphold and maintain the dignity of the Court. Acts which scandalise the Court as libels on its integrity, or its Judges, officers and proceedings are all instances of such misconduct. Hence when an Advocate published in a paper published by him articles throwing discredit upon the Judges of the Court in various ways, and his defence *inter alia* was that he had done so in his capacity of Editor and not in his capacity of Advocate of the Court, *held* that he was guilty of professional misconduct and the High Court had power to deal with him under S. 8 of the Letters Patent (Allahabad) and Rule 2 of the Rules of the Court. *In re : Sarvadhicary*.

3 A. L. J. 592 : A. W. N. 1906 226 (F. B.).

———*Professional misconduct—Advising clients.*

Their Lordships of the Judicial Committee of the Privy Council expressed disapproval of the view that a professional man acting for clients, and taking part in connection with the execution of a compromise directly arising out of the matter in which he is employed, is not bound to warn his clients if they are acting in ignorance of the nature of what they are doing while he is in a position to inform them or under a mistake as to their rights which he could correct, unless expressly asked by them on the subject. An Advocate, was charged with professional misconduct on two counts, and having been found guilty was suspended from practice for a period of four months. The charges were :

(1) That he being at the time the legal adviser of the parties, and knowing and believing at the time of the execution of the document that it was worthless and valueless, did either wrongfully advise and induce the execution thereof by the said parties, or did allow them to remain under the belief that the said document was legal and valid, in that he at their request attested the same ; (2) That being the legal adviser and as such bound to advise the parties as to the effect upon their rights to the property of the deceased of the execution of another document, did not give them the advice they were entitled to expect, and did thereby allow them to execute the said document, which he at the time, according to his admission knew and believed to be worthless as a legally binding agreement, and by attesting the said document, induced the clients to believe that it was legal and binding. *Held*, reversing the order, (as to the first aspect) of the charge that in allowing his clients to execute the documents under the circumstances the Advocate was not guilty of such professional misconduct as justly to call for punishment. *Held*, also, (as to the second aspect of the charge) that there was a decided opinion in the case that the

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actual legal rights of the parties were quite well known before the documents were executed : and that, therefore, there was nothing to show that the Advocate had any knowledge or means of knowledge which his clients did not possess. *In re Henry Lewis Lubbeck.*

2 Cr. L. J. 775 :
7 Bom. L. R. 894 : 2 C. L. J. 421 :
10 C. W. N. 57 : 2 A. L. J. 800 :
15 M. L. J. 432 : I. L. R. 33 Cal. 151.

—*Suspension of—Reasonable cause—Letters Patent (Allahabad) Ss. 7, 8.*

It is essential to the proper administration of justice that unwarrantable attacks should not be made with impunity upon Judges in their public capacity. Where, therefore, an Advocate published an article amounting to a libel reflecting upon Judges of the High Court in their judicial capacity and in reference to their conduct in the discharge of their public duties it was held that this amounted to "reasonable cause" for the suspension of the Advocate from practice under the power conferred by S. 8 of the Letters Patent. (Allahabad). *In re S. D. Sarbadhicary.*

15 Cr. L. J. 57 :
I. L. R. 29 All. 95 : 17 M. L. J. 74 :
9 Bom. L. R. 9 : 5 C. L. J. 130 :
11 C. W. N. 278 : 2 M. L. T. 1 :
342 A. 41 : 4 A. L. J. (P. C.).

—*Suspension of, for criminal offence.*

An Advocate convicted of a criminal offence might properly be suspended or removed from practice under Rule 197 of the Rules of the Allahabad High Court which provides for cases in which the Chief Justice and Judges may, for good cause and without charge or trial, suspend or remove from the roll of the Court any Advocate of the Court. *In re S. D. Sarbadhicary.*

5 Cr. L. J. 57 :
I. L. R. 29 All. 95 : 17 M. L. J. 74 :
9 Bom. L. R. 9 : 5 C. L. J. 130 :
11 C. W. N. 278.

—*Unprofessional conduct—Acceptance of case without intervention of solicitor.*

An advocate who makes an arrangement with his client without intervention of any solicitor to do work at a fee of half of that which is the usual charge, is guilty of unprofessional conduct. *In re S. K. H.*

6 Cr. L. J. 16 :
6 C. L. J. 55 : 2 M. L. T. 492 :
34 Cal. 729.

—*Unprofessional conduct—Threat to client of accepting case against him unless he was paid more than ordinary fees.*

Where an advocate, who has settled a plaint in a case, wrote to his client that he would take the case against her, unless he was paid five times the ordinary fee, he is guilty of unprofessional conduct. *In re S. K. H.*

6 Cr. L. J. 16 :
6 C. L. J. 55 : 2 M. L. T. 492 :
34 Cal. 729.

AFFIDAVIT

See Penal Code, 1860, S. 199.

38 Cr. L. J. 216.

AGRA AND OUDH WATER WORKS ACT.

See Penal Code, 1860, Ss. 159, 160.

Rami Reddy v. Chintha Chinna Narasi Reddy.

40 Cr. L. J. 86 :
178 I. C. 523 : 48 L. W. 378 :
(1938) M. W. N. 975 : (1938) 2 M. L. J. 583 (2) :
11 R. M. 465. : A. I. R. 1938 Mad. 924 :

AGENCY TRACTS

—*Sub-Divisional Magistrate also acting as Assistant Agent—Duty to indicate the capacity in which he is trying a case—Failure to do so—Appeal to Sessions Judge—Calling for report from Magistrate, propriety of—Question of jurisdiction—Report of Magistrate, whether conclusive.*

Though it is the same officer who exercises jurisdiction in the two capacities of District Magistrate and Government Agent of an Agency tract, the capacities are quite different not only as regards the territorial limits within which the authority is to be exercised but in other respects as well. A Magistrate who exercises an authority as a Sub-Divisional Magistrate in the plains and as Assistant Agent in an Agency tract must bear in mind the particular capacity in which he acts in a particular case and must indicate the same in his proceedings. Laxity in this respect should not be encouraged and the Magistrate should not be permitted to rectify the omission later on by making a special report after the case has been disposed of, as to the capacity in which he acted. A report made by a Magistrate after pronouncing his judgment cannot be used to contradict or vary what is contained in the judgments themselves. The question whether a Sessions Judge has jurisdiction or not to entertain an appeal in such a case does not depend upon the report of the Subordinate Magistrate as to the capacity in which he acted but on the real facts of the case to be ascertained by the Judge. *In re Alla Satyam.*

38 Cr. L. J. 81 :
165 I. C. 919 : 44 L. W. 689 :
(1936) M. W. N. 1244 : (1937) 1 M. L. J. 759 :
9 R. M. 312 : A. I. R. 1937 Mad. 17.

AGRA AND OUDH WATER WORKS ACT (I OF 1891)

—*S. 46—Waste water used in garden—Offence.*

Waste water may be used for the purposes of a garden as it cannot be used for a second time for domestic purposes. Where in cold weather the garden of the applicant was found well watered but the *pacca* reservoir and channel connected with a well in the garden were dry and full of leaves. Held, that this circumstance was not sufficient for conviction of the applicant for having used for gardening the water supplied for domestic purposes. *Sital Prasad Ghosh v. Emperor.*

16 Cr. L. J. 558 :
29 I. C. 830 : 13 A. L. J. 546 :
A. I. R. 1915 All. 238.

—*S. 46 (A)—Water used in repairing house, if for domestic purposes—Person on whose behalf but without whose knowledge or sanction water used whether guilty.*

Municipal water used in repairing a house is not used for domestic purposes. S. 46 does not impose any penalty on a person on whose behalf but without whose knowledge or sanction

AGRA TENANCY ACT.

water is used. *Sat Narain Prasad v. Emperor.* 15 Cr. L. J. 291 :

23 I. C. 499 : 12 A. L. J. 288 :
A. I. R. 1914 All. 101.

AGRA TENANCY ACT

—S. 51.—*Suspension of rent—Right of zamindar to recover rent—Landholder collecting suspended rent by distraint, if commits offence.*

An order suspending or remitting arrears of rent is not an order prohibiting the landholder from receiving the same if tendered, or attempting to realise the same by lawful means. Therefore a landholder endeavouring to collect suspended arrears by process of distraint is not guilty of an offence under S. 188 of the Penal Code. Its effect is simply to deprive him of his right of suit in respect of the arrears remitted or of the suspended arrears during the period of suspension. *Emperor v. Ram Sarup.* 16 Cr. L. J. 674 :

30 I. C. 722 : 13 A. L. J. 619 :
A. I. R. 1915 All. 372.

—S. 95 (1)—*Ejected tenants re-entering after execution of decree without consent—Offence under S. 441, Penal Code, is made out.* *Gajraj Sinha v. Emperor.* 37 Cr. L. J. 56 :

159 I. C. 306 : (1935) A. L. J. 1108 :
1935 R. D. 491 : 8 R. A. 425 :

1935 A. L. R. 1104 : A. I. R. 1935 All. 938 :

AGRICULTURISTS' LOANS ACT (XII OF 1884), S. 5

—*Warrant signed by Tahsildar—Authority of Collector.*

A warrant under S. 5, for attachment of the property of the defaulters under the Act signed by the Tahsildar or issued under his order is not contrary to law if he has behind him the authority of the Collector. *Jawad Husain v. Emperor.* 28 Cr. L. J. 673 :

103 I. C. 401 : 1 Luck. Cas. 159 :
2 Luck. 503 : A. I. R. 1927 Oudh. 296 :
8 A. I. Cr. R. 321.

ALIBI

See also Criminal trial.

38 Cr. L. J. 279, 890.

—*Burden of proof.*

Where it is common ground between the prosecution and the defence that a crime has been committed and the accused sets up an *alibi*, the burden is on him to get rid of the evidence for the prosecution which identifies him with the commission of the crime; but when it is not common ground between the prosecution and the defence, it is a misdirection on the part of the Magistrate to treat the defence as a mere question of *alibi*. *Tapeshri Prasad v. Emperor.* 18 Cr. L. J. 317 :

38 I. C. 49 : 15 A. L. J. 127 : 1917 A. I. R. All. 81.

—*Plea of, not proved—presumption.*

The fact that an accused person has failed to establish his plea of *alibi* does not give rise to a presumption against him as to his complicity in the crime. *Emperor v. Taribullah Shaikh.* 23 Cr. L. J. 244 :

66 I. C. 180 : 25 C. W. N. 682.

ALTERATION OF CHARGE

See Criminal Procedure Code, 1898, S. 227. 30 Cr. L. J. 850 (b).

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—*Complainant, whether can alter election.*

It is contrary to public policy and to the recognised principles of the administration of the Criminal Law that when a charge has been launched which requires sanction by a particular authority and that authority has refused sanction, to hold that it is open to a complainant to alter his election, shift his ground and start a fresh charge on an alternative section which does not require sanction. *Kohna Ram v. Emperor.* 23 Cr. L. J. 496 :

68 I. C. 32 : 20 A. L. J. 775 :

4 U. P. L. R. (A.) 162 : A. I. R. 1922 All. 502.

—*Conviction at same time under Ss. 467, and 471, Penal Code.*

An accused can be convicted at one and the same time of forging a document and using that document as forged under Ss. 467 and 471. Penal Code. *Badri Prasad v. Emperor.*

13 Cr. L. J. 861 :

10 A. L. J. 473 : 17 I. C. 797.

AMMUNITION

—*Lead moulded into bullets if ammunition.*

Lead is exempt from the operation of S. 4 of the Arms Act, but when it is moulded into bullets of 20 to 24 bore it is ammunition within the meaning of the section. *Sant Singh v. Emperor.* 6 I. C. 952 : 23 P. W. R. 1910, Cr. : 16 P. R. 1910, Cr.

ANIMAL

—*Wild, when it can be properly of pursuer.*

In order to render an animal *feræ naturæ* the property of any person, there must be a complete capture, the result of which is to reduce the animal completely into possession. Mere pursuit, short of capture, will not do, and so long as it is possible for the animal to escape, it cannot be said that there is such a reduction into possession as makes the animal the property of the pursuer. The mere fact of the accused's dog overtaking an animal and pulling it down, does not preclude the possibility of escape so as to make the animal his property. *Raghunandan v. Emperor.* 13 Cr. L. J. 556 :

15 O. C. 187 : 15 I. C. 972.

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—*See also—Cr. P. C., Ss. 404 to 431.*

—Additional evidence.

—Admission.

—Against acquittal.

—Altering of finding.

—Appealable sentence.

—Competency.

—Dismissal for default.

—Duty of appellate Court.

—Evidence.

—Finding.

—Forum.

—High Court's power.

—Judgment.

—Jurisdiction.

—Limitation.

—Local Govt's order.

—New plea.

—Notice to appellant.

—Privy Council.

—Procedure.

—Right of pleader to be heard.

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—Additional evidence—Admissibility.

Fresh evidence will not be allowed to be adduced in appeal which was not tendered in the lower Court on the ground that it was discovered after the filing of the appeal. *Gurumurthi Chetty v. Archibald Read*.

12 Cr. L. J. 40 :
9 I. C. 251 : (1911) 2 M. W. N. 136 :
9 M. L. T. 323.

—Admission—Restrictive order for admission—Validity.

A restrictive order for admission of a criminal appeal is not contemplated by S. 422, Cr. P. C., and must be deemed *ultra vires*. *Nafar Sheikh v. Emperor*.

14 Cr. L. J. 485.

—Admission—Subsequent dealing with question, whether appeal lay.

The mere fact of the admission of criminal appeal does not preclude the Court from dealing subsequently with the question whether an appeal is competent. *Aziz Sheikh v. Emperor*.

14 Cr. L. J. 254 :
19 I. C. 510 : 17 C. W. N. 825 : 40 Cal. 631 :

—Against acquittal. Also see Criminal Procedure Code, 1898, S. 417.

38 Cr. L. J. 295.

—Against acquittal.

In an appeal against an acquittal, the appellate Court cannot convict of an offence not charged in the grounds of appeal.

12 Cr. L. J. 73 :
9 I. C. 436.

—Against acquittal—Appeal from conviction—Distinction—Benefit of doubt.

Although there is nothing in S. 417, Criminal Procedure Code, to indicate that an appeal from an acquittal should receive any different treatment from any other appeal or class of appeals, there is a distinction of considerable practical significance between an appeal from an acquittal, and one from a conviction. When an accused has been acquitted by a Magistrate after hearing all the evidence against him, the presumption is that there was at least reasonable doubt, and the appellate Court must be positively convinced that there was no such reasonable doubt before it can set aside the acquittal. So that in an appeal from an acquittal, the benefit of all doubt shown to exist is against the appellant, whereas, in an appeal from a conviction the benefit of all reasonable doubt has to be given in favour of the appellant. *Emperor v. Harnama*.

11 Cr. L. J. 66 :
4 I. C. 864 : 15 P. R. 1909, Cr. :
37 P. W. R. 1909, Cr.

—Against acquittal—Grounds for—Discovery of fresh evidence.

In an appeal from an acquittal, the fact that fresh evidence has been discovered subsequent to the acquittal, is not a sufficient reason for setting aside the acquittal or ordering a re-trial. *Emperor v. Po Gyi*.

3 Cr. L. J. 351 :
3 L. B. R. 114.

—Against acquittal—Interference by Chief Court of Punjab.

The Chief Court of the Punjab will not set aside a judgment of acquittal unless it is clearly and palpably wrong on the evidence. *Emperor v. Naxab*.

17 Cr. L. J. 194 :
34 I. C. 306 : 15 P. R. 1916 Cr. :
46 P. W. R. 1916 Cr : A. I. R. 1916 Lah. 143.

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—Against acquittal—Powers of Government.

The Government has the same power of appeal against acquittal as a convicted person has of appealing against conviction. *Emperor v. Po Saing and Aun Pe*.

1 Cr. L. J. 1022 :
2 L. B. R. 303.

—Altering of finding.

See Cr. P. C., Ss. 423, 439.

—Altering finding—Alteration of charge, legality of.

It is open to the appellate Court to alter a charge to one under a different section and it should do so if another section applies to the facts, provided the accused knew all the facts alleged against him. *Narsing Das Marwari v. Emperor*.

29 Cr. L. J. 86 :
106 I. C. 678 : 9 A. I. Cr. R. 282 :
A. I. R. 1928 Nag. 113.

—Appealable sentence—Appeal from first class Magistrate—Right of appeal of accused convicted at joint trial.

If, at the joint trial of two or more persons by a first class Magistrate, an appealable sentence is passed upon any of them, all those convicted have the same right of appeal, even though their sentences may be of the kind against which appeal would have been barred by S. 413 of the Code of Criminal Procedure, if they had been tried singly. *Ba Thaw v. Emperor*.

9 Cr. L. J. 356 :
4 L. B. R. 354.

—Appealable sentence—Summary trial—Order for security for good behaviour in addition to sentence of imprisonment.

A was tried at a summary trial under S. 30 of the Rangoon Police Act, and was sentenced to three months' rigorous imprisonment and further ordered to give security for good behaviour under S. 31-A :

Held, that the addition of the order for security rendered the case appealable. *Kathan v. King-Emperor*.

9 Cr. L. J. 368 :
4 L. B. R. 359.

—Competency—Concurrent terms of imprisonment not individually appealable—Appeal if lies.

An accused who has been sentenced to concurrent terms of imprisonment not one of which is individually appealable has no right of appeal against them collectively. *Aziz Sheikh v. Emperor*.

14 Cr. L. J. 254 :
19 I. C. 510 : 17 C. W. N. 825 : 40 Cal. 631.

—Competency—Judgment of single Judge of Chief Court in original side.

Appeal does not lie against the judgment of a single Judge of the Chief Court in original case.

9 Cr. L. J. 306.

—Order of Collector giving sanction to prosecute under Rules under Madras Municipalities Act—Appeal not competent.

An appeal does not lie against order of Collector according sanction for prosecution under the rules under Madras Municipalities Act.

10 Cr. L. J. 9.

—Competency—Order for security for peace.

No appeal lies from order to keep security for peace.

10 Cr. L. J. 375.

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———*Dismissal for default—Consideration on merits.*

A criminal appeal cannot be dismissed in default without being considered on its merits, though it may be dismissed summarily if there is no sufficient ground for interfering. *Sheoji v. Emperor.* 12 Cr. L. J. 481.
12 I. C. 89.

———*Conviction for two offences—One of the convictions set aside by Appellate Court—Duty of Appellate Court to reduce sentence.*

Where a Criminal Appellate Court sets aside the conviction of an accused person in respect of one of the several offences for which he was tried and convicted by the lower Court, it is its duty to reduce the sentence passed on him. *Prola Narasimham, In re.* 12 Cr. L. J. 454 :
11 I. C. 798 : 10 M. L. T. 115 :
(1911) 2 M. W. N. 97.

———*Duty of Appellate Court.*

In an appeal from a conviction and sentence it is for the Appellate Court, as for the first Court, to be satisfied affirmatively that the prosecution case is substantially true and that the guilt of the appellant has been established beyond all reasonable doubt. *Kanchan Mallik v. Emperor.*

15 Cr. L. J. 686 :
26 I. C. 134 : 18 C. W. N. 1215 :
A. I. R. 1915 Cal. 187.

———*Duty of Appellate Court—Conviction against each accused to be considered.*

The first duty of a Court of criminal appeal is to find whether the conviction had by the lower Court against each of the accused persons is sustainable. A general agreement with the lower Court cannot be sufficient to uphold the conviction of each particular individual, each of whom is entitled to a finding on the facts that he did or did not take part in the alleged offence, and where there is no such finding, there must be a re-hearing of the appeal. *Jatra Mohan v. Akhil Chandra.*

12 Cr. L. J. 43 :
9 I. C. 261.

———*Duty of Appellate Court—Duty of Court in regard to findings of fact by Trying Court.*

An Appellate Court should give weight to the opinion of the Trying Court which had the witnesses before it and was, therefore, able to judge from their demeanour whether or not they were telling the truth. *Deputy Legal Remembrancer, Behar and Orissa v. Matukdhari Singh.* 17 Cr. L. J. 9 :
32 I. C. 137 : 20 C. W. N. 128 :
A. I. R. 1917 Cal. 687.

———*Evidence—Power of Appellate Court to take further evidence.*

The Sessions Judge should not in an appeal refer to documents and evidence which did not form part of the record of the proceedings before the Magistrate. *Moni Mohan Mondal v. Iswar Chunder Mookerjee,* 6 C. L. J. 251 :
6 Cr. L. J. 357, referring to *Muthu Gownden, In re.* 11 Cr. L. J. 221 :
6 I. C. 12.

———*Finding inconsistent with conclusion—Rehearing, ground for.*

If the finding of a Sessions Judge on appeal is inconsistent with his conclusion, that is only a

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ground for re-hearing of the appeal. *Baburam Raut v. Emperor.* 14 Cr. L. J. 295 :
19 I. C. 951 : 17 C. L. J. 394.

———*Forum—Assistant Sessions Judge, judgment of—Sentence under each of two sections, Penal Code, 4 years, sentences to run concurrently—Jurisdiction.*

Where an Assistant Sessions Judge sentences an accused to imprisonment for a period not exceeding four years under each of two sections of the Penal Code, the sentences to run concurrently, an appeal lies to the Sessions Court and not to the High Court. *Lakhimi Ram Gagoi v. Emperor.* 17 Cr. L. J. 266 :
34 I. C. 986 : 23 C. L. J. 595 :
A. I. R. 1916 Cal. 464.

———*Forum—Illegal sentence on reference by second class Magistrate under S. 349, Cr. P. C.—Forum of appeal.*

Where on a reference by a second class Magistrate under S. 349, Cr. P. C., a District Magistrate passed a sentence of five years' imprisonment on one of the accused: *Held*, that the District Magistrate acting under S. 349 must be regarded as a Magistrate not empowered under S. 30, Cr. P. C., and therefore in spite of the sentence of five years' imprisonment which was *ultra vires* appeal lay to the Court of Session and not to Chief Court. *Nga Pya v. Emperor.* 6 Cr. L. J. 289.

———*Forum—Jurisdiction—Offence committed within British India—Trial held within British India—Subsequent transfer of this territory to an Independent Native State—Appeal, forum of.*

An offence was committed at a place within British India where the accused was tried and convicted. An appeal was filed to the Sessions Judge who had jurisdiction to entertain the appeal. Before the appeal could be heard, the territory, including the place where the offence had been committed, was transferred to an Independent Native Chief: *Held*, that the mere fact that the locality where the offence was committed had ceased to be British India before the appeal was determined did not take away from the Sessions Judge jurisdiction to hear the appeal. As the offence was committed in British India, the Sessions Judge had jurisdiction to hear the appeal. *Mahabir v. Emperor.* 12 Cr. L. J. 401 :
11 I. C. 585 : 8 A. L. J. 630 : 33 All. 578.

———*Forum—Trial held by second class Magistrate—Enhancement of Magistrate's powers before conclusion of trial—Appeal, forum of.*

The accused was tried and convicted by a Magistrate who, at the commencement of the trial, held only second class powers, but who, before judgment was passed, was invested with first class powers: *Held*, that as the trial had been held by a second class Magistrate, the conferment of first class powers before its conclusion did not affect the question of appeal; and that, therefore, an appeal lay to the District Magistrate. *Emperor v. Nga Paw.* 8 Cr. L. J. 48 :
4 L. B. R. 239.

———*High Court's power—High Court's power to acquit innocent person without appeal.*

The High Courts when dealing with cases in appeal or revision are competent to acquit an

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innocent person although he has failed to exercise the right of appeal. *Emperor v. Sada*.

11 Cr. L. J. 99 :
I. C. 980 : 14 P. W. R. 1909, Cr.

Judgment.

See Criminal Procedure Code, 1898, S. 427 (1).
30 Cr. L. J. 791.

Jurisdiction—Chief Court—Conviction by Superintendent, Hill States, under special powers given by the Local Government—Local Government's statement.

The Chief Court has no jurisdiction to entertain and hear an appeal from the order of Superintendent, Hill States, especially appointed by the Local Government to try criminal cases in a Native State outside British India, even if the officer happens to be a District Magistrate in British India. The Chief Court has also no power to question the validity of such an appointment, but is bound to accept as conclusive the statement of the Local Government with regard to the capacity in which that officer has acted. *Bishen Das v. Emperor*.

11 Cr. L. J. 390 :
6 I. C. 640 : 20 P. W. R. 1910, Cr. :
14 P. R. 1910, Cr.

Jurisdiction—Competency of Magistrate who summoned accused to hear appeal from conviction.

A Deputy Magistrate sent a complaint for local investigation and report to a Sub-Deputy Magistrate who recommended the dismissal of the complaint. The matter came before the joint Magistrate who, without expressing any judicial opinion hostile to the accused, summoned them to stand their trial. The Joint Magistrate transferred the case to another Deputy Magistrate who convicted the accused. They appealed and the appeal was heard and dismissed by the Joint Magistrate: *Held*, that the Joint Magistrate was not incompetent to hear the appeal. *Dasarath Rao v. Emperor*.

10 Cr. L. J. 557 :
4 I. C. 352 : 36 Cal. 869.

Jurisdiction—Powers of Appellate Court restricted by original Court's jurisdiction—Appellate Court cannot pass sentence beyond Court's power—Enhancement of sentence—Commutation of imprisonment into fine.

It is a rule underlying the whole fabric of appellate jurisdiction that the power of an Appellate Court is measured by the power of the Court from whose judgment or order the appeal before it has been made. Every Court of appeal exists for the purpose where necessary, of doing or causing to be done that which each Court subordinate to its appellate jurisdiction should have, but has not, done or caused to be done, and nothing further. An Appellate Court cannot, on appeal, pass a sentence which the original Magistrate was not competent to pass. All jurisdiction starts with the first Court and remains a constant factor throughout all subsequent stages of the suit or proceeding governed by it. An appellate Court, which alters a sentence of imprisonment into a sentence of fine, cannot inflict a fine beyond the maximum which could have been imposed by the first Court. The altered sentence, taken as a whole, must be such as was

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within the power of the original Court to pass. The substitution of fine for imprisonment is a merciful commutation of punishment, and does not constitute an enhancement in the severity of the sentence. *Sita Ram v. Emperor*.

12 Cr. L. J. 444 :
11 I. C. 788 : 7 N. L. R. 109.

Jurisdiction—Magistrate passing non-appealable sentence—Subsequent enhancement to make it appealable.

A Magistrate first passed a non-appealable sentence on an accused but at the request of the accused he enhanced the sentence so as to make it appealable. The accused appealed to the Sessions Judge who dismissed the appeal on the preliminary ground that no appeal lay as the Magistrate had no jurisdiction to alter his sentence after he had delivered and signed his judgment: *Held*, that the Sessions Judge committed an error in holding that he had no jurisdiction to hear the appeal. Although the Magistrate had no jurisdiction to alter his sentence, yet for the purposes of the Sessions Judge's jurisdiction, so far as the appeal was concerned, that was the very mistake which the Judge was called upon to correct by way of appeal. *Emperor v. Keshavlal*.

12 Cr. L. J. 402 :
11 I. C. 586 : 13 Bom. L. R. 503 : 35 B. 418.

Jurisdiction—Transfer of territory to Foreign State subsequent to conviction—Validity of order of re-trial made in appeal heard before transfer.

The accused committed an offence within the Family Domains of the Maharaja of Benares and was convicted by the Deputy Superintendent. An appeal was made to the Sessions Judge of Mirzapore who heard it on 31st March 1911 and ordered a re-trial on 3rd April 1911. The Benares State came into existence on 1st April 1911 and the territory in which the offence was committed was transferred to that State. On 10th April 1911, the Sessions Judge made a reference to the High Court recommending that his order for re-trial of 3rd April was made without jurisdiction and that it be declared null and void: *Held*, that the order was perfectly valid and was made with jurisdiction. *Emperor v. Saheb Din*.

12 Cr. L. J. 470 :
11 I. C. 1006 : 8 A. L. J. 705.

Jurisdiction—Trial of an offence under Frontier Crimes Regulation without Council of Elders—Course of appeal.

Where a Magistrate, empowered by S. 59 of the Frontier Crimes Regulation (III of 1901), tries, without the assistance of a Council of Elders, a person charged with having done an act punishable under the Regulation the ordinary course of appeal prescribed by Criminal Procedure Code applies. Consequently an appeal lies to the Sessions Court from the conviction and sentence of rigorous imprisonment for two years, passed by a Magistrate of the 1st Class, on an accused convicted of an offence under S. 30 of the Regulation. *Emperor v. Alam Khatun*.

11 Cr. L. J. 426 :
6 I. C. 959 : 19 P. R. 1910 Cr.

Limitation—Last day for filing appeal expiring during vacation—Appeal presented on

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re-opening of Court—Circumstance justifying admission of appeal after expiry of limitation.

The last day for filing an appeal in a Sessions Court expired during the Court's civil vacation, but on that day the Judge held criminal sittings of which, however, neither the appellant nor his Counsel had timely notice, and the appeal was filed on the day the Court re-opened after the civil vacation, but was dismissed as time-barred: *Held*, that as notice of the Judge's intention to hold sittings on the day when limitation for the appeal expired was not given either to the appellant or to his Counsel, the appeal ought not to have been dismissed as time-barred. *Sona Sheikh v. Naib Ali*.

22 Cr. L. J. 426 :
61 I. C. 714.

———*Local Government's orders.*

There is no right of appeal to any Court of Law to adjudicate as to the merits of any order passed by the Local Government. *Jitendra Nath v. Chief Secretary of the Bengal Government*.

34 Cr. L. J. 245 :
141 I. C. 866 : 36 C. W. N. 1088 : 60 Cal. 364 :
I. L. R. (1933) Cal. 198 : A. I. R. 1932 Cal. 753.

———*New plea.*

The High Court will not give effect to the contention sought to be raised before them for the first time, relating to the inadmissibility of statements in evidence for the reason that they were not statements as contemplated by S. 161, Cr. P. C. *Narain Chandra Biswas v. Emperor*.

37 Cr. L. J. 445 :
161 I. C. 289 : 63 C. L. J. 191 : 8 R. C. 508 :
A. I. R. 1936 Cal. 101.

———*Notice to appellant—Date of hearing—Reasonable notice to be given to appellant.*

An appellant is entitled to reasonable notice of the date and place of hearing of his appeal. A notice to an appellant's Pleader that his appeal would be heard next day, wherever the Court happened to be encamped, is not reasonable or sufficient. *Arjun Tathoo, In re*.

21 Cr. L. J. 373 :
55 I. C. 853 : 22 Bom. L. R. 188 :
A. I. R. 1920 Bom. 318.

———*Privy Council—Federal Court—Leave to appeal from decision of Federal Court—Special circumstances must be shown—Special circumstances, what are.*

Where leave to appeal to the Privy Council from the decision of the Federal Court is asked for, some special circumstances must be shown justifying grant of such leave, what special circumstances are, would depend upon the merits of each case. In this particular case the leave was refused. *Dr. Hori Ram Singh v. Crown*.

40 Cr. L. J. 599 (F. C.) :
181 I. C. 947 : 11 R. F. C. 75 :
1939 O. L. R. 416 (1) : 5 B. R. 771 :
(1939) M. W. N. 616 (F. C.).

———*Privy Council, appeal to—Pardon, grant of, to appellant, whether sufficient reason for not entertaining appeal.*

Where an appeal in a criminal case is pending before the Privy Council and a free pardon is granted to the appellant, this of itself is a sufficient reason for the Board declining to

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entertain the appeal. *Kali Nath Roy v. Emperor*.

22 Cr. L. J. 129 (P. C.) :
59 I. C. 641 : 19 A. L. J. 65 : 33 C. L. J. 124 :
40 M. L. J. 10 : 13 L. W. 253 :
21 M. W. N. 49 : 29 M. L. T. 142 :
2 L. 34 : 25 C. W. N. 701 :
23 Bom. L. R. 709 : 10 P. W. R. 1921 Cr. :
A. I. R. 1921 P. C. 29.

———*Procedure—Pleader appearing for accused without vakalatnama.*

Where an accused person is represented by a Pleader in an appeal, but the latter has no *vakalatnama*, the proper course is to adjourn the hearing of the appeal until one is forthcoming, and thus afford the accused an opportunity of being represented. *Jasir Khan v. Emperor*.

21 Cr. L. J. 413 :
56 I. C. 61 : A. I. R. 1920 Cal. 175.

———*Procedure—Disposal of appeal without giving appellant's pleader reasonable opportunity of being heard in support of it.*

Where, on the presentation of a criminal appeal, the appellant's pleader stated that some other pleader would argue the case but the Magistrate called on the pleader present to argue at once, and on his failing to do so, dismissed the appeal: *Held*, that reasonable opportunity was not given to the appellant's pleader to be heard in support of the appeal and that the appeal should, therefore, be re-heard.

Ramtahal Dusadh v. Emperor. 36 C. 385, 13 C. W. N. 684 : (1909) 1 Ind. Cas. 868 : 9 Cr. L. J. 401 referred to. *Machi Reddi, In re*.

10 Cr. L. J. 491 :
4 I. C. 37.

———*Procedure.*

Notice of hearing of appeal must be issued. Hearing of appeal without notice is illegal.

9 Cr. L. J. 553.

———*Procedure—Record sent for—Appellant, right of, to be heard.*

Where a District Magistrate on a criminal case coming up before him in appeal sends for the record and on the receipt of the record dismisses the appeal without hearing the appellant or any legal practitioner engaged on his behalf, the procedure adopted by him is not in accordance with law. The appellant must be given an opportunity to be heard. *Jagdeo Rai v. Kali Rai*.

18 Cr. L. J. 639 :
30 I. C. 1007 : 1 Pat. L. W. 577 :
A. I. R. 1917 P. 331.

———*Procedure—Summary rejection without hearing appellant's pleader, legality.*

Summary rejection of an appeal against order of sanction, without hearing appellant's pleader is illegal.

9 Cr. L. J. 189.

———*Right of pleader to be heard—Discretion of Court.*

It is not obligatory but discretionary for a Magistrate to hear a pleader for the appellant if the appeal has been fixed for a particular date for the delivery of the judgment which is ready. *Nyaji Khan v. Emperor*.

23 Cr. L. J. 752 :
69 I. C. 640.

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———Confession of.

———Corroboration.

———Custody.

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- Detention in custody.
- Evidence.
- Non-compliance with pardon.
- Perjury.
- Statement by.

- See also* (i) Accomplice.
 (ii) Cr. P. C., 1898. Ss. 337, 339.
 (iii) Criminal trial—Evidence.
 (iv) Evidence.
 (v) Evidence Act, Ss. 114, 133.

— *Confession of—Whether substantive evidence.*

Confessions made by approvers are not substantive evidence, but may be used only for the purpose of contradicting or corroborating their deposition in Court. *Nitai Chandra Jana v. Emperor*.
 38 Cr. L. J. 852 (F. B.):
 170 I. C. 201 : 10 R. C. 98 :
 A. I. R. 1937 Cal. 433.

— *Confession of—Approver in Police custody but not threatened—Statement, admissibility.*

The principle that it is only when an approver's disclosure is extorted as the result of undue duress, such as threats or violence, that S. 24, Evidence Act, is applicable and the statement must be ruled out of evidence, does not apply where the Court is not satisfied that in spite of being in Police custody, which was subsequently held to be illegal, the approver was either subjected or threatened to be subjected to any such ill-treatment as would make the statement inadmissible under S. 24, Evidence Act. *Inder Pal v. Emperor*.
 37 Cr. L. J. 732 :
 162 I. C. 969 : (1936) Cr. C. 389 :
 38 P. L. R. 1128 : 8 R. L. 978 :
 A. I. R. 1936 Lah. 409.

— *Confession of—Corroboration—Confession of co-accused.*

In cases where a large number of persons have been arrested by the Police and confessions are obtained one after the other, it is likely enough that those confessions should agree with each other and each man would be likely to name, as far as possible, those persons who have already been named in the previous confessions. The fact of any particular person having been named in the confessions of more than one of the co-accused cannot, therefore, be regarded as sufficiently reliable corroboration of the statement of the approver. In such a case, each person accused is entitled to claim that as against him the statement of the approver shall be corroborated by some reliable evidence. *Lala v. Emperor*.
 23 Cr. L. J. 158 :
 65 I. C. 622 : 3 P. W. R. 1922 Cr. :
 34 P. L. R. 1922 : 4 U. P. L. R. (L.) 38.

— *Confession of—Pardon forfeited—Previous deposition, whether can corroborate retracted confession.*

Deposition of an approver where pardon has been forfeited having itself been retracted cannot afford any corroboration of a retracted confession. *Sheikh Shafi v. Emperor*.

31 Cr. L. J. 661 :
 124 I. C. 459 : A. I. R. 1930 Nag. 259.

— *Corroboration.*

The Court should be satisfied as against each accused that there is some corroboratory evidence which shows that that accused took part in the

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dacoity. *Ganu Chandra Kashid v. Emperor*.
 33 Cr. L. J. 396 :
 137 I. C. 174 : 34 Bom. L. R. 303 : 56 B. 172 :
 I. R. (1932) Bom. 232 : A. I. R. 1932 Bom. 286.

— *Custody.*

Approver must be detained in judicial custody or confined in prison. *Kundan Lal v. Emperor*.
 32 Cr. L. J. 785 :
 131 I. C. 625 : 32 P. L. R. 423 :
 I. R. 1931 Lah. 481 : A. I. R. 1931 Lah. 353.

— *Detention in custody.*

Approver detained in custody under S. 337, Cr. P. C. is a 'criminal prisoner' within S. 3 (2), Prisons Act. *Kundan Lal v. Emperor*.

32 Cr. L. J. 785 :
 131 I. C. 625 :
 32 P. L. R. 423 : I. R. 1931 Lah. 481 :
 A. I. R. 1931 Lah. 353.

— *Evidence—Accomplice—Evidence, rule of—Corroboration—Quantity of corroboration.*

The law, as such, does not require any corroboration to validate the testimony of an accomplice. The rule of practice which does lay down this requirement must be applied with due regard to the varying circumstances of each particular case. The corroboration is necessary not only *quoad* the incidents and circumstances of the crime but also *quoad* the identity or personality of the offenders. There is no rule, whether of law or practice, which seeks to furnish an inflexible canon as to the precise degree of corroboration which, in all cases, should be demanded for an accomplice's evidence. The law does not require that every detail of the approver's story should be fortified by a similar story told by an independent witness, since the effect of any such principle would be to rule out the accomplice's evidence as altogether inadmissible. It is only necessary that accomplice's evidence should, in the circumstances of each particular case, receive that corroboration which it seems to require. *Emperor v. Kuberappa*.
 14 Cr. L. J. 225 :
 19 I. C. 321 : 15 Bom. L. R. 288.

— *Evidence—Conviction based on evidence of approver alone.*

A conviction should not be based on the evidence of an approver alone unless it is corroborated by reliable, independent evidence. *Nanzigadu v. Emperor*.
 12 Cr. L. J. 240 :
 10 I. C. 284.

— *Evidence—Corroboration.*

An approver's evidence cannot be accepted unless it is corroborated in material particulars by other and independent evidence. *Lad Khan v. Emperor*.
 13 Cr. L. J. 182 :
 19 P. W. R. 1912, Cr. : 11 P. L. R. 1912 :
 13 I. C. 998.

— *Evidence—Corroboration—Confession to private person.*

On certain night, a large gang of dacoits made an attack on the house of A. Before they could effect their purpose, the neighbours came up and the dacoits were driven off. One of them D. was, however, captured. He made a confession on the spot to a private person giving the names of some of the dacoits. As a result of the confession, some dacoits were captured. P. was captured who afterwards turned informer. D. had made a long detailed

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confession giving an account of the dacoity to a first class Magistrate but subsequently he retracted the confession: *Held*, that, in all cases depending on the evidence of an informer, the degree of support that the evidence required must depend on the amount of the credit in each particular case to be attached to the informer, that the confession of D. was ample evidence to corroborate the approver, and that the convictions of the dacoits were legal. *Lalan Malik v. Emperor*. 13 Cr. L. J. 571 : 16 C. W. N. 669 : 15 I. C. 987.

—————*Evidence—Corroboration—Corroboration as to some accused, if corroboration as to guilt of others.*

Per Courtney Terrel, C. J.—In the case where there are several accused, corroboration is required with respect to the guilt of each individual accused, that is to say, the fact that the evidence of the accomplice is corroborated as to certain of the accused does not amount to corroboration of the evidence as regards the guilt of the other accused. *Ratan Dhanuk v. Emperor*. 30 Cr. L. J. 137 : 113 I. C. 329 : 9 P. L. T. 672 : 8 Pat. 235 : A. I. R. 1928 Pat. 630.

—————*Evidence—Corroboration—Failure of Lower Courts to carefully scrutinize corroborative evidence—Interference with concurrent findings of fact in revision.*

The evidence of an approver should not be believed without material corroboration, and in order to see whether there is such a corroboration, it is the duty of the Court to scrutinize and marshal out very carefully the proof relating thereto. Where this duty has not been properly performed by the lower Court, the High Court will interfere on the Revision side and set aside even the concurrent finding of the Court below. *Manna v. Emperor*. 12 Cr. L. J. 35 : 9 I. C. 232 : 3 P. W. R. 1911, Cr.

—————*Evidence—Corroboration—Find of unidentifiable article, whether amounts to corroboration of approver's evidence.*

In a case of dacoity a find of sugar claimed by the complainant as stolen in the dacoity can be relied on as a circumstance corroborating an approver's evidence even though sugar is not an article capable of identification. *Ram Sarup Singh v. Emperor*. 32 Cr. L. J. 72 : 128 I. C. 121 : 9 Pat. 606 : I. R. (1931) Pat. 9 : 11 P. L. T. 867 : A. I. R. 1930, Pat. 513.

—————*Evidence—Corroboration—Nature of charge to jury—How far approver to be believed is matter for jury.*

The question how far an approver is to be believed is a matter essentially for the Jury. It is not, therefore, open to the Judge to tell the Jury that the approver is an out-and-out liar. Where the Judge in his charge to the Jury stated as follows: "The fact, therefore, that the approver says that a certain one of the accused was not present at the dacoity does not prove that prisoner guiltless unless you are satisfied that the approver is really telling the truth:" *Held*, that the Judge was not bound to ask the Jury to deal with the approver as a witness who was either truthful or untruthful,

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as an approver's story may be true in some parts, but not in others, and the direction was not erroneous. *Ramsarup Singh v. Emperor*. 32 Cr. L. J. 72 : 128 I. C. 121 : 9 Pat. 606 : I. R. (1931) Pat. 9 : 11 P. L. T. 867 : A. I. R. 1930 Pat. 513 :

—————*Evidence—Corroboration, necessity of—Evidence, if discarded must be discarded as a whole.*

The evidence of an approver must be corroborated in material particulars and those material particulars should connect the accused persons with the crime. If the evidence of an approver is discarded, it must be discarded as a whole and the defence cannot base arguments on it any more than the prosecution. *Shco Barhi v. Emperor*. 32 Cr. L. J. 5 : 127 I. C. 566 : 11 P. L. T. 520 : I. R. (1930) Pat. 710 : A. I. R. 1930 Pat. 164.

—————*Evidence—Corroboration—Omission of warning to jury—Conviction, legality of.*

Per Courtney Terrel, C. J.—In view of the rule according to which the evidence of an accomplice must be regarded with grave suspicion, it is the practice, amounting almost to a rule of law, that a Jury must be warned expressly of the danger in accepting the uncorroborated evidence of an accomplice, and if the warning is omitted, a conviction based upon such uncorroborated evidence must be set aside. *Ratan Dhanuk v. Emperor*. 30 Cr. L. J. 137 : 113 I. C. 329 : 9 P. L. T. 672 : 8 Pat. 235 : A. I. R. 1928 Pat. 630.

—————*Evidence—Corroboration—Retracted confession of co-accused—Conviction for murder—Independent corroboration, necessity of.*

It is unsafe to convict an accused for murder on the testimony of an approver and retracted confession of a co-accused, especially when they are in conflict with each other and there is no independent corroboration. *Parmeshwar v. Emperor*. 25 Cr. L. J. 1207 : 82 I. C. 135 : 11 O. L. J. 325 : (1924) A. I. R. (O.) 369.

—————*Evidence—Corroboration—Tainted evidence.*

Evidence that is itself tainted cannot be useful for purposes of corroboration of tainted evidence. A wife who knows all about a proposal to murder her husband and is a consenting party to the commission of the crime is in the position of an accomplice and her evidence should not ordinarily be accepted either as corroborative of the evidence of an approver or as sufficient, apart from independent corroboration, to justify the conviction of the accused. *Ahmad Nur v. Emperor*. 23 Cr. L. J. 597 : 68 I. C. 821 : 4 U. P. L. R. (L.) 110.

—————*Evidence—Corroboration held, not sufficient.*

Evidence to prove that certain accused persons were seen on certain occasions with the gang of the dacoits before and after dacoity and particularly where that evidence is unsatisfactory, is not sufficient to corroborate the approver's statement so as to make it admissible against the said accused. *Chet Singh v. Emperor*. 7 Cr. L. J. 227 : 2 P. W. R. Cr. 86.

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Evidence—Corroboration, necessity of.

An accused person should not be convicted solely upon the evidence of an approver. To support a conviction, the approver's evidence must be corroborated in material particulars. *Emperor v. Mathuri*.

37 Cr. L. J. 794 :
163 I. C. 253 : 1936 A. L. J. 518 :
(1936) Cr. C. 401 : 1936 A. L. R. 539 :
8 R. A. 928 (2) : 58 A. 695 :
A. I. R. 1936 All. 337.

Evidence—Corroboration, necessity of.

In the absence of reliable corroboration as to the identity of the accused and other material particulars, no reliance can be placed on the evidence of an approver (especially where he exonerates himself). *Kailash Chandra Rishi v. Emperor*.

30 Cr. L. J. 57 :
113 I. C. 73 : 48 C. L. J. 481 :
I. R. 1929 Cal. 77.

Evidence—Corroboration of, necessary for.

No conviction can be based on the evidence of an approver without clear and independent corroboration. Evidence in corroboration of the statement of an approver must be evidence tending to prove that the particular person to whom it relates was guilty of the offence charged; it is not sufficient that it should merely corroborate the general accuracy of the story told by the approver. Evidence dealing with facts outside the knowledge of the approver would amount to a corroboration of the approver's statement, if it tends to prove the guilt of the particular accused with reference to the offence charged. *Gaya Din v. Emperor*.

11 Cr. L. J. 551 :
7 I. C. 1006 : 13 O. C. 235.

Evidence—Corroboration, necessity of.

Obiter.—It is not imperative that in every case there should be corroboration of the evidence of an approver though no doubt as a matter of precaution it is, generally speaking, desirable that there should be some sort of corroboration. *Sarat Chandra Dhupri v. Emperor*.

35 Cr. L. J. 1335 :
151 I. C. 473 : 7 R. C. 133 :
A. I. R. 1934 Cal. 719 (S. B.).

Evidence—Nature of—Value of.

Per Courtney Terrel, C. J.—The evidence of an approver does not differ from the evidence of any other witness save in one particular respect, namely, that the evidence of an accomplice is regarded *ab initio* as open to grave suspicion. Accordingly, if the suspicion which attaches to the evidence of an accomplice be not removed that evidence should not be acted upon unless corroborated in some material particular, and, if the suspicion attaching to the accomplice's evidence be removed, then that evidence may be acted upon even though uncorroborated and the guilt of the accused may be established upon that evidence alone. *Ratan Dhanuk v. Emperor*.

30 Cr. L. J. 137 :
113 I. C. 329 : 9 P. L. T. 672 : 8 Pat. 235 :
A. I. R. 1928 Pat. 630.

Evidence—Statement of, as to his accomplices—Corroboration, necessity of—Corroborative statement made after long delay, reliability of.

The statement of an approver as to who were his accomplices must be corroborated by reliable evidence before it can form the basis

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of a conviction. Where the corroboration offered is the statement of two men who apparently knew something about the matter from the very beginning but refused to make any statement until the third day of the Police investigation, the statement must be regarded with suspicion and as not sufficient corroboration. *Fatta v. Emperor*.

23 Cr. L. J. 476 :
67 I. C. 828 : 2 L. L. J. 296 :
18 P. W. R. 1922 Cr.

Evidence—Value of.

A conviction cannot be based entirely on a statement made by an approver.

12 Cr. L. J. 537.

Evidence—Necessity of corroboration.

There is no bar to the conviction of an accused person even on the uncorroborated testimony of an approver if the Court is fully satisfied about its truth. But the testimony of an approver being usually of a tainted character, the Courts, as a matter of prudence, insist generally on some material corroboration thereof in so far as it implicates the accused person. The extent of corroboration which the Court will insist on, will, however, naturally vary with the circumstances of each case. If the approver's evidence appears to be on the whole reliable and he has no motive for implicating an accused person falsely, the corroboration required will be comparatively less. *Shajang v. Emperor*.

32 Cr. L. J. 681 :
131 I. C. 277 : 1931 Cr. C. 298 :
I. R. 1931 Lah. 405 : A. I. R. 1931 Lah. 178.

Evidence—Corroboration—Retracted confession of co-accused.

The testimony of an approver, which is itself tainted, cannot be held to be sufficiently corroborated by a retracted confession of a co-accused. *Kanshi Ram v. Emperor*.

36 Cr. L. J. 383 (2) :
153 I. C. 383 :
15 Lah. 491 : 36 P. L. R. 346 : 7 R. L. 425 (2) :
A. I. R. 1934 Lah. 873.

Non-compliance with pardon—Criminal proceedings before conclusion of principal trial—Illegality.

It is illegal to start criminal proceedings against an approver for not having complied with the condition on which a pardon was tendered to him, before the conclusion of the principal trial. *Emperor v. Haji Jiand*.

23 Cr. L. J. 611 :
68 I. C. 835 : A. I. R. 1922 Sind 31.

Perjury.

If a person has made contradictory statements but in the later statement he has reverted to truth, it is undesirable that he should be prosecuted for perjury. *Emperor v. Jairam Singh*.

33 Cr. L. J. 485 :
137 I. C. 748 : 33 P. L. R. 321 :
I. R. 1932 Lah. 350 : A. I. R. 1932 Lah. 307.

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Where an approver is being prosecuted for the original offence with which he was charged, a prosecution for perjury is unfair and cannot be sanctioned. *Emperor v. Jairam Singh*.

33 Cr. L. J. 485 :
137 I. C. 748 : 33 P. L. R. 321 :
1932 Cr. C. 421 : I. R. 1932 Lah. 350 :
A. I. R. 1932 Lah. 307.

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—Statement by—Complicity not proved—Statement, whether admissible.

The statement of an alleged approver who is not proved to have participated in the offence is not admissible against the accused. *Sant Ram v. Emperor*. 24 Cr. L. J. 799 : 74 I. C. 543 : 9 O. & A. L. R. 324.

—Statement by—Made at end of trial, value of—Corroboration.

An approver's evidence is in itself tainted evidence though in some cases it may be worthy of belief for various reasons, but the uncorroborated statement of an approver taken at the end of the trial is of no value whatever. *Sundar Singh v. Emperor*. 21 Cr. L. J. 507 : 56 I. C. 667 : 105 P. L. R. 1920 : A. I. R. 1921 Lah. 267.

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See also Criminal Procedure Code, 1898, S. 145. 31 Cr. L. J. 191.

—Arbitrator.

Where it is abundantly clear from the conduct of the objectors that they had no intention of appearing before the arbitrators, the arbitrators are justified in proceeding *ex-parte*. *Grahams Trading Co. (India) Ltd. v. Chandulal-Parmanand*. 37 Cr. L. J. 175 : 159 I. C. 824 : 8 R. S. 102 : A. I. R. 1935 Sind 228.

—Award—Filing of award in Karachi Court made under Arbitration Act and not in consequence of notification under Punjab Act I of 1911.—Karachi Court has to see if cause of action forming subject-matter of award arose within its jurisdiction. *Grahams Trading Co. (India), Ltd. v. Chandulal-Parmanand*. 39 Cr. L. J. 175 : 159 I. C. 824 : 8 R. S. 102 : A. I. R. 1935 Sind 228.

—Award.

Where each of the many contracts contains the same submission clause, there is no reason why a single award should not be made in respect of different contracts. *Grahams Trading Co. (India), Ltd. v. Chandulal-Parmanand*. 37 Cr. L. J. 175 : 159 I. C. 824 : 8 R. S. 102 : A. I. R. 1935 Sind 228.

—Award.

Where the arbitrators have jurisdiction, they cannot be guilty of misconduct in proceeding with the arbitration during the pendency of the suit in respect of the same subject-matter. *Grahams Trading Co. (India), Ltd. v. Chandulal-Parmanand*. 37 Cr. L. J. 175 : 159 I. C. 824 : 8 R. S. 102 : A. I. R. 1935 Sind 228.

—Review—Powers of arbitrators.

An arbitrator who has made an award in an application by a husband to reduce maintenance allowance awarded to his wife, is not competent to review his award subsequently. *Bhagwati Devi v. Gajadhar Prasad*. 36 Cr. L. J. 186 : 152 I. C. 822 : 1934 A. L. R. 1061 : L. R. 15 A. 106 Cr. : 7 R. A. 400 : A. I. R. 1934 All. 940.

—Powers of Court.

The fact that an accused person makes a false

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defence does not prove that he is guilty. *Parbhu v. Emperor*. 35 Cr. L. J. 79 (2) :

146 I. C. 364 : 34 P. L. R. 639 : 6 R. L. 212 : A. I. R. 1933 Lah. 946.

ARBITRATION ACT, S. 19.

—Suit and arbitration relating to different matters—Stay of suit.

If suit is not in respect of same matter agreed to be referred, there can be no stay of suit and there can be no question that arbitrators are *functus officio* until such suit is stayed. *Grahams Trading Co. (India), Ltd. v. Chandulal-Parmanand*. 37 Cr. L. J. 175 :

159 I. C. 824 : 8 R. S. 102 : A. I. R. 1935 Sind 228.

ARMS ACT, (XI of 1878).

—Conviction under Arms Act—Alteration into one under Explosives Act.

It would not be fair in revision to alter a conviction under the Arms Act to one under the Explosives Act unless a conviction under the latter Act were obviously correct and unless it were certain that the accused had not been prejudiced by being charged under the Arms Act. *Kisayat Ullah Khan v. Emperor*. 32 Cr. L. J. 564 : 130 I. C. 626 :

L. R. 12 A. 42 Cr. : 1930 A. L. J. 1467 : 53 A. 226 : I. R. 1931 All. 290 :

A. I. R. 1931 All. 17.

—Notifications relating to—Construction.

The notifications relating to the Arms Act imposing a penalty upon the subject must be construed very strictly. *Daljitsing Fattesing v. Emperor*. 31 Cr. L. J. 847 :

125 I. C. 435 : 32 Bom. L. R. 106 : A. I. R. 1930 Bom. 153.

—S. 4—Ammunition—Lead in shape of bullet or shot.

A piece of lead in the shape of a bullet or in the shape of shot is certainly ammunition or a part of ammunition. Lead, as such, which is not in such a shape, is excluded from the meaning of the term. *Emperor v. Bhopal Singh*. 37 Cr. L. J. 727 :

162 I. C. 912 : 1936 A. L. J. 657 : (1936) Cr. C. 504 : 8 R. A. 915 :

1936 A. L. R. 515 : A. I. R. 1936 All. 392.

—Air-gun—similar to "Gem" air-gun—not adapted for use with explosive substances—whether it is a toy—whether it comes under definition of arms.

The air-gun in case was said to be similar to the "Gem" air-gun, which is not adapted for use with explosive substances. Moreover, "Gem" air-guns had been classed as toys by the Government for the purposes of the Tariff Act : *Held*, that the air-gun in question was a toy and did not come under the definition of arms. *Emperor v. Maung Shwe The*. 4 Cr. L. J. 239 : 12 Bur. L. R. 201.

—All parts of ammunition—Empty cartridge cases.

The expression "all parts of ammunition," as used in S. 4 includes empty cartridge cases. *Emperor v. Ebrahim Alibhoy*. 2 Cr. L. J. 449 : 7 Bom. L. R. 474.

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—S. 4.—*Arms*—*Dah*—*Criterion for determining whether dah an arm.*

In determining whether any given *dah* is an arm within the meaning of that term in S. 4, the true criterion is the "intention of the maker as regards its purpose." A *dah* having a blade 22½ inches long, not intended for domestic purposes, is an arm. *Po Mc v. Emperor.*

23 Cr. L. J. 594 :
68 I. C. 818 : 11 L. B. R. 340 :
A. I. R. 1932 Rang. 23.

—S. 4—"Arms," definition of—*Cook's knife whether an arm—Primary intention of manufacturer.*

Primarily manufactured for culinary purposes, a cook's knife however carried or intended to be used, is not converted into an arm notwithstanding that it is provided with a sheath. The purpose for which an implement is primarily intended decides whether it is an arm or not. *Crown v. Nga Hmat Kyan*, 1 L. B. R. 271 : *Ebrahim Dacoodji Babi Barea v. King-Emperor*, 3 L. B. R. 1 : *Crown v. Kya Nyo*, Cr. Rev. No. 556 of 1903, followed. *Emperor v. Aung Ba*, 11 Cr. L. J. 153 :

4 I. C. 1028 : 5 L. B. R. 130 : 3 Bur. L. T. 69.

—S. 4—"Arm," definition of—*Dashe-upyat, whether an arm—Weapon used for domestic and agricultural purposes—Test—Intention of manufacturer and not of possessor material.*

A weapon primarily intended for domestic and agricultural purposes, even if it can be used for purposes of offence and defence, is not an arm within the meaning of the Act. It is the intention of the manufacturer, and not of the possessor of a weapon as to the use to which it is to be put, which determines whether a weapon is an arm or not. Therefore, a *dashe-upyat* of the usual type is not an arm within the meaning of the Arms Act. *Emperor v. Hamyji*, 11 Cr. L. J. 744 :

8 I. C. 972 : 5 L. B. R. 207 : 3 Bur. L. T. 91.

—S. 4—*Arms*, definition of—*Sword-stick, if sword.*

A sword-stick is a sword sheathed in a cane-stick and comes within the definition of arms in S. 4. *The Deputy Legal Remembrancer v. Satish Chandra*, 6 Cr. L. J. 227 :

11 C. W. N. 971 : I. L. R. 34 Cal. 749 :
6 C. L. J. 75.

—S. 4—"Arms," definition of—*Weapon, dangerous and probably deadly—Whether 'arm.'*

The definition of "arms" in the Arms Act is neither exhaustive nor altogether happy.

The mere fact that a weapon is dangerous and, if used, may probably cause death, does not make it "arms" within the meaning of S. 4 of the Arms Act. *Gajja v. Emperor*, 15 Cr. L. J. 658 :

26 I. C. 133 : 1 O. L. J. 559 :
A. I. R. 1914 Oudh 285.

—S. 4—*Arms*, definition of, whether exhaustive—*Hunting knives, whether arms.*

S. 4 does not purport to give an inclusive definition of arms. Hunting knives fall within S. 4, and are, therefore, subject to the provision contained in S. 5. *Bishan Singh v. Emperor*, 25 Cr. L. J. 1119 :

81 I. C. 943 : 51 Cal. 573 :
A. I. R. 1924 Cal. 714.

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—S. 4—"Arms," if includes "fire arms."

Unless there is something repugnant in the subject or context, wherever the word "arms" occurs in the Indian Arms Act, it has got to be read as including "parts of arms." By S. 4 of the Act the word "arms" also includes "fire-arms." *Harsha Nath Chatterjee v. Emperor*, 16 Cr. L. J. 9 :

26 I. C. 313 : 21 C. L. J. 201 :
42 C. 1153 : A. I. R. 1915 Cal. 719.

—S. 4—*Arms*, if must be in serviceable condition.

It is not necessary that an arm or a part of an arm should be in a serviceable condition before it can fall within the definitⁿ contained in S. 4. *Karam Din v. Emperor*, 25 Cr. L. J. 539 :

77 I. C. 1003 : A. I. R. 1923 Lah. 617.

—S. 4—"Arms," meaning of—*Weapon of domestic use, whether 'arm.'*

It is the purpose for which an implement is primarily used which determines the question whether it does or does not fall within the definition of "arms" given in S. 4. Implements of ordinary domestic use like an axe or a knife cannot be brought within the purview of the definition of "arms" in the section by the mere fact that they have been on a particular occasion used as weapons of offence or defence. *Mehr Din v. Emperor*, 28 Cr. L. J. 199 :

99 I. C. 935 : A. I. R. 1927 Lah. 162.

—S. 4—"Arm," out of order if falls within S. 4.

An arm, even out of order, comes within the definition of 'arm' in S. 4. *Emperor v. Samiullah*, 7 Cr. L. J. 350.

—S. 4—"Arms," what are—*Definition whether exhaustive—Test.*

The definition of the expression "arms" as given in the Act is not, and is not intended to be, exhaustive, and the true meaning of the term must be arrived at by consideration of the circumstances in each case. Neither the length, breadth or the form of the blade of a weapon, nor the handle affords any certain test of its classification as "arms." Whatever can be used as an instrument of attack or defence and is not an ordinary implement for domestic purposes falls within the purview of the Act. *Emperor v. Ralla Singh*, 20 Cr. L. J. 11 :

48 I. C. 486 : 32 P. R. 1918 Cr. :
A. I. R. 1919 Lah. 472.

—S. 4—"Arms," what are.

Whatever can be used as an instrument of attack of defence, for cutting as well as for thrusting and is not an ordinary implement for domestic purposes, comes within the meaning of the statute. *The Deputy Legal Remembrancer v. Satish Chandra*, 6 Cr. L. J. 227 :

11 C. W. N. 971 : I. L. R. 34 Cal. 749 :
6 C. L. J. 751.

—S. 4—"Arm," what is—*Test—Clasp knife whether 'arm.'*

It cannot be laid down as a hard and fast rule that a clasp knife does not fall within the definition of 'arms.' The purpose for which an implement is primarily intended regulates whether it should be deemed to be 'arms.' Where a knife had a blade 5½ inches long with

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a pointed end, was fitted to a long handle and turned over into the handle : *Held*, that the knife fell within the definition of arms inasmuch as the primary purpose of such an instrument can only be for stabbing. *Emperor v. Nga Lu Gale*.

29 Cr. L. J. 115 :
106 I. C. 707 : 5 R. 710 :
A. I. R. 1928 Rang. 49.

———S. 4.—*Bolts and bars of rifles, whether arms.*

The word "arms," as defined in S. 4, includes parts of arms as well, and bolts and bars of rifles are, therefore, "arms" within the meaning of this section. *Karm Din v. Emperor*.

25 Cr. L. J. 539 :
77 I. C. 1003 : A. I. R. 1923 Lah. 617.

———S. 4.—*Definition of "Arms"—Dagger-shaped clasp knives.*

Dagger-shaped knives are intended primarily as weapons of offence, and fall within the definition of "arms" although they might be called clasp-knives. *Ebrahim Darwoodji v. Emperor*.

2 Cr. L. J. 372 :
3 L. B. R. 1 : 11 Bur. L. R. 183.

———S. 4.—*Definition of arms, whether exhaustive.*

The definition of 'arms' in S. 4 is not exhaustive and there could be arms beyond the list of weapons mentioned in the said definition. *Emperor v. Nga Lu Gale*.

29 Cr. L. J. 115 :
106 I. C. 707 : 5 R. 710 :
A. I. R. 1928 Rang. 49.

———S. 4.—*Empty cartridge cases if ammunition.*

Empty cartridge cases fall within the definition of ammunition given in S. 4. *Baldeo Singh v. Emperor*.

10 Cr. L. J. 573 :
4 I. C. 405 (1)

———S. 4.—*Lead moulded into bullets is ammunition.*

Lead though exempt from the operation of S. 4 when moulded into bullets of 20 to 24 bore, it is ammunition within the meaning of S. 4. *Sant Singh v. Emperor*.

11 Cr. L. J. 421 :
6 I. C. 952 : 23 P. W. R. 1910 Cr. :
16 P. R. K. 10 Cr.

———S. 4.—*Pole-axe if 'arm' within S. 4.*

A weapon consisting of a plain lathi, a blade and two moveable screws and so contrived that by loosing the screws the blade may be detached from the shaft made up of the lathi, is not "arms" as defined in S. 4 of the Arms Act, although the weapon may be described as a pole-axe. *Gajja v. Emperor*.

15 Cr. L. J. 658 :
26 I. C. 133 : 1 O. L. J. 559 :
A. I. R. 1914 All. 276.

———Ss. 4, 95.—*Empty cartridges, possession of.* Possession of empty cartridge case though an offence, matter would be of no importance where it is not suspected to be used in future as ammunition and it would be ignored under S. 95, I. P. C. or under maxim : *de Minimis not curat lex*. *Emperor v. Bhopal Singh*.

37 Cr. L. J. 727 :
162 I. C. 912 : 1936 A. L. R. 515 :
1936 A. L. J. 657 : 1936 Cr. C. 504 :
8 R. A. 915 : A. I. R. 1936 All. 392.

———S. 4.—*Spear-head, if part of spear within meaning of S. 4.*

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In S. 4 the Legislature enumerated only arms and not parts thereof. Therefore spear-heads cannot, within the meaning of that section, be taken to be parts of spears. *Ram Brich v. Emperor*.

38 Cr. L. J. 54.

———S. 4.—*Spears with blunt points and edges, whether 'arms.'*

A spear would not cease to be a spear within the meaning of S. 4 of the Arms Act by reason of its points and edges becoming blunt, if they are capable of being re-sharpened at any time. *Emperor v. Sattegowda Salgoda Patil*.

31 Cr. L. J. 1109 :
126 I. C. 881 : 32 Bom. L. R. 571 :
A. I. R. 1930 Bom. 174.

———S. 4.—*Definition of arms, nature of.*

The definition of 'arms' in S. 4 is intentionally wide and the list of weapons is not exhaustive, every type of air gun or air pistol is not excluded from the definition. *Abani Mohan v. Emperor*.

35 Cr. L. J. 766 :
143 I. C. 925 : 60 Cal. 1477 : 38 C. W. N. 84 :
6 R. C. 488.

———Ss. 4 and 19 (f).—*Ammunition.*

"Ammunition" does not include 'patakhas'. *Kifayat Ullah Khan v. Emperor*.

32 Cr. L. J. 564 :
130 I. C. 626 : L. R. 12 A. 42 Cr. : 53 A. 226 :
1930 A. L. J. 1467 : I. R. 1931 All. 290 :
A. I. R. 1931 All. 17.

———S. 5.—*Arms Rules, Sch. II—Manufacture of kirpans by Sikhs—Offence.*

The entry in Schedule II to the Arms Rules which excludes "kirpans possessed or carried by Sikhs" from the prohibitions and directions contained in the Arms Act, refers to kirpans actually in existence and in the possession of or carried by Sikhs. But the entry does not exempt the manufacture of kirpans from the operation of the prohibition contained in S. 5 of the Arms Act. The manufacture of kirpans, therefore, without a license, is an offence falling under Cl. (a) of S. 19. *Emperor v. Basta Singh*.

25 Cr. L. J. 342 :
77 I. C. 230 : 3 L. 437 : A. I. R. 1923 Lah. 267.

———S. 5.—*Hunting knives if arms—If subject to provision in S. 5.*

Hunting knives fall within the definition of arms in S. 4 and are, therefore, subject to the provisions in S. 5. *Bishan Singh v. Emperor*.

25 Cr. L. J. 1119.
51 C. 573 : 31 I. C. 943 : A. I. R. 1924 Cal. 714.

———S. 9.—*Marriage procession—Public assemblage—Carrying gun without licence—Offence.*

Accused was convicted under S. 19 for carrying a gun in marriage procession. Under the terms of the licence, the licensee was forbidden to take the gun to a public assemblage, and it was contended that a marriage procession was not such an assemblage : *Held*, that the conviction was justified, as the marriage procession was a public assemblage, because the moment such a procession emerges from private premises and goes down the public street, it is open to the public to join the procession, and the procession becomes a public assemblage. *Kalyanchand-Gopalchand v. Emperor*.

23 Cr. L. J. 450 :
67 I. C. 722 : 24 Bom. L. R. 487 :
A. I. R. 1923 Bom. 36.

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—S. 13—"Under a licence," meaning of—
Licence granted—Person carrying arms not bound to carry licence.

A person who holds a licence for an arm is not obliged by law to carry that licence with him whenever he has the arm with him. The words "under a licence" in S. 13 import no more than that the person carrying the arms must have been granted a licence empowering him to possess and carry them. *Emperor v. Muhammad Ibrahim*,
22 Cr. L. J. 755 :
64 I. C. 275 : 24 O. C. 265 :
A. I. R. 1921 Oudh 149.

—Ss. 13, 15, 19.

A Sub-Inspector of Police, not of the 1st grade, who has been presented by Government with a revolver, commits no offence by possessing and going armed with a dagger. *NgaKaing v. Emperor*,
7 Cr. L. J. 243 :
U. B. R. Cr. 1907-1909 Arms 1.

—S. 14—Empty cartridge cases, if ammunition.

The possession of empty cartridge cases which are incapable of being re-loaded in India does not amount to an offence under S. 19 (f). *Amir v. Emperor*,
26 Cr. L. J. 1039 :
87 I. C. 927 : 23 L. J. 455 :
L. R. 6 A. 127 Cr. : 47 A. 629 :
A. I. R. 1925 All. 698.

—S. 14—Empty cartridge, whether ammunition.

Empty cartridges come within the definition of ammunition given in S. 14. *Emperor v. Aladin*,
25 Cr. L. J. 747 :
31 I. C. 215 : 21 A. L. J. 879 :
10 O. & A. L. R. 105 : 46 A. 107 :
L. R. 5 A. 22 Cr. : A. I. R. 1924 All. 215.

—S. 14—"Fire-arms," if include "parts of fire arms".

By S. 4 of the Act the word "arms" also includes "fire-arms". Therefore the word "fire arms" as used in S. 14 includes "parts of arms." *Harsha Nath Chatterjee v. Emperor*,
16 Cr. L. J. 9 :
26 I. C. 313 : 21 C. L. J. 201 :
A. I. R. 215 Cal. 719.

—S. 14—"Fire arms", meaning.

The word "fire-arms" only means "arms that are fired by means of gun-powder or other explosive." *Harsha Nath Chatterjee v. Emperor*,
21 C. L. J. 201 :
26 I. C. 313 : 42 Cal. 1153 :
A. I. R. 1915 Cal. 719.

—S. 14—Gun-barrel, whether an arm.

A gun-barrel in a serviceable condition is a fire arm within the meaning of S. 14. *Emperor v. Dhansingh*,
5 Cr. L. J. 435 :
3 N. L. R. 53.

—S. 14—License not valid—Effect.

Licence or exemption not granted by virtue of Act and Rules would be invalid and no protection to accused charged with Contravening Act exists. *Emperor v. B. R. Vertannes*,
34 Cr. L. J. 112 (2) :
140 I. C. 754 : I. R. (1933) Rang. 2 (2) :
A. I. R. 1932 Rang. 189.

—S. 14—Possession contemplated by.

The snatching up of a gun which was in the hand

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of another and firing it at a mad dog do not constitute the possession contemplated by S. 14. *Probhat Chandra v. Emperor*,
7 Cr. L. J. 242 :
12 C. W. N. 272 : I. L. R. 35 Cal. 219 :
3 C. L. J. 190.

—S. 14—Possession of parts of fire arms.

Possession of parts of fire-arms is prohibited by S. 14 read with S. 4 of the Act. *Harsha Nath Chatterjee v. Emperor*,
16 Cr. L. J. 9 :
26 I. C. 313 : 21 C. L. J. 201 : 42 Cal. 1153 :
A. I. R. 1915 Cal. 719.

—S. 14—Spear, deposit of—Failure to deposit—Conviction, if legal.

Section 14 does not require "a snare" to be deposited with a Magistrate and a conviction for omission to do so is illegal. *In re : Chagantipati China Basavapp*,
16 Cr. L. J. 528 :
29 I. C. 544 : 2 L. W. 532 :
A. I. R. 1916 Mad. 624.

—S. 14—"Extent", meaning of.

The word 'extent' in S. 14, is not limited in its meaning to territorial extent. *A. Malcolm v. Emperor*,
34 Cr. L. J. 363 :
142 I. C. 522 (2) : 37 C. W. N. 93 : 60 Cal. 445 :
I. R. (1933) Cal. 301 : A. I. R. 1933 Cal. 218.

—Ss. 14, 15—Prosecution under—Duty of prosecution—Possession of arms in furtherance of terrorist movement—Offence under.

In a prosecution for possession of fire-arms in contravention of Ss. 14 and 15, it is incumbent on the prosecution to prove that the fire arms were possessed in contravention of Ss. 14 and 15. The fact that these fire-arms have been possessed in furtherance of terrorist movements is not in itself an offence under the Act. It may be that there is a conspiracy to commit terrorist crimes and it may be that there is a conspiracy to possess fire-arms in contravention of the Act. But the two things are not the same. From the fact of being members of an organisation, the object of which is to commit terroristic offences, it would not follow in the absence of other evidence, that the accused were also parties to a criminal conspiracy for the specific and definite purpose of possessing fire-arms in contravention of the Arms Act. It is a fallacy to suppose that merely because one was a member of the larger organisation, one was also a member of the smaller organisation although the immediate objects of the two were not one and the same. *Bimal Krishna Biswas v. Emperor*,
37 Cr. L. J. 840 :
163 I. C. 566 : 62 Cal. 819 : 39 C. W. N. 761 :
9 R. C. 30.

—Ss. 14, 15, 19 (f)—Possession of gun—Servant—Master having licence, dead—Licence not renewed—Servant continuing to retain possession of gun.

X was licensed to possess a gun ; the gun was kept by his servant, the accused. X died and Y who succeeded to the management of X's property, failed to renew the licence. Two years after X's death, the quarters belonging to the accused were searched and the gun found therein : *Held*, that the accused had possession and control of the gun in contravention of the provisions of Ss. 14, 15, and was, therefore,

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guilty of an offence under S. 19 (f). *Emperor v. Jafu Bapu*. 13 Cr. L. J. 525 :

14 Bom. L. R. 501 : 15 I. C. 797.

—S. 16.—*Confiscation—Possession of gun without obtaining renewed licence—Confiscation of gun illegal—Fine and detention of gun proper punishment.*

An order confiscating a gun because of mere delay in renewing the licence to possess it, is illegal. The imposition of a fine and detention of the gun in the Police Station till the production of the licence would be a proper order. *Kautilya Rowethen, In re*. 15 Cr. L. J. 21 :

22 I. C. 165 : A. I. R. 1915 Mad. 130.

—S. 19.—*Arms—Possession of weapon requiring repairs—Revolver out of repair.*

An arm, even out of order comes within its definition given in S. 4, consequently possession of a revolver requiring some repairs without a licence is punishable under S. 19, clause (c). The test is not whether a particular weapon is serviceable but whether it comes within the legal definition of an arm. *Emperor v. Samiullah*. 7 Cr. L. J. 350 :

3 P. W. R. Cr. 28 : 6 P. R. Cr. 1908 :

9 P. L. R. 405.

—S. 19.—*Arms—Possession without licence—Possession must be exclusive.*

A dagger was found in a room in a house. The room and the house were jointly occupied by a father and his adult son. There was no evidence to show that either of them was aware of its existence : *Held*, that neither of them could be convicted under S. 19. *Emperor v. Sher Zaman*. 3 Cr. L. J. 71 :

6 P. L. R. 657 : 52 P. R. Cr. 1905.

—S. 19.—*Arms found concealed on property of joint Hindu family but in exclusive possession of one member—Such member if in possession of such arms.*

Where unlicensed arms are found concealed upon premises which, though legally the joint property of a joint Hindu family, are in fact at the time of the finding in the exclusive possession and control of one member of the family, that member of the family can properly be held to be in possession of such arms. *Emperor v. Ram Sarup*. 3 Cr. L. J. 88 :

26 A. W. N. 11 : I. L. R. 28, All. 302 :

3 A. L. J. 833.

—S. 19.—*Chhavi defined—Possession by keeping it hidden—Offence.*

Everything is a *chhavi* which has a large axe-like blade curved or otherwise, with an arrangement of ring or rings for binding it to the handle, and a handle of a considerable length. Being in possession of a *chhavi* and keeping it hidden is simply punishable under S. 19. *Gahna v. Emperor*. 15 Cr. L. J. 506 :

24 I. C. 594 : 1 P. W. R. 1914 Cr. :

33 P. L. R. 1914 : A. I. R. 1914 Lah. 280 :

—S. 19.—*Illegal possession of arms, prosecution for—Bijnor District—Sanction of District Magistrate, whether necessary.*

In the Bijnor District of U. P. the sanction of the District Magistrate is not necessary for a prosecution under S. 19. *Amir Ahmad v. Emperor*. 27 Cr. L. J. 15 :

91 I. C. 47 : L. R. 6 A. 196 Cr. :

24 A. L. J. 30 : A. I. R. 1926 All. 143.

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—S. 19.—*Licence—License carrying gun in marriage procession—Condition of license, whether contravened.*

A licence under the Act to keep a gun permitted the licensee to use the arm for sport, protection or display but provided that the licensee should not take such arm to a fair, religious procession, or other public assemblage. The licensee went armed with the gun in a marriage procession and was prosecuted for an offence under S. 19 : *Held*, that the marriage procession was neither a religious procession nor a public assemblage within the meaning of the word as used in the licence, and that the licensee could not be prosecuted under S. 19, in respect of having gone armed with his gun in the procession. *Balkishan v. Emperor*. 29 Cr. L. J. 575 :

109 I. C. 511 : 10 A. I. Cr. R. 348 :

11 N. L. J. 84 : A. I. R. 1928 Nag. 219.

—S. 19.—*Offence, essentials of.*

Mere possession is punishable under S. 19, while concealment is under S. 20. Intention is inferred from circumstances. *Jogendra Mohan Guha v. Emperor*. 34 Cr. L. J. 879 :

144 I. C. 957 : 60 Cal. 545 : 6 R. C. 68 :

A. I. R. 1933 Cal. 516.

—S. 19.—*Possession of arms without licence, offence of—Illegality of search, effect of.*

Where arms have been found in the possession of the accused, no question of the legality of the search or otherwise can be raised by him. *Emperor v. Abdul Ghafur*. 30 Cr. L. J. 556 :

116 I. C. 29 : I. R. (1929) All. 509 :

A. L. J. 28 : A. I. R. 1929 All. 68.

—S. 19.—*Prosecution under—Sanction, if necessary.*

Sanction of the District Magistrate is not necessary for prosecution under S. 19. *Emperor v. Abdul Ghafur*. 30 Cr. L. J. 566 :

116 I. C. 29 : I. R. (1929) All. 509 :

(1929) A. L. J. 28 : A. I. R. 1929 All. 68.

—S. 19.—*Punjab Government Notification of 11th May, 1917—Kirpan, what is—Burden of proof.*

Every sword is not a *kirpan*. A person who claims that a particular kind of sword is a *kirpan* and that he is entitled to carry it with impunity under the Punjab Government Notification of 11th May, 1917, must prove that the weapon in question is a *kirpan*. In this case it was held that a sword 31 inches long with a blade length of 22 inches has not been proved to be a *kirpan*. *Bachittar Singh v. Emperor*. 23 Cr. L. J. 78 :

65 I. C. 430 : 8 P. W. R. 1922 Cr. :

A. I. R. 1922 Lah. 146.

—S. 19.—*Question of exclusive possession cannot be raised only in appeal.*

The question of exclusive possession of an arm cannot be raised for the first time in appeal. *Gahna v. Emperor*. 15 Cr. L. J. 506 Cr. :

24 I. C. 594 : I. P. W. R. 1914 Cr. :

33 P. L. R. 1914 : A. I. R. 1914 Lah. 280 :

—S. 19.—*Possession.*

Search under S. 34, I. P. C.—Arms found on one only of two persons—Conviction of other under S. 19 (f) is not legal. *Mamatha Nath Biswas v. Emperor*. 34 Cr. L. J. 299 :

142 I. C. 280 : 37 C. W. N. 201 :

60 Cal. 618 : I. R. (1933) Cal. 246 :

A. I. R. 1933 Cal. 132.

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—S. 19—*Servant of person exempted, carrying and using master's gun—Offence.*

The servant of a person exempted from the operations of the Act commits no offence by carrying his master's gun and shooting game with it with his master's permission. *Malua v. Emperor.* 20 Cr. L. J. 432 :

51 I. C. 208 : 17 A. L. J. 758 :

1 U. P. L. R. (A.) 61 : A. I. R. 1919 All. 160.

—S. 19—*Offence, essentials of.*

The offence under S. 19 is complete as soon as the accused is found in possession of arms and ammunition in contravention of S. 14 or S. 15 of the Act and the commission of the offence is not dependent upon whether the search was or was not conducted in the manner provided by Ss. 25 and 30. *Parsad Dahait v. Emperor.* 37 Cr. L. J. 100 :

159 I. C. 487 : 16 P. L. T. 598 : 2 B. R. 88 :

8 R. P. 286 : A. I. R. 1935 Pat. 465.

—S. 19—*License not renewed—Offence.*

The possession of arms of which the licence has not been renewed is also punishable under S. 19 (f) of the Arms Act read with S. 14 thereof. *Malcolm v. Emperor.* 34 Cr. L. J. 363 :

142 I. C. 522 (2) : 37 C. W. N. 93 :

60 Cal. 445 : I. R. (1933) Cal. 301 :
A. I. R. 1933 Cal. 218.

—S. 19 (f)—*Prosecution—Sanction.*

The provisions of S. 32 not being in force in Dehra Ismail Khan, the previous sanction of the District Magistrate is necessary for a prosecution under S. 19 (f), in that District. *Emperor v. Ali Beg.* 35 Cr. L. J. 109 (1) :

146 I. C. 437 : 15 Lah. 6 : 6 R. L. 229 :

34 P. L. R. 965 : A. I. R. 1933 Lah. 869 (1).

—S. 19—*Possession of stolen revolver—Offence.*

Where a person is found in possession of a stolen revolver without a licence, he can be tried under the Arms Act as well as under the Penal Code and can be punished under both the enactments. *Rcoti v. Emperor.* 34 Cr. L. J. 1018 :

145 I. C. 609 : L. R. 14 A. 63 Cr. :

(1933) A. L. J. 523 : 6 R. A. 135 :

A. I. R. 1933 All. 461.

—S. 19—*Custody for negotiating sale—Offence.*

Where a weapon is made over merely for the purpose of negotiating a sale, such possession is not unlawful. Negotiations for sale where no delivery takes place is no offence. *Malcolm v. Emperor.* 34 Cr. L. J. 363 :

142 I. C. 522 (2) : 37 C. W. N. 93 :

60 Cal. 445 : I. R. (1933) Cal. 301 :

A. I. R. 1933 Cal. 218.

—s. 19—*U. P. Arms Rules and Orders, 1924, r. 35—Possession of arms by repairer whether punishable—Period of time for which repairer can possess, tests of.*

A person who repairs arms and is in possession of guns made over to him for repairs cannot be convicted of an offence of being in possession of arms without licence. Once it is found that a person was in possession of arms for the bona fide purpose of repairing them, the length of

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time during which his possession thereof is justified depends upon the circumstances of each case such as the nature of the work to be done, the whereabouts of the customer, the exigencies of his profession and so on. *Murli v. Emperor.*

30 Cr. L. J. 984 :

119 I. C. 13 : I. R. (1929) All. 973 :

(1930) A. L. J. 201 :

A. I. R. 1929 All. 720.

—Ss. 19, 6—*Carrying gun which has no licence acknowledged by British Government—Offence.*

A person who is found in British India carrying without a licence, a gun which has no licence acknowledged by the British Government, is guilty of an offence under the provisions of S. 19 read with S. 6. *Emperor v. Ori.* 30 Cr. L. J. 543 :

115 I. C. 839 : 6 O. W. N. 131 :

I. R. (1929) Oudh 279 :

A. I. R. 1929 Oudh 157.

—Ss. 19, 20—*Arms and ammunition hidden under clothes of accused—Offence.*

Ammunition and parts of arms were found on the accused in a bag which was hidden under a chaddar that the accused was wearing : *Held*, that the accused was guilty of an offence under S. 20 and not merely of an offence under S. 19. *Babo v. Emperor.* 26 Cr. L. J. 1459 :

89 I. C. 1027 : 1 L. C. 276 :

A. I. R. 1926 Lah. 61.

—Ss. 19, 20—*Chhavi concealed in loin-cloth—Attending fair—Conviction under S. 20.*

When at a largely-attended fair, where extra Police are sent on account of the large crowd, a person is found in unlawful possession of any 'arms' which he has taken the trouble to hide or conceal in his waist-band or loin-cloth, he 'has done an act mentioned in clause (f) of S. 19 'in such a manner as to indicate an intention that such an act may not be known to a public servant' within the meaning and for the purposes of S. 20. *Khem Singh v. Emperor.*

16 Cr. L. J. 412 :

28 I. C. 796 : 76 P. L. R. 1915 : 8 P. R. 1915 Cr. :

A. I. R. 1914 Lah. 591.

—Ss. 19, 20—*Chhavi, whether "arm"—Possession of chhavi, whether offence.*

To determine whether a particular instrument is an arm within the meaning of the Arms Act, the real test is whether it is usually employed for the purpose of offence or defence. The possession of a *chhavi* is unlawful under the Arms Act. *Jinda v. Emperor.* 20 Cr. L. J. 577 :

52 I. C. 193 : 10 P. L. R. 1919 :

A. I. R. 1919 Lah. 211.

—Ss. 19, 20—*Concealment of arms—Offence.*

Each case of concealment of arms must be decided on its own facts as to whether it falls under S. 19 or S. 20. But for S. 20 to apply, there must be some special indication of an intention to conceal the possession of arms from a public servant, Railway official or a public carrier. *Karim Bakhsh v. Emperor.*

29 Cr. L. J. 577 :

109 I. C. 593 : 10 A. I. Cr. R. 293 : 9 Lah. 550 :

A. I. R. 1928 Lah. 193.

—Ss. 19, 20—*Evidence indicating offence under S. 20—Commitment to Sessions—Magistrate's duty to order.*

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If in the trial of a case under the Arms Act, the evidence recorded indicates an offence under S. 20 of the Act, the Magistrate ought to commit the case to the Sessions, leaving it to the latter Court to determine whether the evidence is to be believed. *Nishi Kanta Lahiri v. Emperor*.

17 Cr. L. J. 202 :
34 I. C. 314 : 20 C. W. N. 732 :
A. I. R. 1916 Cal. 477.

—Ss. 19, 20, 29—Offences under Ss. 19, 20, whether distinct—Sanction under S. 29, whether necessary when act punishable under first part of S. 20.

The offences created by and punishable under the first part of S. 20 are distinct from offences created by and punishable under S. 19. Therefore, a District Magistrate's sanction, under S. 29 is unnecessary before instituting proceedings in respect of an act punishable under the first part of S. 20 and mentioned in clause (f) of S. 19. *Nga Pochein v. Emperor*.

17 Cr. L. J. 209 :
34 I. C. 321 : 8 L. B. R. 452 :
A. I. R. 1916 L. B. 105.

—Ss. 19, 20—Possession of arms without licence—Concealment—Conviction.

Each case of concealment of arms must be decided on its own facts, and in each case, the Court must decide on the evidence whether a particular act of concealment falls under S. 19 or S. 20. *Sher Ali v. Emperor*.

23 Cr. L. J. 609 :
68 I. C. 833 : A. I. R. 1923 Lah. 79.

—S. 19 (1)—Licence for full-sized gun—Possession of half-barrelled gun—Offence.

A person is not entitled to keep a half-barrelled gun when he is licensed only to keep a full-barrelled gun. *Murli Singh v. Emperor*.

29 Cr. L. J. 472 :
109 I. C. 120 : 10 A. I. Cr. R. 206 :
10 Lah. L. J. 302 : A. I. R. 1928 Lah. 759.

—S. 19 (1)—Offence, essentials of.

Presence of loaded cartridges in house—It is necessary to prove not only the presence of the article in the house but the possession of some particular person over the article to justify conviction. *Kaul Ahir v. Emperor*.

34 Cr. L. J. 517 :
143 I. C. 114 : (1932) A. L. J. 1072 :
L. R. 14 A. 7 Cr. : 55 A. 112 :
I. Cr. R. (1933) All. 195 (1) :
A. I. R. 1933 All. 112.

—S. 19 (a)—Ammunition, definition of—Empty cartridge cases, possession of, if offence.

Empty cartridge cases fall within the definition of ammunition given in section 4. Therefore, a conviction under section 19 (a) for the possession of such cases is legal. *King-Emperor v. Ebrahim Alibhoy*, 7 Bom. L. R. 474, followed. *Jaman Khan v. The Empress*, 20 P. R. 1890, Cr. not allowed. *Baldeo Singh v. Emperor*.

10 Cr. L. J. 573 :
7 A. L. J. 102 : 4 I. C. 405.

—S. 19 (a)—Clasp knives, whether arms.

Clasp knives are not arms within the meaning of S. 19 (a). *Emperor v. Mc Thin*.

15 Cr. L. J. 585 :
25 I. C. 337 : 7 Bur. L. T. 165 :
A. I. R. 1914 L. B. 259.

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—S. 19 (a)—Keeping must be for sale.

The keeping of arms under S. 19 (a) must be a keeping for sale, not keeping only. *Harsha Nath Chatterjee v. Emperor*.

16 Cr. L. J. 9 :
26 I. C. 313, 21 C. L. J. 201 : 42 Cal. 1153 :
A. I. R. 1915 Cal. 719.

—S. 19 (a) (d)—Kirpan of 9 to 11 inches, whether sword—Sikh carrying such kirpan, whether liable to be punished.

Kirpans with blades of nine to ten inches in length are not swords, within the meaning of the Arms Act, and a Sikh who carries such kirpans is not guilty of an offence under S. 19, cl. (a) or (d). *Daljitsing-Fattchsing v. Emperor*.

31 Cr. L. J. 847 :
125 I. C. 435 : 32 Bom. L. R. 106 :
I. R. (1930) Bom. 339 : A. I. R. 1930 Bom. 153.

—S. 19 (a), Sch. II (7) (a)—Possession of lead by people selling nets—No offence.

Certain iron-mongers of a place which was the headquarters of a large fishery industry were charged under S. 19 (a), with being in possession of lead in large quantities without licence. Some of them pleaded guilty and were not represented by counsel. The Magistrate merely asked them whether they admitted having the lead for sale without licence and convicted them on their plea of guilty. They applied in revision to the Sessions Judge stating that they were vendors of nets and that the lead was used for manufacturing nets. He refused to take action. On application to the High Court: *Held*, that under the circumstances the Magistrate should, in his examination of the accused, have put some question to them with a view to elucidating whether they were *prima facie* vendors of lead for industrial, that is, fishing purposes and as the presumption was that they were selling the lead in good faith for industrial purposes there was no ground for the conviction of the accused. *Ali Hossain v. Emperor*.

32 Cr. L. J. 206 :
128 I. C. 845 : I. R. (1931) Rang. 61 :
(1930) Cr. Cas. 1177 : A. I. R. 1930 Rang. 349.

—S. 19 (b)—Gun found in room of joint family house accessible to many—Offence.

Where the place in which an incriminating article is found is one to which several persons have equal rights of access, it cannot be said to be in the possession of any one of them: *Held*, on facts that the accused could not be convicted under S. 19 (b) of the Arms Act. *Sudhanya Bawali v. Emperor*.

18 Cr. L. J. 781 :
41 I. C. 157 : 21 C. W. N. 839 :
A. I. R. 1917 Cal. 406.

—S. 19 (b)—Miscellaneous collection of arms found in house of accused—Plea of articles being foisted.

A miscellaneous collection of arms and ammunition was found in a house belonging to the accused. Except the fact that the arms and ammunition were found in the accused's house, there was no other evidence for the prosecution. The defence was that the contraband property must have been foisted into the house and an attempt was made to prove by positive evidence that persons had been seen tampering with the roof of the house on

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the night before the property was seized. The articles found were not *prima facie* the type of articles which would be kept by a man who wished to shoot with a gun or a revolver without a licence most of them being quite unserviceable and there was a mass of miscellaneous collection of cartridges some of which might and some of which could not fit the gun or revolver: *Held*, that the property found of itself suggested the possibility that the plea of foisting put forward might not be altogether unreasonable, and that a sufficient element of reasonable doubt was introduced to make it possible that the plea might be true so as to warrant his acquittal. *In re Ramalinga Goundan*.

39 Cr. L. J. 147 :
172 I. C. 498 : (1937) M. W. N. 878 :
46 L. W. 522 : (1937) 2 M. L. J. 620 :
10 R. M. 459 : A. I. R. 1937 Mad. 975.

———S. 19 (c)—Offence when complete—Particular intention, if necessary.

Under S. 19 (c) of the Arms Act, the offence of possessing arms unlawfully by a person entering British India is complete the moment he enters with the arms in his possession. No particular intention in the mind of the offender is requisite. K. landed in India from Penang : between the landing stage and the Customs Shed, he was detected in the act of handing a parcel to a third person : on inspection, the parcel was found to contain a revolver and cartridges : *Held*, that, technically, K had committed an offence under S. 19 (c). *Mahomed Ismail Rowther, In re*.

13 Cr. L. J. 776 :
35 Mad. 596 : 17 I. C. 408.

———S. 19 (c)—Person using blunt spears for exercises without licence—Offence—Exemption of ornamental arms and theatrical property, scope of.

Where the founder of a gymnasium class brought some iron spears and took them to the parade ground and used them in person without a licence and it was found that the spears were capable of inflicting injury on human beings and cattle, though their edges and points were blunt : *Held*, that the spears were 'arms' within S. 4 and did not come within the class of ornamental arms or theatrical property exempted by cl. (d) of the Government Notification under cl. 13 of the Arms Act, and he was guilty of 'going armed' without a licence. *Emperor v. Sattigowda Sattigowda Patil*.

31 Cr. L. J. 1109 :
126 I. C. 881 : 32 Bom. L. R. 571 :
I. R. (1939) Mad. 201 : I. R. (1930) Bom. 449 :
A. I. R. 1930 Bom. 174.

———S. 19 (d)—Arms Rules, r. 24—Consignment of gun from one place to another—Consignee, whether bound to take licence for transportation—Unlicensed consignee, whether guilty under S. 19 (d).

Under the Arms Act, and the rules thereunder where arms are to be sent from one place to another, it is for the consignor and not for the consignee to apply for and obtain the licence. Where a person in Madras ordered a gun from a dealer in Bombay ostensibly for an intending purchaser but in fact upon his own account : *Held*, that his act did not amount to the offence of transporting without a licence under S. 19 (d), although he was liable to prosecution on

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receipt of the weapon for possessing the gun without a licence. *In re D. Viraswami Naidu*.

31 Cr. L. J. 273 :
121 I. C. 617 : 57 M. L. J. 520 :
(1920) M. W. N. 807 : 30 L. W. 945 :
52 M. 999 : A. I. R. 1929 Mad. 864.

———S. 19 (d)—Offence, essentials of.

Transportation of cartridges in contravention of Act—Prosecution must prove that cartridges exceeded number allowed by licence. *Daulat Ram v. Emperor*.

34 Cr. L. J. 190 :
141 I. C. 263 : 34 P. L. R. 148 :
(1933) Cr. Cas. 311 : I. R. (1933) Lah. 105 (1) :
A. I. R. 1933 Lah. 166.

———S. 19 (c)—Arms—Possession—Servant fetching gun for licensed master, if guilty.

Mere temporary possession, without a licence, of arms for purposes other than their use as such is not an offence within the meaning of S. 19. X, who was licensed to keep a gun, went to a village with his servant Y. From there, they came back but X left his gun behind him. He sent Y. to bring back his gun from the village. While Y. was bringing back the gun, he was arrested and convicted of an offence under S. 19 (c) for going armed in contravention of S. 13 of the Act : *Held*, that the accused was not guilty under S. 19 (c). *Emperor v. Koya Hansji*.

13 Cr. L. J. 860 :
14 Bom. L. R. 964 : 17 I. C. 796 :
37 B. 181.

———S. 19 (c)—"Goes armed" meaning of—Isolated act of carrying sword, whether amounts to going armed.

The expression 'goes armed' in S. 19 (c) of the Arms Act does not necessarily connote a habitual course of conduct even an isolated act carrying a weapon would amount to going armed. *Manjubhai Gordhandas v. Emperor*.

30 Cr. L. J. 1059 :
119 I. C. 641 : 31 Bom. L. R. 536 :
53 B. 604 : I. R. (1929) Bom. 513 :
A. I. R. 1929 Bom. 283.

———S. 19 (e)—"Going armed," meaning of—Intention to use weapon.

The expression "going armed" within the meaning of Cl. (c) of S. 19 indicates, first an intention to use the weapon as a fire-arm, and secondly, the possibility of using it. For the purpose of a conviction under Cl. (c), there must be some clear evidence of intention on the part of the accused to use the weapon. Where in a prosecution under the section, it was found that the accused had only one empty cartridge in his fire-arm and no cartridges at all were found on the person of the accused and there was no proof of the accused having ever previously used the fire-arm : *Held*, that the accused could not be convicted of an offence under S. 19 (c). *In re: Sonai Muthu Ambalam*.

26 Cr. L. J. 1028 :
87 I. C. 916 (1) : 48 M. L. J. 502 :
(1925) M. W. N. 217 :
21 L. W. 644 : A. I. R. 1925 Mad. 585.

———S. 19 (c)—Going armed, what is—Acquittal under S. 221, Penal Code, effect of.

The accused in the course of a quarrel in a private lane asked his brother to bring a sword and inflicted injuries on his opponent.

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He was convicted under S. 324, Penal Code, but the matter was compounded in appeal. He was again charged by the Police under S. 19 (c), Arms Act: *Held*, that the conduct of the accused amounted to 'going armed' with the sword within the meaning of S. 19 (c): *Held further*, that the prosecution under S. 19 (c), Arms Act, was not barred under S. 403, Criminal Procedure Code, by reason of his previous acquittal under S. 324, Penal Code. *Man ubhai Gordhandas v. Emperor*. 30 Cr. L. J. 1059 : 119 I. C. 641 : 31 Bom. L. R. 536 : 53 Bom. 604 : I. R. (1929) Bom. 513 : A. I. R. 1929 Bom. 283.

———S. 19 (e)—Possession by servant.

Servant in possession of master's gun on behalf of master for a short time only—Offence, held not committed. *Parmeshwar Singh v. Emperor*. 35 Cr. L. J. 127 : 146 I. C. 498 (1) : 14 P. L. T. 653 : 6 R. P. 273 : A. I. R. 1933 Pat. 600.

———S. 19 (e)—Servant of licensee in possession of gun—Offence.

A person who has got a licence or who is exempted from taking out a licence is not entitled to allow any servant of his to use the gun for the latter's own purposes, and a servant so in possession of his master's gun and using it for his own purposes commits an offence under Cl. (e) of S. 19. But a servant carrying a gun for purposes of his master in the presence of his master commits no offence. Where both the master and servant honestly, but wrongly, believe that the servant is himself entitled to use the gun, the power of confiscation of the gun need not be enforced. *Vairavan Servoi. In re*.

25 Cr. L. J. 975 : 81 I. C. 623 : 46 M. L. J. 401 : 19 L. W. 507 : 34 M. L. T. 97 : (1924) M. W. N. 375 : 47 Mad. 438 : A. I. R. 1924 Mad. 668.

———S. 19 (e)—Servant using master's gun—if guilty.

A servant who goes out at the request of his master with his master's gun to shoot duck for him is guilty of "going armed." The exemption of his master from the prohibitions against going armed in respect of arms carried for his own personal use would not protect the servant. *Emperor v. Hatimati*. 12 Cr. L. J. 122 : 9 I. C. 720 : 4 S. L. R. 214.

———Ss. 19 (e), 13—Going armed with a gun without percussion cap and without licence—Whether an offence.

The word "arms" as defined in S. 4, includes part of arms. It would, therefore, include a gun minus a percussion cap, and a person carrying that gun would be going armed with arms and the person carrying such a gun without licence would be guilty under S. 19 (e). *Local Government v. Gajraj Singh*. 38 Cr. L. J. 639 : 168 I. C. 879 : 9 R. N. 278 : I. L. R. (1937) Nag. 488 : A. I. R. 1937 Nag. 213.

———Ss. 19 (e), 13—Intention of using arms, whether necessary ingredient for offence under S. 19 (e).

A man who is found going about with a pistol, gun, sword or other weapon within the definition of 'arm' must, in the absence of proof to the

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contrary, be presumed to be carrying it with the intention of using it, should an opportunity for using it arise. S. 13 itself as it stands is distinct from S. 14, as it implies the action or process of going armed. If arms according to the definition, are carried, the requirements of the section are fulfilled even where the weapon could not immediately be fired. Any other interpretation would open the way to evasion of the law by carrying caps or cartridges secretly or in the keeping of a companion. *Local Government v. Gajraj Singh*. 38 Cr. L. J. 639 : 168 I. C. 879 : 9 R. N. 278 : I. L. R. (1937) Nag. 488 : A. I. R. 1937 Nag. 213.

———S. 19 (e) and (f)—"Armed," meaning of.

According to the Vernacular use of the word "armed" in Sind, a person is to be deemed "armed" within the meaning of S. 19 (c) notwithstanding the fact that he is equipped with an "arm" which is not capable of immediate use as an "arm". *Emperor v. Mahomed Punjal*.

25 Cr. L. J. 448 : 77 I. C. 736 : A. I. R. 1925 Sind 177.

———Ss. 19 (e), (f), 29—Sanction to prosecute—Illegal possession of fire-arms—Previous sanction—Institution of proceedings—Charge.

The accused was sent up for trial under S. 19 (e). After hearing the prosecution, the Magistrate charged him in the alternative with this offence and under S. 19 (f). The sanction of the District Magistrate, required under S. 29, was not obtained till after the framing of the charge. The accused was finally convicted under S. 19 (f): *Held*, that proceedings under cl. (f) were not instituted until the Magistrate framed the charge under that clause. Although the charge was actually framed without jurisdiction, the Magistrate might have instituted proceedings afresh, after receiving sanction, by framing a fresh charge; and as the accused had not been in any way prejudiced by the procedure adopted, the absence of a fresh charge after the receipt of sanction was cured by S. 535 of the Code of Criminal Procedure.

Cr. P. C., 1898, S. 537 (b)—Want of sanction, effect of.

Section 537 (b) does not cure the want of sanction in any case except when the sanction is required under S. 195 of the Code. *Kaka v. Emperor*.

4. L. B. R. 247.

———S. 19 (f)—Accused holding arm after expiry of licence—Whether punishable under S. 19 (f) or S. 23.

A man who possesses an arm for which he holds an expired licence does not do so "under that licence and in the manner and to the extent permitted thereby." Consequently he commits an offence under S. 19 (f), and is not punishable under S. 23. *Zanul Abidin v. Emperor*.

38 Cr. L. J. 396 : 167 I. C. 191 : 9 R. Pesh. 84 : A. I. R. 1937 Pesh. 30.

———S. 19 (f)—Accused made over gun to another a year and a half ago—If liable to punishment.

Where it is proved that a person who kept a gun for some time made it over to another to

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keep for him, he cannot be convicted of an offence under S. 19 clause (f) of the Arms Act. *Akhil Nath v. Emperor*. 12 Cr. L. J. 197 : 10 I. C. 688 : 15 C. W. N. 440.

—S. 19 (f)—*Possession, what is.*

Accused pointing out revolver concealed in shed near house in which he lived with his father and brother—Held not sufficient to constitute offence. *Gian Chand v. Emperor*. 34 Cr. L. J. 1256 : 146 I. C. 232 : 6 R. L. 195 (2) : A. I. R. 1933 Lah. 314.

—S. 19 (f)—*Arms—Possession—Chhavi found in bed of two persons in third person's house.*

Two persons were lying on a bed in the house of a third person and a *chhavi* was found in the bedding wrapped in a piece of cloth : *Held*, that even if it were assumed that the *chhavi* did not belong to the owner of the house, these two persons could not be convicted of an offence under S. 19 inasmuch as it could not be said which of them was actually in possession of the *chhavi*. *Narinjan Singh v. Emperor*. 23 Cr. L. J. 95 : 65 I. C. 447 : 4 U. P. R. (L) 32 : 13 P. W. R. 1922 Cr.

—S. 19 (f)—*Cartridges and gun in house—Accused residing in house with others—Accused bringing key from a woman in zenana—Accused cannot be said to be in possession of incriminating article and conviction under S. 19 (f) is illegal.* *Emperor v. Mast Ram*. 32 Cr. L. J. 699 : 131 I. C. 441 : 8 O. W. N. 128 : I. R. 1931 Oudh 201 : A. I. R. 1931 Oudh 115.

—S. 19 (f)—*Charge under Ss. 19 (f) and 20—Plea of guilty—Possession of arms connected with political views—Award of maximum sentence will not be interfered with.* *Niratan Ganguli v. Emperor*. 34 Cr. L. J. 633 : 143 I. C. 802 : 37 C. W. N. 195 : 348 L. J. 663 : 60 C. 571 : I. R. (1933) Cal. 478 : A. I. R. 1933 Cal. 124.

—S. 19 (f)—*Chhavi found in house in joint occupation of two persons—Possession.*

Where a *chhavi* is found in a house in the joint occupation of two persons, it cannot be said with any degree of certainty that one of them was in exclusive possession thereof for the purposes of S. 19 (f). *Alia v. Emperor*. 25 Cr. L. J. 399 : 77 I. C. 447 : (1923) A. I. R. (L) 513.

—S. 19 (f)—*Conviction under—No sanction—Legality.*

A conviction under S. 19 (f) without a previous sanction is illegal. *Nga Tha Hla v. Emperor*. 25 Cr. L. J. 203 : 76 I. C. 571 : 2 Bur. L. J. 203 : A. I. R. 1924 Rang. 85.

—S. 19 (f)—*Discovery of arms on information from accused—Conviction, legality of.*

Where an article, the possession of which is forbidden by the Arms Act, has been discovered by reason of information given by an accused person, the conviction based upon that evidence is legally sound. *Naurang Singh v. Emperor*. 28 Cr. L. J. 250 : 100 I. C. 122 : 9 Lah. L. J. 211 : 23 P. L. R. 626.

—S. 19 (f)—*Empty cartridge cases, whether ammunition—Possession—Offence.*

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The possession of empty cartridge cases which are incapable of being re-loaded in India does not amount to an offence under S. 19 (f) of the Arms Act. *Mir v. Emperor*. 26 Cr. L. J. 1039 : 87 I. C. 927 : 23 A. L. J. 455 : L. R. 6 A. 127 Cr. : 47 All. 629 : A. I. R. 1925 All. 498.

—S. 19 (f)—*Exclusive possession of pistol not established.*

A person was charged under S. 19 (f). The only evidence against him was that at his instance a place was dug up in another person's house, from where a pistol along with some cartridges was recovered. He was not alleged to have been armed with pistol during the commission of the robbery. The person from whose house the pistol and cartridges were recovered, was suspiciously withheld by the Police : *Held*, that such exclusive possession was not established against the accused as would justify his conviction for the offence of possessing a pistol without a license. *Maru v. Emperor*. 39 Cr. L. J. 119 : 172 I. C. 351 : 10 R. L. 301 : A. I. R. 1937 Lah. 561.

—S. 19 (f)—*Illegal possession of arms—Arms found in room attached to office frequented by many people—Lessee, whether in possession.*

The upper storey of a house used as the office of a certain Society, which was rented in the name of the accused, was raided by the Police and a pistol and a certain number of cartridges were found at the bottom of a grain-bin in a room at the back of the kitchen which had no doors. The accused was not present at the time of the search, but three other members of the Society, to one of whom the key of the house had been made over by the accused, were present : *Held*, that it had not been proved beyond reasonable doubt that the pistol and cartridges were in the possession of the accused. *Krishna Gopal v. Emperor*. 27 Cr. L. J. 301 : 92 I. C. 589.

—S. 19 (f)—*Illegality of search, effect of.*

A person convicted under S. 19 (f), Arms Act, cannot be acquitted simply because the search was not conducted in strict compliance with the provisions of S. 103, Criminal Procedure Code. *Emperor v. Mast Ram*. 32 Cr. L. J. 699 : 131 I. C. 441 : 8 O. W. N. 128 : I. R. (1931) Oudh 201 : A. I. R. 1931 Oudh 115.

—S. 19 (f)—*Joint family—Article found in family house—Head of family, presumption as to possession of—Rebuttal of presumption.*

In the case of a house occupied by a joint family, there is an initial presumption that an article found therein is in the possession of the head of the family and this presumption is not rebutted by the fact that the head of the family is a very old man. *Karam Singh v. Emperor*. 30 Cr. L. J. 668 : 116 I. C. 718 : I. R. (1922) Lah. 574 : A. I. R. 1929 Lah. 872.

—S. 19 (f)—*Long lathi with axe-like blade, whether 'arm'.*

An instrument which consists of two separate pieces, namely, a *lathi* 6'-3" long, at one end of which there is a hollow screw,

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and an axe-like blade 5" by 4½" which has a screw to allow of its being fixed into the long lathi is an 'arm' within the meaning of the Arms Act. *Emperor v. Puran Singh*.

29 Cr. L. J. 961 :
112 I. C. 49 : 9 Lah. 137 : 29 P. L. R. 306 :
10 Lah. L. J. 538 : A. I. R. 1928 Lah. 295.

—Ss. 19 (f) 4—Parts of revolver—Possession—Offence.

Loose parts of revolver which have not changed original character constitute arms and their possession is an offence. Test is whether it has lost its specific character and has ceased to be a fire-arm. *Santo Singh v. Emperor*.

34 Cr. L. J. 916 :
145 I. C. 177 : 37 C. W. N. 234 : 6 R. C. 80 :
A. I. R. 1933 Cal. 495 (1).

—S. 19 (f).—Minor in possession of arms without license—Offence.

There is nothing in law which prevents a minor from being in actual fact in possession of arms without a license or which prevents him from being guilty of an offence under S. 19, (f).

A person, who was exempt from the operation of the Arms Act and kept certain arms, died leaving behind him a widow and a minor son. No license was obtained by the son for the arms, but they were retained in the house and were properly looked after: *Held*, that the arms were in the custody and under the control of the minor and that he was guilty of an offence under S. 19 (f). *Emperor v. Ghulam Husain*.

19 Cr. L. J. 447 :
44 I. C. 975 : 16 A. L. J. 323 : All. 420 :
A. I. R. 1918 All. 107.

—S. 19 (f).—Offence committed several years after the Act came into force at place to which old Act applica—No previous sanction necessary.

Where, several years after the passing of the Arms Act, XI of 1878, an offence under S. 19 (f) of the Act, was committed in the Karnal District, to which Act XXXI of 1860 had applied: *Held*, that the previous sanction of the Magistrate of the District was not a condition precedent to a prosecution for the offence. *Sunder Singh v. Emperor*.

14 Cr. L. J. 688 :
21 I. C. 1008 : 24 P. R. 1913 Cr.

—S. 19 (f)—Offence, essential of.

Offence is committed when rifle is borrowed by non-license holder for his own use and not for use on behalf of license holder. But if possession is not for unlawful purpose, nominal sentence is sufficient. *Emperor v. Sarfraz Khan Shah Baz Khan*.

36 Cr. L. J. 1264 :
157 I. C. 411 : 8 R. Pesh. 26 :
A. I. R. 1935 Pesh. 103.

—S. 19 (f).—Offence under, committed—Proceedings without sanction—Validity.

Where an offence under S. 19 (f) has been committed, no proceedings ought to be instituted without the previous sanction of the District Magistrate. If such sanction has not been obtained, the proceedings are null and void. The absence of sanction cannot be treated as a mere irregularity. *Gopalakrishna Iyer v. Emperor*.

12 Cr. L. J. 234 :
10 I. C. 261 : (1911) 2 M. W. N. 271 :
9 M. L. T. 475.

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—S. 19 (f).—Offence under S. 19 (f), Arms Act is cognizable Sanction is not necessary to proceed under, for conspiracy to commit substantive offence under S. 19 (f). *Magan Lal Bagdi v. Emperor*.

35 Cr. L. J. 1097 :
150 I. C. 623 : 30 N. L. R. 269 : 7 R. N. 10 :
A. I. R. 1934, Nag. 71.

—S. 19 (f).—Offences under Ss. 19, 20—Sanction under S. 29, necessity of.

The operation of S. 29 is restricted only to the offence punishable under clause (f) of S. 19. It does not extend to offences under S. 20 and no sanction is, therefore, necessary for a prosecution under that section. *Nga Po Chein v. Emperor*.

18 Cr. L. J. 357 :
38 I. C. 741 : 9 Bur. L. T. 1217.

—Ss. 19 (f) 20, offences under—Simultaneous conviction for both—Legality.

Person cannot be convicted under both Ss. 19 (f) and 20 in respect of same revolver. *Dharmi Kanta Chakrabarty v. Emperor*. 35 Cr. L. J. 226 :
146 I. C. 1051 : 57 C. L. J. 57 : 6 R. C. 285 :
A. I. R. 1933 Cal. 594.

—S. 19 (f).—Person exempted, servant of, whether can shoot for him—Offence.

A person exempted from the provisions of the Act can send a servant armed with his gun to shoot for him. *Gopal v. Emperor*.

18 Cr. L. J. 297 :
38 I. C. 329 : A. I. R. 1917 All. 327.

—S. 19 (f).—Possession of a gun, meaning of—Interpretation of S. 19 (f).

The provisions of S. 19 (f) do not make the mere possession of a gun punishable; they make possession contrary to the provisions of S. 14 of that Act punishable. *Probhat Chandra v. Emperor*.

7 Cr. L. J. 112 :
12 C. W. N. 272 : I. L. R. 35 Cal. 219 :
7 C. L. J. 242 : 3 M. L. T. 190.

—S. 19 (f).—Possession of arms—Discovery of arms on search in accused's house—Conviction, legality of.

A person cannot be convicted of an offence under S. 19 (f) though arms were found on search in his house where the circumstances are such that the arms might have been kept in the house by the servant of the accused. *Bishan Singh v. Emperor*. 27 Cr. L. J. 1159 :
97 I. C. 743 : 8 Lah. L. J. 404 : 27 P. L. R. 651.

—S. 19 (f).—Possession of empty cartridge—Offence.

An empty cartridge which cannot be re-loaded in India is not ammunition and the possession of such a cartridge does not, therefore, amount to an offence under S. 19 (f). *Kallu v. Emperor*.

27 Cr. L. J. 136 :
91 I. C. 803 : 24 A. L. J. 208 : L. R. 7 A. 15 Cr. :
A. I. R. 1926 All. 255.

—S. 19 (f).—Possession of gun—Servant carrying gun to Magistrate on master's behalf for renewal of license—Possession of servant, whether punishable.

A servant, who carries a gun on behalf of his master to a Magistrate for the purpose of renewing the license, is not guilty, under S. 19 (f) of possessing a gun in contravention of the provisions of the Act. *Charu Chandra Ghosh v. Emperor*.

14 Cr. L. J. 377 :
20 I. C. 137 : 17 C. W. N. 979.

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—S. 19 (f).—*Possession of jambia, whether punishable in Bombay Presidency.*

Under Sch. II to the Act as amended the mere possession of a *jambia* (a kind of dagger), in the Bombay Presidency is not an offence under S. 19 (f). *Emperor v. Babaji Manaji Patil*.

31 Cr. L. J. 932 :
125 I. C. 717 : 32 Bom. L. R. 350 :
A. I. R. 1930 Bom. 159.

—S. 19 (f).—*Possession of unlicensed revolver—Adequate sentence, what is.*

The sentence of one year's rigorous imprisonment under S. 19 (f) for the offence of being in possession of unlicensed revolver is not appropriate. If it had been the case of some other unlicensed weapon having been found in the possession of an accused person, a sentence of one year's rigorous imprisonment might well be considered to be adequate. The case of pistol or revolver stands on a somewhat different footing. It is a dangerous weapon and can easily change hands without detection. The chances of a weapon of that kind falling into the hands of dangerous persons are not very remote. Sentence was enhanced to two years' rigorous imprisonment. *Emperor v. Bishwanath*.

38 Cr. L. J. 137 :
166 I. C. 176 : (1936) A. L. J. 1287 :
1936 A. L. R. 1008 : 9 R. A. 368 :
(1936) Cr. Cas. 1109 : I. L. R. 1937 All. 308 :
A. I. R. 1936 All. 850.

—S. 19 (f).—“Possession” or “control”—*Temporary custody of a person not entitled to possess or use arms.*

Where one P. authorised to go armed and being out shooting with R., a person not entitled to possess or to use fire-arms, left his loaded gun in R's charge while he himself went away for a temporary purpose : *Held*, that R. had no more than a temporary custody of the gun which did not amount either to the “possession” or to the “control” contemplated by clause (f), section 19. *Emperor v. Khudda Gond*.

8 Cr. L. J. 406 :
4 N. L. R. 146.

—S. 19 (f).—“Possession”, what constitutes—*Strangers present in house in which cartridges are discovered, liability of.*

The petitioners who are Hindus were found sitting in a Muhammadan's house on a *chowki* with two Muhammadans. The Police came to the house and on search found some cartridges in a parcel in a box under the *chowki*. The petitioners were convicted along with the others on the finding that they were in possession of these cartridges. There was no proof that the petitioners were in actual possession of them or that they knew of their existence. *Held*, that the conviction was illegal. *Bazlar Rahman v. Emperor*.

30 Cr. L. J. 1038.
119 I. C. 297 : 33 C. W. N. 202 :
I. R. (1929) Cal. 777 : A. I. R. 1929 Cal. 302.

—S. 19 (f).—*Offence, essence of.*

The essence of the offence under S. 19 (f), is the possession of arms without a licence and a licence is required for each separate weapon. *Abani Mohan Bhattacharjee v. Emperor*.

35 Cr. L. J. 766 :
148 I. C. 925 : 60 Cal. 1477 : 38 C. W. N. 84 :
6 R. C. 488.

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—S. 19 (f).—*Conviction under Ss. 411 and 414, Penal Code, effect of.*

The fact that certain persons were convicted in respect of possession of a stolen revolver under Ss. 411 and 414, Penal Code, respectively, is no bar to their being convicted in respect of it under S. 19 (f), Arms Act, also. *Munna v. Emperor*.

35 Cr. L. J. 36 :
146 I. C. 354 (2) : 10 O. W. N. 895 :
6 R. O. 104 : A. I. R. 1933 Oudh 470.

—S. 19 (f).—*Possession, meaning of.*

The phrase, “the possession of the arms or control over the arms” referred to in Cl. (f) of S. 19 implies actual physical possession or control of the arms or ammunition in respect of which the charge has been lodged. *Lakhan Singh v. Emperor*.

35 Cr. L. J. 973 :
149 I. C. 533 : 11 O. W. N. 534 : 6 R. O. 572 :
A. I. R. 1934 Oudh 200.

—S. 19 (f).—*Sanction for prosecution, necessity of.*

The previous sanction of the District Magistrate is required for a prosecution under S. 19 (f) of the Arms Act not only in the Peshawar but also in the other four districts of the Frontier Province. *Government Advocate, N.-W. F. Province v. Fazal Rahim*.

34 Cr. L. J. 670 :
143 I. C. 508 : I. R. (1933) Pesh. 29 :
A. I. R. 1933 Pesh. 69.

—S. 19 (f).—*Joint possession, effect of.*

Unlicensed gun found in house where members of joint Hindu family live. All members can be tried on the charge under S. 19 (f). *Emperor v. Sikhdar*.

33 Cr. L. J. 719 :
139 I. C. 153 : L. R. 13 All. 43 Cr. :
(1932) A. L. J. 570 : 54 All. 411 :
I. R. (1932) All. 535 : A. I. R. 1932 All. 441.

—S. 19 (f).—*Joint possession.*

Unlicensed muzzle-loading pistol found in house occupied by accused, his sons and their wives—Accused can be said to be in possession and control of the pistol—Every case is to be decided upon its own facts. *Jwala v. Emperor*.

35 Cr. L. J. 428 :
147 I. C. 625 : (1934) A. L. J. 366 : 6 R. A. 523 :
A. I. R. 1934 All. 548.

—S. 19 (f).—*Offence, essence of.*

When once the prosecution fails to connect the accused with knowledge of the revolver, he cannot be convicted of conspiracy. *Abani Mohan Bhattacharjee v. Emperor*.

35 Cr. L. J. 766 :
148 I. C. 925 : 60 Cal. 1477 : 38 C. W. N. 84 :
6 R. C. 488.

—S. 19 (f).—*Recovery of cartridges from house occupied by accused but previously occupied by him and his brother—Offence.*

During the investigation of a certain theft case the house of the accused was searched by the Police, and as a result of this investigation, two cartridges of a rifle were discovered from an earthen pitcher placed in his house. The accused admitted the recovery of cartridges but stated that it was not within his knowledge and that his brother who was an ex-military employee might have placed them in the house which was jointly occupied by the accused and his brother. The Magistrate believed the story of the accused to be true : *Held*, that no

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offence under S. 19 (f), had been established.
Manigir v. Emperor. 28 Cr. L. J. 339 :
 100 I. C. 819 : 7 A. I. Cr. R. 571.

—S. 19 (f).—*Servant of gun licensee carrying gun to his master's house—If guilty under S. 19 (f).*

Servant of a gun licensee who was merely carrying the gun to the house of the master under his orders cannot be convicted under S. 19 (f), Arms Act. *Lakshmana Rao, In re Aridi Veerasami Petitioner.*

41 Cr. L. J. 400 :
 187 I. C. 120 : 1939 M. W. N. 1260 :
 12 R. M. 699 : A. I. R. 1940 Mad. 257.

—S. 19 (f).—*Possession as servant.*

Servant in possession of gun of master having licence—Use of gun by servant in riot—Offence under S. 19 (f). is made out. *Nanku v. Emperor.*

37 Cr. L. J. 35 :
 159 I. C. 183 : (1939) A. L. S. 1096 :
 1935 A. L. R. 1078 : 8 R. A. 409 :
 A. I. R. 1935 All. 916.

—S. 19 (f).—*Servant, possession of gun by—Use for his own purpose—Master's licence.*

Where the accused was using without licence a gun for his own purposes, he was held to be acting in infringement of the terms of S. 19, Cl. (f), although the gun belonged to the master of the accused, who had a licence and who had lent it to the accused. *Madho Lal v. Emperor.*

10 Cr. L. J. 555 :
 4 I. C. 333 : 13 C. W. N. 124.

—S. 19 (f).—*Several persons occupying a house—Presumption of head of family being in possession of arms—Whether rebuttable.*

In a prosecution under S. 19 (f), it must be proved that the accused has arms in his possession or control. Where several people occupy a house, it should be presumed that the head of the family is in possession and control of everything in the house including unlicensed arms. It is, of course, open to him to rebut that presumption by any evidence which he can adduce. *Emperor v. Mir Ahmad.*

38 Cr. L. J. 838 :
 169 I. C. 681 : 10 R. Pesh. 9 :
 A. I. R. 1937 Pesh. 73.

—S. 19 (f).—*Sikh wearing sword, whether guilty of offence—"Kirpan," meaning of.*

By virtue of Sch. II, 3 (6) a Sikh possessing or wearing one sword cannot be held guilty of an offence under S. 19 (f) of the Act. The meaning of the word "Kirpan" discussed. *Hari Singh v. Emperor.*

26 Cr. L. J. 661 :
 86 I. C. 37 : 6 L. L. J. 265 : 5 Lah. 308 :
 1 L. C. 54 : A. I. R. 1924 Lah. 600.

—S. 19 (f).—*Temporary possession of gun without license—Offence, whether complete.*

A person found in possession of a gun belonging to his father shooting birds with it is guilty of an offence under S. 19 (f). *Muhammad Hasan v. Emperor.*

26 Cr. L. J. 479 :
 85 I. C. 159 : 22 A. L. J. 1095 :
 I. R. 6 A. 23 Cr. : 47 A. 297 :
 A. I. R. 1925 All. 175.

—S. 19 (f).—*U. P. Notification No. 10-N-VIII, dated May 9, 1934—Spear, meaning of—Person in District mentioned in Notification in possession of spear-head—Whether liable to conviction under S. 19 (f).*

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Held, that the Notification of the U. P. Government No. 10-N-VIII, dated May 9, 1934, does not prohibit the possession of a spear-head in the District of Ghazipur. The word "spear" used in the Notification must be interpreted in the sense in which that word is used in S. 4 of the Act, and as a spear is used in that section in contra-distinction to spear-head, a spear cannot be held to include a spear-head. Consequently, a resident of Ghazipur District in possession of a spear-head cannot be convicted under S. 19 (f), Arms Act. *Ram Brich v. Emperor.*

38 Cr. L. J. 511 :
 167 I. C. 935 : 1937 A. L. J. 41 :
 1937 A. L. R. 285 : 9 R. A. 600 :
 A. I. R. 1937 All. 228.

—S. 19 (f).—*Weapon found in house belonging to joint family—No proof that it belonged to a particular member—Presumption is that it belonged to the head of family.*

Where a weapon is found in a house belonging to a joint family in the absence of proof that the room in which the weapon was kept was in the exclusive or particular possession of any member of the family, it cannot be inferred that the weapon was in the possession of any other person than the head of the family. *Mangar Koiri v. Emperor.*

38 Cr. L. J. 100 (a) :
 165 I. C. 803 (1) : 17 P. L. T. 573 :
 (1936) Cr. Cas. 820 : 15 Pat. 696 :
 3 B. R. 88 (1) : 9 R. P. 216 :
 A. I. R. 1936 Pat. 512.

—Ss. 19 (f), 14.—*Unlicensed gun—Person to whom it is entrusted—Possession of, if legal—Such person not having knowledge that guns were unlicensed—Sentence.*

In the case of a licensed weapon a person who merely assist the owner of the weapon by carrying it for him or taking it somewhere for him may be said to assist his master in doing a perfectly legal act, for the master being the licensee is entitled to have the gun in his possession. But in the case of an unlicensed weapon neither the actual owner of the gun nor anybody to whom he entrusts it, can be said to be engaged in a legal act, for the possession in that case is illegal whether it be in the possession of the master or of a servant. But where it is not proved that the accused had knowledge that the gun which he was carrying for his master was unlicensed, the offence does not call for a serious punishment. *Emperor v. Lalman Tharu.*

38 Cr. L. J. 409 :
 167 I. C. 352 : 18 P. L. T. 88 : 3 B. R. 298 :
 9 R. P. 409 : A. I. R. 1937 Pat. 347.

—Ss. 19, (f) 20.—*Arms, illegal possession of—Concealment—Conviction under S. 20, when justified—Possession.*

S. 20 applies only to cases where the import or export of arms is attempted and not to every case of possession or concealment of arms. When a man is in illegal possession of arms, he does not usually carry them openly but takes some steps to conceal them from the public. In order, therefore, to bring a case within the meaning of S. 20 of the Act, something more than a mere ordinary concealment should be established. Where an accused was sitting on a charpoi upon which also lay a gun covered with

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a *dotali*: *Held*, that he was not guilty of an offence under S. 20, but only of an offence under S. 19 (f). *Channan Singh v. Emperor*.

26 Cr. L. J. 733 :
86 I. C. 221 : 26 P. L. R. 49 : 6 Lah. 151 :
7 L. L. J. 329 : A. I. R. 1925 Lah. 395.

—Ss. 19 (f), 20.—Carrying small arm in pocket or dab—Offence.

If a person carries on his person a small weapon such as a pistol, a dagger or a blade of a *chhavi*, he naturally puts it in his pocket or *dab* and if with that weapon in his pocket or *dab* he is in his house or in his village or in a *bazar* or in a Court compound, it cannot be inferred in the absence of any indication to the contrary that he was so carrying the weapon with the intention specified in S. 20. *Ghulam Mohammad v. Emperor*.

28 Cr. L. J. 671 :
103 I. C. 207 : A. I. R. 1927 Lah. 561.

—Ss. 19 (f), 20.—Carrying spear-head in waist coat worn under shirt—Accused running on being called—Offence—Intention to conceal, inference of.

The fact that the accused was carrying a spear-head in the pocket of his waist coat which was worn beneath his shirt does not indicate an intention on his part to conceal the arm from a public servant and the offence committed is one under S. 19 (f) and not S. 20. Nor can any such intention be inferred by the accused running on being called by a Police constable. *Harnam Singh v. Emperor*.

31 Cr. L. J. 79 :
120 I. C. 273 : A. I. R. 1929 Lah. 576.

—Ss. 19 (f), 20.—Concealment, meaning of—Carrying arms in gunny bag—Intention.

For a conviction to fall under S. 20, there must be some special indication of an intention that the possession of arms was being concealed from a public servant or from a Railway Official. Where the arms are carried through a place where it is not anticipated that a public servant would be met, the intention to conceal is not easy to infer. Consequently when a person carried arms wrapped upon in a gunny bag on horse back to an appointed place for sale where he did not expect any public servant to meet, he could not be said to have had an intention to conceal. *Chet Singh v. Emperor*.

27 Cr. L. J. 625 :
94 I. C. 401 : 7 Lah. 65 : 27 P. L. R. 523 :
A. I. R. 1926 Lah. 262.

—Ss. 19 (f), 20.—Offence falling under Ss. 19 and 20—Procedure.

Per *Parlett, J.*—Proceedings may be instituted against any person under S. 20 of the Arms Act for the secret possession of arms in contravention of the provisions of S. 14 or S. 15 without previous sanction under S. 29. If, however, in such a case a Magistrate finds that the intention to conceal the possession is not made out, he should discharge the accused under S. 20. Proceedings under S. 19 (f) may then be instituted, if and when the necessary sanction thereto is given under S. 29. *L. B. Nga Po Chein v. Emperor*.

34 I. C. 321 : 8 L. B. R. 452 :
A. I. R. 1916 L. B. 105.

—Ss. 19 (f), 20.—Person carrying revolver in pocket without licence, offence committed by—Revolver found in pocket of one of two men sitting together—Both persons, whether guilty.

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A person carrying a revolver in his pocket without a licence to keep arms is guilty only under S. 19 (f) and not under S. 20 of the Act for concealing the arm. *Udham Singh v. Emperor*.

16 Cr. L. J. 637 :
30 I. C. 461 : 27 P. W. R. 1915 Cr. :
A. I. R. 1915 Lah. 193.

—Ss. 19 (f), 20—Subsequent sanction—Legality.

Sanction obtained subsequently for offences under Ss. 20 and 19 (f)—Proceedings are not invalid. *Sabjhatullah Shah v. Emperor*.

32 Cr. L. J. 517 :
130 I. C. 437 : 25 S. L. R. 1 :
A. I. R. 1931 Sind 9.

—Ss. 19 (f), 20—Revolver found in pocket of one of two men sitting together—Both, if guilty.

Where an arm was found in possession of one of two men sitting together and it was proved that at one time the revolver was possessed by the other, too, both are guilty of possessing the arm without a licence. *Udham Singh v. Emperor*.

16 Cr. L. J. 637 :
30 I. C. 461 : 27 P. W. R. 1915 Cr. :
A. I. R. 1915 Lah. 193.

—Ss. 19 (f), 20—Sanction absence of—Effence.

The appellant was convicted by the Sub-Divisional Magistrate under S. 19 (f) and sentenced to one year's rigorous imprisonment. The District Magistrate had not sanctioned the prosecution under S. 29 of the Act. The Sessions Judge held that he intended to convict under S. 20 as he quoted certain circulars, but allowed the conviction to stand although an offence under S. 20 would not be triable by a 1st Class Magistrate: *Held*, that the conviction and sentence must be set aside. *Shunshanisa v. Emperor*.

1 Cr. L. J. 742 :
S. C. 2 L. B. R. 244.

—Ss. 19 (f), 20—Unserviceable fire-arm, possession of.

Whether in any particular instance an instrument is a fire-arm or not, is a question to be determined according to the facts of each case, and the circumstance that it is in an unserviceable condition is not sufficient to take it out of the category of fire-arms. Where certain fire-arms had been found from the possession of the accused, who had concealed them under a heap of straw in order that visitors in his house should not see them: *held*, that the concealment was not with the intention specified in S. 20 and the accused could, therefore, be convicted only under S. 19, Cl. (f). *The Crown v. Azu*.

9 Cr. L. J. 259 :
1 S. L. R. 18.

—Ss. 19 (f), 20—Conviction under S. 20—Alteration to the under S. 19 (f).

Where an accused person is convicted under S. 20, Arms Act, if the first three clauses of S. 19 do not apply to the case, it must be held that the Magistrate has in fact held that the accused has committed an act mentioned in S. 19 (f), and it is open to the Appellate Court to alter the finding from one under S. 20 to one under S. 19 (f). *Sabjhatullah Shah v. Emperor*.

32 Cr. L. J. 517 :
130 I. C. 437 : 25 S. L. R. 1 :
(1931) Cr. C. 57 : A. I. R. 1931 Sind 9.

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—Ss. 19 (f), 20.—Wrongful possession of arms—Proof—order in dacoity case, relevancy of, in trial under Arms Act.

In order to obtain a conviction under Ss. 19 (f) and 20 of the Arms Act, the prosecution must strictly prove that the articles discovered were in the possession of the accused. *Nga Tha Kua v. Emperor*, 17 Cr. L. J. 512 : 36 I. C. 480 : A. I. R. 197 L. B. 112.

—Ss. 19 (f), 25, 30.—Illegal possession of arms—Search unlawful—Conviction, whether justified.

On a search being made of the house of the accused, certain arms and ammunition were found therein. The accused was thereupon convicted of an offence under S. 19 (f). It was found, however, that the search had not been lawful inasmuch as it did not comply with the provisions of Ss. 25 and 30. Held, that in spite of the search not being lawful, there being sufficient evidence that the accused was in unlawful possession of the arms and ammunition, the conviction was justified. *Kutroo v. Emperor*, 26 Cr. L. J. 1112 : 88 I. C. 280 : 23 A. L. J. 364 : L. R. 6 A. 124 Cr. : 47 A. 575 : A. I. R. 1925 All. 434.

—Ss. 19 (f) and 29.—Proceedings under S. 19 (f) initiated without sanction of District Magistrate—Sanction obtained after commitment—Illegality.

No proceedings can be instituted under S. 19 (f) of the Arms Act without the previous sanction of the District Magistrate, and a conviction under that section without such sanction is illegal. Nor does the obtaining of the sanction after commitment cure the omission under S. 532 or 537 of the Criminal Procedure Code. *Abdul Kadir, In re*, 11 Cr. L. J. 190 : 4 I. C. 1107 : 5 M. L. T. 162.

—Ss. 19 (f), 29.—Prosecution for offence under S. 19 (f)—Sanction obtained after entering case and preparing charge, sufficiency of—'Institution of proceedings', what constitutes.

Proceedings are instituted against a person in respect of an offence under S. 19 (f) only when he is placed before the Court. The fact that sanction of the Commissioner of Police for a prosecution under S. 19 (f) was not obtained before entering the case in the case book and making out a charge but only before placing the accused before the Court does not, therefore, vitiate a trial. *Ismail Khan v. Emperor*, 28 Cr. L. J. 817 : 104 I. C. 433 : 46 C. L. J. 35 : A. I. R. 1927 Cal. 721.

—Ss. 19 (f), 29.—Trial under S. 19 (f) by City Magistrate who was also Additional District Magistrate exercising powers of District Magistrate—Sanction under S. 29, necessity of—Trial without sanction is illegal under S. 556, Cr. P. C. (Act V of 1898).

Where a case under S. 19 (f), is tried by a City Magistrate who is also the Additional District Magistrate empowered with the powers of District Magistrate, it cannot be said that sanction under S. 29 is unnecessary as he himself exercised the powers of the District Magistrate. Even in such a case the trial of the case without sanction under S. 29 is illegal. Sanction under S. 29, would only be granted on a

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consideration of the facts connected with the prosecution, and having once granted sanction in his capacity as Additional District Magistrate, the accused could not be tried by the Magistrate granting the sanction whether he acted as Additional District Magistrate or as City Magistrate. The trial is, therefore, illegal under S. 556, Cr. P. C. *Yusaf Umar Tindal v. Emperor*, 55 I. C. 997 (1), relied on. 41 Cr. L. J. 707 : 189 I. C. 29 : 1940 Kar. 296 : 13 R. S. 26 : A. I. R. 1940 Sind 107.

—S 20.

See also S. 19.

—Ss. 20, 25.—Accused found in possession of unlicensed arms—Non-compliance with S. 25, effect of.

The want of compliance with the provisions of S. 25 cannot save a person from the consequences of unlicensed arms being found in his possession. *Shiam Lal v. Emperor*, 28 Cr. L. J. 652 : 103 I. C. 108 : L. R. 8 A. 92 Cr. : 8 A. I. Cr. R. 7 : A. I. R. 1927 All. 516.

—S. 20—Offence, essence of.

Act must show an intention that such acts may not be known to any public servant.

Merely keeping of a *chhavi* blade in one's own house and possessing a stick that would fit into it, cannot be regarded as falling within the purview of S. 20. The case would fall more appropriately under the definition of S. 19 (f). *Ida v. Emperor*, 33 Cr. L. J. 346 (1) : 136 I. C. 724 (1) : 33 P. L. R. 379 : I. R. 1932 Lah. 260 (1) : A. I. R. 1931 Lah. 561.

S. 20—Applicability.

In determining whether an accused person possessed arms in such a manner as to indicate an intention that this should not be known to any public servant and, therefore, committed an offence under S. 20, Arms Act, each case has to be decided on its own merits. *Sabhatullah Shah v. Emperor*, 32 Cr. L. J. 517 : 130 I. C. 437 : 25 S. L. R. 1 : A. I. R. 1931 Sind 9.

—S. 20—Applicability.

Keeping arm in store house (*taikhana*)—No conviction under S. 20. *Sabhatullah Shah v. Emperor*, 32 Cr. L. J. 517 : 130 I. C. 437 : 25 S. L. R. 1 : A. I. R. 1931 Sind 9.

—S. 20—Applicability.

S. 20 is applicable only to those cases where the import or export of an arm is attempted. *Gahna v. Emperor*, 15 Cr. L. J. 506.

—S. 20—Arms—Concealment—Import and Export of arms.

S. 20 should not be applied to ordinary cases of concealment of arms; the section directly applies only to cases where the import or export of arms is attempted. *Ibrahim v. Emperor*, 14 Cr. L. J. 41 : 18 I. C. 265 : 9 P. R. 1912 Cr. : 44 P. W. R. 1912 Cr. : 128 P. R. 1913.

—S. 20.

Charge of conspiracy to possess arms—Accused absconding—Possession of arms by accused on

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arrest—Separate proceedings under Arms Act can be taken. *Sukhdev Raj v. Emperor*.

34 Cr. L. J. 637 :

143 I. C. 627 : 1933 Cr. C. 351 :

I. R. 1933 Lah. 373 : A. I. R. 1933 Lah. 231.

—S. 20—Charge under—Duty of Magistrate.

S. 20 lays down two distinct offences, and when framing a charge of an offence under that section, a Magistrate should state distinctly whether the first or the second part of the offence is meant. *Tha Hla v. Emperor*.

28 Cr. L. J. 203 :

76 I. C. 571 : 2 Bur. L. J. 203 :

A. I. R. 1924 Rang. 85.

—S. 20—Chhavi, concealment of—Sentence suitable.

Where a person is convicted under S. 20 of having concealed a *chhavi* and nothing is known against him, and it is not shown that he has not broken the law in the past, the maximum sentence provided by the section is not called for, nor is a nominal sentence justified. *Fagiria v. Emperor*.

23 Cr. L. J. 339 :

66 I. C. 995 : 3 L. L. J. 145.

—S. 20—Concealment of arms—Question of fact.

It is a question of fact whether the person found in possession of a concealed weapon is carrying the weapon in such a way as to indicate an intention to hide the article from the classes of persons referred to in S. 20. The fact that a person is concealing a weapon in his loin cloth while he is on a Railway platform indicates an intention to conceal that weapon from, *inter alia*, Railway officials within the meaning of S. 20. *Abdul Wahid v. Emperor*.

29 Cr. L. J. 256 :

107 I. C. 495 : 9 Lah. L. J. 533 :

29 P. L. R. 329 : 9 A. I. Cr. R. 454 :

9 Lah. 302 : A. I. R. 1928 Lah. 110.

—S. 20—Concealment of arms after arrest.

The first Part of S. 20 does not deal with cases of concealment or of attempts at concealment made by a man who has arms on his person, or in a bag which he is carrying, or which are otherwise in his immediate personal possession, only on being arrested. It is meant to deal with cases of concealment before arrest. *Gopala-krishna Iyar v. Emperor*.

12 Cr. L. J. 234 :

10 I. C. 261 : (1911) 2 M. W. N. 271 :

9 M. L. T. 475.

—S. 20—Concealment of arms on search being made by the Police—Mere denial of possession not concealment.

The mere denial on the part of a person whose house is being searched by the police for unlicensed arms that he has any such arms in his possession does not constitute a concealment or attempt to conceal arms on search being made by the police within the meaning of the second paragraph of S. 20. *Emperor v. Ram Sarup*.

3 Cr. L. J. 88 :

26 A. W. N. 11 : 1 L. R. : 28 All. 362.

—S. 20—Conviction under S. 20—Concealment, nature of.

S. 20 is not applicable to ordinary cases of concealment. But where the conduct of the accused shows clearly that his intention was that the possession of an arm by him may

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not be known to any public servant, he may be rightly convicted under the section. *Pai v. Emperor*.

27 Cr. L. J. 934 :

96 I. C. 390 : 8 Lah. L. J. 301 : 27 P. L. R. 446.

—S. 20—Heavy sentence, propriety of.

Where an accused was convicted of an offence under S. 20 and sentenced to three years' rigorous imprisonment and no special grounds were mentioned in the judgment for imposing such a heavy sentence: *Held*, that having regard to the circumstances of the case the sentence was very heavy and ought to be reduced. *Blamboyil Kuttascheri Ahamad, In re*.

17 Cr. L. J. 80 :

32 I. C. 672 : A. I. R. 1917 Mad. 899.

—S. 20—Concealment in locked trunk.

Loaded revolver concealed in a locked trunk raises rebuttable presumption of concealment. *Jogendra Mohan Guha v. Emperor*.

34 Cr. L. J. 879 :

144 I. C. 957 : 60 Cal. 545 :

6 R. C. 68 : A. I. R. 1933 Cal. 516.

—S. 20—Offence under—Elements necessary.

An offence under S. 20 is different from an offence mentioned in S. 19 (6). The only additional element necessary to constitute an offence under S. 20 is that the possession should be in such manner as to indicate an intention that such act may not be known to any public servant. *Harsha Nath Chatterjee v. Emperor*.

16 Cr. L. J. 9 :

26 I. C. 313 : 21 C. L. J. 201 : 42 Cal. 1153 :

A. I. R. 1915 Cal. 719.

—S. 20—Offence under—Nature of.

The first part of S. 20 creates offences distinct from and graver than those punishable under S. 19. *Nga Po Chein v. Emperor*.

38 I. C. 741 :

9 Bur. L. T. 217 : A. I. R. 1917 L. B. 96.

—S. 20—Offence under—Sanction.

No sanction is required for a prosecution under S. 20 of the Arms Act. *Tha Hla v. Emperor*.

25 Cr. L. J. 203 :

76 I. C. 571 : 2 Bur. L. J. 203 :

A. I. R. 1924 Rang. 85.

—S. 20—Offence under—Sentence—Mere suspicion of police that accused was about to commit dacoity, if can be considered.

In the absence of any aggravating circumstance, a sentence of five years' rigorous imprisonment for an offence under S. 20 is too severe. The mere fact that there was a suspicion in the mind of the Police that the accused was about to take part in a dacoity is not a circumstance which a Court can take into consideration in arriving at an appropriate punishment for the actual offence which has been proved. *Abdul Wahid v. Emperor*.

29 Cr. L. J. 256 :

107 I. C. 495 : 9 Lah. L. J. 533 : 29 P. L. R. 329 :

9 A. I. Cr. R. 454 : 9 Lah. 302 :

A. I. R. 1928 Lah. 110.

—Ss. 20, 4—Particular instruments, when 'arms'—Dang with iron attachment—Detachable blade—Domestic purposes of offence or defence.

Whether or not any particular instrument is included in the expression "arms," used in the Act, must necessarily depend on the circumstances of each case. The accused had a bamboo dang 5 feet 7 inches long. It had an iron

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attachment at the thick end, where an 8 inches long blade could be fitted by readily slipping it off and on the stick. The blade was found detached from the stick and hidden in the folds of his loin-cloth: *Held*, that the weapon was not meant for ordinary domestic purposes but for purposes of offence or defence, and that, therefore, it was included in the term "arms" used in the Act. *Mangal Singh v. Emperor*.

23 Cr. L. J. 63 :
64 I. C. 847 : 2 L. 291 : 12 P. L. R. 1922 :
A. I. R. 1922 Lah. 138.

———S. 20—Application of.

Person concealing weapons while at railway platform S. 20 applies. *Said Gul v. Emperor*.

32 Cr. L. J. 995 :
132 I. C. 855 : (1931) Cr. C. 927 :
I. R. (1931) Lah. 695 : A. I. R. 1931 Lah. 663.

———S. 20—Possessing arms without licence—Intention to conceal.

The fact that a person who is travelling without a ticket in a Railway compartment, having a *chhavi* concealed in his loin cloth, takes it out voluntarily to threaten a Railway servant who asks him for his ticket, indicates an indifference on the part of the person as to whether the weapon is seen by the Railway servant or not and the intention requisite for an offence under S. 20, Arms Act, therefore, is not established. *Surjan Singh v. Emperor*.

———S. 20—Possession of guns and cartridges—Offence.

A person who is in secret possession of guns and cartridges is guilty of an offence under the first part of S. 20. *Tha Hla v. Emperor*.

25 Cr. L. J. 203 :
76 I. C. 571 : 2 Bur. L. J. 203 :
A. I. R. 1924 Rang. 85.

———S. 20—Application of.

Prosecution under—Question of intention under S. 20 depends on facts of each case. *Ganga Prasad v. Emperor*.

34 Cr. L. J. 890 :
1411 I. C. 850 : (1933) Cr. C. 1035 :
6 R. P. 129 : A. I. R. 1933 Pat. 493.

———S. 20—Application of.

Accused in joint possession of room along with other person—Suit-case containing ammunition found beneath cot of accused—Key of suit-case concealed beneath bedding—Conviction under S. 20 is proper. *Nagendra Chandra Das v. Emperor*.

36 Cr. L. J. 370 :
153 I. C. 529 : 38 C. W. N. 656 :
(1934) Cr. C. 1100 : 60 C. L. J. 190 :
7 R. C. 384 : A. I. R. 1934 Cal. 705.

———S. 20—Application of.

S. 20 to apply, there must be some special indication of an intention to conceal the possession of the arms from a public servant, Railway official or public carrier. *Prem Kumar v. Emperor*.

33 Cr. L. J. 110 :
135 I. C. 39 : 32 P. L. R. 651 :
I. R. 1932 Lah. 23 : A. I. R. 1931 Lah. 571.

———S. 20—Sanction.

Sanction is not required for prosecution under S. 20. *Nagendra Chandra Das v. Emperor*.

36 Cr. L. J. 370 :
153 I. C. 529 : 38 C. W. N. 656 :
60 C. L. J. 190 : 7 R. C. 384 :
A. I. R. 1934 Cal. 705.

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———S. 20—Scope and applicability—Intention to conceal—Determination of.

It is difficult to lay down any general rule as to what cases fall under S. 20 and what cases under S. 19. Every case must be decided on its own facts. The question whether the circumstances justify the inference that the intention was such as is indicated in S. 20 must depend upon the particular circumstances of each case. S. 20 is not confined to cases where import or export of arms is attempted and applies to cases where a person is concealing a weapon, be it at a Railway platform as it indicates an intention to conceal it from *inter alia* Railway officials who are on the platform, or anywhere else. Where the arms and ammunitions are tied up and concealed in such a manner that it must be presumed that the intention of the accused was not only to conceal them from the boys of the school hostel but also from any public servant who may happen to come to the hostel, there is no doubt that the intention of the accused is that his act may not be known to any public servant. 89 I. C. 1027 (6), relied on. (Case-law explained.) *Jagdish Dutt Shukla v. King-Emperor*.

41 Cr. L. J. 545 :
188 I. C. 110 : 1940 O. W. N. 481 :
1940 O. L. R. 306 : 12 R. O. 425 :
A. I. R. 1940 Oudh. 337.

———S. 20—Scope of.

S. 20 is not confined to cases where the import or export of arms is attempted. *Abdul Wahid v. Emperor*.

29 Cr. L. J. 256 :
107 I. C. 495 : 9 Lah. L. J. 533 : 29 P. L. R. 329 :
9 A. I. Cr. R. 454 : 9 Lah. 302 :
A. I. R. 1928 Lah. 110.

———S. 20—Application of.

The mere fact that the weapon is not exposed to view does not necessarily indicate the intention mentioned in S. 20. *Ganga Prasad v. Emperor*.

34 Cr. L. J. 890 :
144 I. C. 850 : (1933) Cr. C. 1035 : 6 P. R. 129 :
A. I. R. 1933 Pat. 493.

———S. 20—Scope of.

Two parts of S. 20 are quite independent of each other. *Jogendra Mohan Guha v. Emperor*.

34 Cr. L. J. 879 :
144 I. C. 957 : 60 C. 545 : 6 R. C. 68 :
A. I. R. 1933 Cal. 516.

———S. 20—Scope of.

Sections 13, 14, 19 (f) and 20—Distinction between and their respective scope indicated. *Sachindra Kar Gupta v. Emperor*.

35 Cr. L. J. 125 :
146 I. C. 645 : 60 C. 1432 : 6 R. C. 251 :
A. I. R. 1933 Cal. 692.

———Ss. 20, 19.—Accused when challenged attempting to escape—He found in possession of spear-head and sandhewa, a burglar's implement, hidden in his loin cloth—Offence held was under S. 20.

Two mounted Police who were on patrol between two Police Stations challenged a mounted Sikh. He galloped off, the sowars followed. After a time the Sikh fell, they captured him and as they found that he was in possession of a *khunda* with a screw, they searched him. They found concealed below his *khes* a burglar's implement—a *sandhewa*—and in his loin cloth a spear-head which screwed

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into the *khunda*: *Held*, that the offence committed by the Sikh was one under S. 20, and not under S. 19. *Jodh Singh v. Emperor*.

40 Cr. L. J. 279 :
179 I. C. 897 : 40 P. L. R. 921 : 11 R. L. 650 :
A. I. R. 1939 Lah. 17.

S. 22—Selling or using sword stick.

A sword-stick is a 'sword' within the meaning of the term 'sword' in the Act. Consequently, selling of a sword-stick or the using of it without licence is an offence under S. 22. *Maulla Bovi Shikaldar v. Emperor*.

35 Cr. L. J. 104 (1) :
146 I. C. 472 : 35 Bom. L. R. 884 : 6 R. B. 155 :
A. I. R. 1933 Bom. 438.

S. 22—'Delivery into possession,'—*Leaving rifle fixed up as a trap and a servant to watch it does not constitute delivery into possession.*

The petitioner, when out shooting with his servant, came across a deer recently killed by the tiger and fixed up his rifle over the kill so as to form a trap for the tiger. He then went home leaving his servant to watch the trap from a neighbouring tree. The petitioner was convicted under S. 22 for delivering his rifle into the possession of his servant, who was not legally authorized to possess a rifle: *Held*, that the conviction was illegal.

S. 22—'Delivery into possession,' explained.

The delivery into possession contemplated by S. 22 of the Arms Act is such a delivery as gives the person into whose possession the arm is delivered control over the arm and authority to use it. There was no such delivery in the present case. *Queen Empress v. Nga Myat Aung*, 1 U. B. R. (1897-01), 1: *Queen-Empress v. Bhure*, 15 A. 27: *Emperor v. Harpal Rai*, 24 A. 454, referred to. *Adams v. Emperor*.

10 Cr. L. J. 361 :
3 I. C. 712 : 5 L. B. R. 83.

S. 22—'Delivery, meaning of—Delivery of arm for merely carrying it to licensed-holder, whether offence.

Delivery into possession contemplated by S. 22 is such a delivery as to give the person into whose possession arm is delivered control over the arm and authority to use it as an arm. The licensed-holder of a gun can permit another person who is not so licensed to carry his gun. *Manzur Husain v. Emperor*.

29 Cr. L. J. 97 :
106 I. C. 689 : L. R. 8 A. 166 :
Cr. 8 A. I. Cr. R. 560 : 26 A. L. J. 162 :
A. I. R. 1928 All. 55.

S. 22—Meaning of word "possession"—Master delivering gun to servant—Servant's offence.

S. 22 has no application where a master delivers a gun to his servant in order that the latter, though not licensed under S. 13, may shoot with it. The word "possession" in S. 22 means something different from the mere control which is devolved by such a delivery. *Emperor v. Mukunda*.

8 Cr. L. J. 18 :
4 N. L. R. 78.

S. 22—Repairer of gun delivering gun

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to person not licensed for carrying it to licensed-holder—If guilty.

A repairer of a gun who, under the directions of its licensed-holder, delivers it after repair to a person who is not licensed, for the purpose of merely carrying it to the licensed-holder is not guilty of an offence under S. 22. *Manzur Husain v. Emperor*.

29 Cr. L. J. 97 :
106 I. C. 689 : L. R. 8 A. 166 :
Cr. 8 A. I. Cr. R. 560 : 26 A. L. J. 162 :
A. I. R. 1928 All. 55.

S. 23—Holding of arm after expiry of licence, if punishable under S. 23.

A man who possesses an arm for which he holds an expired licence commits an offence under S. 19 (f) and is not punishable under S. 23. *Zanul Abidin v. Emperor*.

S. 24—Requirements of.

Licence-holders should take precautions for safe custody of weapons. On absence of precautions, they will be confiscated under S. 24. *Emperor v. Sarfraz Khan Shah Bhaz Khan*.

36 Cr. L. J. 1204 :
157 I. C. 411 : (1935) Cr. C. 855 :
8 R. Pesh. 26 : A. I. R. 1935 Pesh. 103.

S. 25—Nature of.

If provisions of Ss. 25 and 30 are disregarded and no excuse or justification is offered, Court will hesitate to convict unless prosecution offers unimpeachable evidence to remove suspicion. *Persad Dabait v. Emperor*.

37 Cr. L. J. 100 :
159 I. C. 487 : 16 P. L. T. 598 : 2 B. R. 88 :
8 R. P. 286 : A. I. R. 1935 Pat. 465.

S. 25—Unlicensed arms in possession of accused—Non-compliance with S. 25, effect of from consequences.

The want of compliance with the provisions of S. 25 cannot save a person from the consequences of unlicensed arms being found in his possession. *Sham Lal v. Emperor*.

28 Cr. L. J. 652.

S. 27—Notification permitting Sikhs to possess kirpans—Sword-stick, whether kirpan.

A sword-stick is not a kirpan within the meaning of the notification issued by the Governor-General under S. 27, which excludes kirpans possessed, or carried by Sikhs from the operation of the prohibitions and directions contained in that Act. *Randhir Singh v. Emperor*.

29 Cr. L. J. 425 :
108 I. C. 596 : 10 A. I. Cr. R. 81 :
A. I. R. 1928 Lah. 239.

S. 27—Notification, what is.

Publication printed in Government of India press is not a notification. *Emperor v. B. R. Verlannes*.

34 Cr. L. J. 112 (2) :
140 I. C. 754 : I. R. 1933 Rang. 2 (2) :
A. I. R. 1932 Rang. 180.

S. 27—Rules under R. 3, Sch. I—'Own personal use,' meaning of.

The expression "own personal use" means use not by a servant nor by a friend nor by any one else but by the master. *Emperor v. Hatimati*.

12 Cr. L. J. 122 :
9 I. C. 720 : 4 S. L. R. 214.

S. 29—Absence of sanction under—Defect, if curable.

The absence of sanction required under S. 29

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is a defect fatal to any proceedings held without such sanction, inasmuch as the defect is not curable under S. 537 of the Cr. P. C. *Nag Po Chrin v. Emperor.*

17 Cr. L. J. 209 :
34 I. C. 321 : 8 L. B. R. 452 :
A. I. R. 1916 L. B. 105.

———S. 29—*Bijnor District—Illegal possession of arms—Sanction, if necessary.*

In the Bijnor District of the United Provinces the sanction of the District Magistrate is not necessary for the prosecution under S. 19. *Amir Ahmad v. Emperor.*

27 Cr. L. J. 15.

———S. 29—*Institution of proceedings' meaning of—Sanction obtained after submission of charge sheet but before Magistrate takes it up for consideration—Legality of prosecution.*

A proceeding is instituted within the meaning of Ss. 29 and 30 where for the first time the adjudication of a Court of competent jurisdiction is sought. 'Proceedings' in S. 29, mean legal proceedings in Court and not searches or arrests or investigations made by the Police in the exercise of the powers conferred upon them by the Criminal Procedure Code or any other law. A complaint was made against X and Y on the 30th of June, 1925. The Police continued to investigate and on the 13th of August the Police submitted a charge sheet against X, Y and Z. This application was considered by the Magistrate on the 17th August. Formal sanction for prosecuting Z was obtained on the 17th of August and produced before the Magistrate on that date : *Held*, that the prosecution of Z was not bad for want of previous sanction inasmuch as no proceeding within the meaning of S. 29 had been instituted against Z till the 17th of August. *Emperor v. Ghulam Nabi.*

29 Cr. L. J. 301 :
107 I. C. 835 : 6 Pat. 768 : 9 A. I. Cr. R. 385 :
A. I. R. 1928 Pat. 146.

———S. 29—*Offence under S. 20—Sanction, if necessary.*

No sanction is required for a prosecution under S. 29. *Nga Tha Hla v. Emperor.*

25 Cr. L. J. 203.

———S. 29—*Operation of—Scope.*

The operation of S. 29 is restricted only to the offence punishable under Cl. (f) of S. 19. *Nga Po Chrin v. Emperor.*

18 Cr. L. J. 357.

———S. 29—*Possession of arms without licence in District Aligarh—Sanction for prosecution, whether necessary.*

In the District of Aligarh, in accordance with the terms of S. 29 sanction of the District Magistrate is not now necessary for prosecution for offence under S. 19 (f) for possessing arms without licence. *Emperor v. Angad.*

30 Cr. L. J. 856 :
117 I. C. 822 : (1929) A. L. J. 215 :
I. R. 1929 All. 742 : A. I. R. 1929 All. 69.

———S. 29—*Prosecution under S. 20—Sanction, if necessary.*

The operation of S. 29 does not extend to offences under S. 20 and no sanction is, therefore, necessary for a prosecution under that section. *Nga Po Chrin v. Emperor.*

18 Cr. L. J. 357 :

———S. 29—*Sanction required but not obtained—Defect is fatal.*

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When a sanction is required under S. 29 of the Arms Act, the absence of sanction is a defect fatal to any proceedings held without such sanction. *Tha Hla v. Emperor.*

25 Cr. L. J. 203 :
76 I. C. 571 : 2 Bur. L. J. 203 :
A. I. R. 1924 Rang. 88.

———S. 30—*Search, powers of, restriction on.*

Per *Boys, J.*—Section 30 does not itself give any power of search to anybody. It is confined to a statement that when a search is being conducted under the Cr. P. C. in the case of any proceedings instituted in respect of an offence punishable under S. 19 (f), such search is to be conducted in the presence of a particular officer. The section merely places certain restrictions on such powers of search as may otherwise be possessed under the provisions of the Cr. P. C. The words "in the case of any proceedings instituted" were inserted in S. 30 with the intention of restricting all powers of an Investigating Officer in making searches for arms where there was no known unlawful purpose. *Kutroo v. Emperor.*

26 Cr. L. J. 1112 :
88 I. C. 280 : 23 A. L. J. 364 :
Cr. L. R. 6 A. 124 : 47 A. 575 :
A. I. R. 1925 All. 434.

———S. 30—*Search—Essentials.*

Per *Walsh, J.*—The words "in the presence of some officer specially appointed" in S. 30 mean that there must be at least two persons, namely the person making the search and the officer specially appointed within the meaning of the section who is present at the search. *Kutroo v. Emperor.*

26 Cr. L. J. 1112 :
88 I. C. 280 : 23 A. L. J. 364 :
Cr. L. R. 6 A. 124 : 47 A. 575 :
A. I. R. 1925 All. 434.

———Sch. II—*Manufacture of kirpans by Sikh, if exempted from operation of S. 5.*

Schedule II does not exempt the manufacture of Kirpans by a Sikh from the operation of the prohibition contained in S. 5. *Emperor v. Basta Singh.*

25 Cr. L. J. 342.

———Sch. II—*Possession of jambia in Bombay Presidency, if offence under S. 19 (f).*

Under Sch. II to the Act as amended, mere possession of a jambia in the Bombay Presidency is not an offence under S. 19 (f). *Emperor v. Babaji Manaji Patil.*

32 Cr. L. J. 932.

———Sch. II, 3 (b)—*Sikh wearing sword, if guilty under S. 19 (f).*

By virtue of Sch. II, 3 (b), a Sikh wearing or possessing one sword cannot be held guilty of an offence under S. 19 (f). *Hari Singh v. Emperor.*

26 Cr. L. J. 661.

———Sch. VII.

Schedule VII only deals with exemption from payment of fee chargeable for licence. *Emperor v. B. R. Vertannes.*

34 Cr. L. J. 112 (2) :
140 I. C. 754 : I. R. 1933 Rang. 2 (2) :
A. I. R. 1932 Rang. 180.

ARMY ACT (VIII of 1911), S. 69.

———*Concurrent jurisdiction of Criminal Court and Court-martial—Discretion of Military Authority to decide forum of trial.*

Where a Criminal Court and a Court-martial have each jurisdiction in respect of an offence, it rests entirely with the discretion of the prescribed Military Authority to decide whether the offence should be tried by a Court-martial or not. *Emperor v. Lachhmi Dat.*

29 Cr. L. J. 803 :
111 I. C. 307 : 26 A. L. J. 942 :
10 A. I. Cr. R. 453 : A. I. R. 1928 All. 672.

———**S. 70.—Desertion—Criminal Court, power of, to require military authority to make reference.**

The offence of desertion cannot be tried by a Criminal Court at all and a Criminal Court has, therefore, no power under S. 70 (1) to require the prescribed Military Authority to refer the question of jurisdiction in respect of such an offence to the Governor-General in Council. *Emperor v. Lachhmi Dat.*

111 I. C. 307 : 26 A. L. J. 942 :
10 A. I. Cr. R. 453 : A. I. R. 1928 All. 672.

———**S. 90.—Scope of.**

Section 90 (1) does not apply to a soldier who has served the full period of 21 years. *In the matter of Conductor Alfred Beedham Quetta.*

36 Cr. L. J. 737 :
155 I. C. 444 (2) : 7 R. L. 717 :
A. I. R. 1934 Lah. 845.

———**S. 90 (1).—Subsistence allowance.**

The subsistence allowance provided to enable a soldier to live is not his pay; the allotment and other payments not paid at his request is the unilateral act of the Military Authorities, and cannot affect his legal position. *In the matter of Conductor Alfred Beedham.*

36 Cr. L. J. 737 :
155 I. C. 444 (2) : 7 R. L. 717 :
A. I. R. 1934 Lah. 845.

———**S. 158 (1).—Application of.**

Person, no more subject to military law—He can be arrested and tried within three months, else he cannot be tried by Court Martial. *In the matter of Conductor Alfred Beedham, Quetta.*

36 Cr. L. J. 737 :
155 I. C. 444 (2) : 7 R. L. 717 :
A. I. R. 1934 Lah. 845.

ARREST

See also Cr. P. C., 1898, S. 54.

———*Warrant addressed to bailiff not by name, whether legal.*

An arrest is not illegal merely because the warrant for arrest is addressed, not by name, but only to "the bailiff of the Court." *Abdul Rahim Sahib v. Emperor.*

15 Cr. L. J. 765 :
25 I. C. 328 : 1914 M. W. N. 498.

ASSAM CRIMINAL LAW AMENDMENT ACT (III of 1934), S. 20 (1).

———*Applicability—Whether applies outside limits of Assam.*

A person in Assam was served with a notice under S. 16 (1) (a) of the Act, directing him to notify his residence and any change of residence to the Superintendent of Police, and

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he notified his residence duly: he wrote a letter to the Superintendent of Police to say that he was starting for B. that evening, and he left the town on the same evening. He wrote a letter from C. stating that at B. he had stayed at certain place and had been detained by illness and that he had arrived at C. a few days previously. On his return he was arrested on a charge under S. 20 (1): *Held*, that the Act had no force outside Assam and was not intended to apply to such a person outside the limits of Assam, and that he was not bound to inform of his subsequent addresses outside Assam. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Kali Raman Bhattacharjee.*

38 Cr. L. J. 182 :
166 I. C. 297 : 40 C. W. N. 28 : 63 Cal. 519 :
1936 Cr. C. 662 : 9 R. C. 98 (2) :
A. I. R. 1936 Cal. 414.

ASSAM FOREST REGULATION (VII of 1891), Ss. 5, 6, 15, 17.

———*Reserved forest—Notification constituting reserved forest—Objection to inclusion of certain land disallowed by Forest Settlement Officer—Remedy of objector—Notification, whether can be impeached as invalid.*

Where in consequence of a notification of the Local Government under the Regulation of its intention to convert certain land into a reserved forest, an objection is made to the reservation of a piece of that land on the ground that it belongs to the permanently settled estates of the objector, and the objection is disallowed by the Forest Settlement Officer, such disallowance amounts to a rejection of the objector's claim, and his proper remedy is by appeal to the Commissioner urging that his claim should be enquired into on the merits by the Forest Settlement Officer, and if he does not appeal, he is not entitled to impeach the notification of the Government on the ground that his claim not having been disposed of, the notification is invalid. *Khandkar Hidayatulla v. Emperor.*

21 Cr. L. J. 754 :
58 I. C. 338 : 24 C. W. N. 645 : 47 Cal. 889 :
A. I. R. 1920 Cal. 291.

———**Ss. 33, 34—Charge, omission to frame—Facts fully set out—Accused given opportunity to meet case—No prejudice.**

That a mere omission to frame a charge under some section of the Regulations had not prejudiced the accused, when the facts had been fully set out and the accused had an opportunity to meet the case presented against them. *Manik Chandra Agarwala v. Emperor.*

3 Cr. L. J. 202 :
10 C. W. N. 311.

———**Ss. 33, 34—Prosecution at instance of lessee of Government for infringement of S. 33 or rules under S. 31, if proceeding within meaning of S. 63.**

A criminal prosecution instituted at the instance of a lessee of rubber trees from the Government for the infringement of the provision of S. 33 or of any of the rules made under S. 31 is a proceeding taken under the Regulation within the meaning of S. 63 and the presumption under S. 63 is applicable even where the trees are not in direct possession of the Government. *Manik Chandra Agarwala v. Emperor.*

3 Cr. L. J. 202.

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———S. 34—*Rules under—R. 13—Absence of guilty knowledge—Mitigated punishment.*

That the absence of guilty knowledge is a ground only for the mitigation of sentence for infringement of Rule 13 under S. 31. *Manik Chandra Agarwala v. Emperor.* 3 Cr. L. J. 202 : 10 C. W. N. 311.

———S. 40—*Rules under, rr. 1, 2—Breach of—Onus of proof.*

To support a conviction for breach of rules 1 and 2 framed under S. 40, the onus is on the prosecution to prove that the forest produce was being removed along some route other than the two routes prescribed by rule 1. The mere fact of its being found concealed under suspicious circumstances is not sufficient to remove that onus from the prosecution and to throw the burden on the accused of proving that it was on its way for conveyance by an authorized route. *Moti Thakoor v. Dy. Conservator of Forests.* 4 Cr. L. J. 206 : I. L. R. 33 Cal. 895.

———S. 63—*Presumption as to forest produce being property of Government even though the forest is not in direct possession of Government.*

A criminal prosecution instituted at the instance of a lessee of rubber trees from the Government for the infringement of the provision of S. 33 or of any of the rules made under S. 31 is a proceeding taken under the Regulation within the meaning of its S. 63. The presumption referred to in S. 63 is applicable even where the trees are not in direct possession of the Government. *Manik Chandra Agarwala v. Emperor.* 3 Cr. L. J. 202 : 10 C. W. N. 311.

ASSAM GARO HILLS REGULATION, (III of 1884).

———*High Court—Jurisdiction—Laskars—Tribal Chiefs—Compensation for affront—Fine.*

In the Garo Hills, petty Magistrates known as Laskars have jurisdiction to grant compensation for any kind of affront committed in connection with any petty complaint. Calling it fine, makes no difference. The High Court has no jurisdiction to deal with the matter. *Darsing Nakma v. Emperor.* 12 Cr. L. J. 10 : 9 I. C. 114 : 13 C. L. J. 444.

ASSAM LABOUR EMIGRATION ACT (VI of 1901).

———*Charge of recruiting coolies from Agency tracts prohibited by a Government Order—Application of accused to summon witnesses if vexatious.*

Where an accused charged with recruiting coolies from Agency tracts, applies to the Magistrate trying the case to summon as witnesses, to prove his defence, persons alleged to have been recruited, the application cannot be characterised as vexatious and refused on that ground. *Lunmo of Mahalunma v. Emperor.*

12 Cr. L. J. 566 : 12 I. C. 654 : 1911 (2) M. W. N. 472.

———*Emigration—Essentials.*

In order to constitute emigration within the meaning of the Act all that is necessary is that (a) the points of departure and destination should be as required by the Act, (b) that the

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emigrant should be sixteen years of age or upwards, and (c) that the emigrant is to labour for hire in a labour district otherwise than as a domestic servant. *Manik Ram Ahir v. Emperor*

18 Cr. L. J. 404 : 38 I. C. 964 : 2 P. L. J. 91 : 1917 Pat. 89 : 2 P. L. W. 357 : A. I. R. 1916 Pat. 133.

———S. 2 (1) (e)—*Emigration—Intention of recruited person if material.*

There is nothing in section 2, sub-clause (e), to indicate or to show that in order to constitute emigration there must be personal intention present to the mind of the person recruited, when he is recruited, to go to a labour district to work there for hire. *Manik Ram Ahir v. Emperor.*

18 Cr. L. J. 404 : 38 I. C. 964 : 2 P. L. J. 91 : 1917 Pat. 89 : 2 P. L. W. 357 : A. I. R. 1916 Pat. 133

———S. 2 (1) (e)—*Emigration, definition of.*

Sub-clause (e) of sub-section (1) of section 2 is merely descriptive of what emigration may mean, and is intended to avoid repetition in the main provisions of the Emigration Act of the various points of departure and destination to and from which it was desired to restrict emigration. This description or interpretation has no concern with the mind of the emigrant or whether the emigration was intentional on the part of the emigrant or otherwise. *Manik Ram Ahir v. Emperor.*

18 Cr. L. J. 404 : 38 I. C. 964 : 2 P. L. J. 91 : 1917 Pat. 89 : 2 P. L. W. 357 : A. I. R. 1916 Pat. 133.

———S. 164—*'Emigration', meaning of—Offence—Conviction.*

Emigration, to be emigration within the meaning of the Act, must be emigration with the idea that the object to be attained or kept in view by the emigrant is arrival in a labour district and labouring there. Where the accused induced coolies to leave under a promise that they would be employed as domestic servants in C. but they were in fact taken to Assam to work in the labour districts and the accused were convicted under S. 164: *Held*, that the conviction was bad, inasmuch as the coolies did not depart from S. with the object of proceeding to a labour district and labouring there. *Manik Ram Ahir v. Emperor.*

18 Cr. L. J. 284 : 38 I. C. 316 : 1 P. L. J. 388 : 2 P. L. W. 355 : A. I. R. 1916 Pat. 151.

———S. 164—*Jurisdiction of Court where inducement to depart was given—"Emigrate" meaning of.*

The accused induced L. to leave Cawnpore in order to go to Fiji to work. On the way they stopped at Arrah, and there the accused told L. that he would have to go to Sylhet and placed him in a train in charge of a *Sardar* for the purpose of ultimately going to that place: *Held*, that as L. was not induced to leave Cawnpore in order to go to labour at Sylhet, but in order to go to Fiji, no offence under S. 164 was committed at Cawnpore, that L. did not emigrate within the meaning of the Act from Cawnpore and was not induced to emigrate therefrom, that it was not until he arrived at Arrah that any attempt was made to induce him to depart from that place for the purpose of labouring for hire in Sylhet, and that the offence was committed at Arrah, and the Magistrate there had

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jurisdiction to try the offence. *Faiz Ali v. Emperor*. 11 Cr. L. J. 144 : 4 I. C. 495 : 37 Cal. 27.

—S. 164—*Keeping houses for recruiting without licence—Assisting persons to emigrate.*

A person who, having no licence or certificate, keeps houses for putting in recruits, actively assists them to emigrate in contravention of the provisions of the Act and keeps a licensed recruiter as a mere figure, is guilty of an offence punishable under S. 164. *Mahabir Singh v. Emperor*. 17 Cr. L. J. 511 : 36 I. C. 479 : 14 A. L. J. 784 : A. I. R. 1916 All. 169.

—S. 164—“Magistrate” meaning of—*Repatriation, order for, at cost of owner of garden—Order made by Sub-Deputy Magistrate, if legal—Employer not called upon to show cause—Undue influence or coercion, absence of.*

A Sub-Deputy Magistrate, not appointed by the Local Government to perform the functions of a Magistrate under the Act, acquitted certain persons of offences under S. 164 but at the same time passed an order that the proprietor of the garden for which the coolies were recruited should deposit the expenses of repatriation of the coolies. There was nothing to show that there had been any undue influence or coercion and the employer was not called upon to show cause as required by S. 161, that the order was a bad one : *Held*, that the order of repatriation at the cost of the employer was bad. *Emperor v. Ritu Chamar*. 15 Cr. L. J. 195 : 22 I. C. 979 : 18 C. W. N. 1143 : A. I. R. 1914 Cal. 615.

—S. 164—*Offence under, essentials—Intention of person recruited, if material.*

To constitute an offence under S. 164 the recruiter must have present to his mind in the exercise of his powers the purpose for which he recruits, viz., emigration. It matters not that the individual recruited intended to emigrate. *Manik Ram Ahir v. Emperor*. 18 Cr. L. J. 404 : 38 I. C. 964 : 2 P. L. J. 91 : 1917 Pat. 89 : 2 P. L. W. 357 : A. I. R. 1916 Pat. 133.

—Ss. 164, 213—*Emigration and recruiting, difference—Charge for assisting emigration—Conviction for abetment of recruiting—Legality.*

The process of emigration is entirely different from the process of recruiting. Recruiting must terminate before emigration begins. An accused who is charged with having assisted in the emigration of coolies cannot be convicted of having abetted the illegal recruitment of the coolies. *Ashita Ranjan Bose v. Emperor*. 29 Cr. L. J. 795 : 111 I. C. 123 : 48 C. L. J. 92 : 32 C. W. N. 1062 : 10 A. I. Cr. R. 572 : A. I. R. 1928 Cal. 339.

—Ss. 164, 213—*Offence under Ss. 161, 213, nature of.*

An offence under S. 164 read with S. 213 is an offence relating to a summons case and S. 242 of the Cr. P. C. applies to the trial of such a case. Failure to comply with S. 242, Cr. P. C. is a ground for setting aside a trial. *Ashita Ranjan Bose v. Emperor*. 29 Cr. L. J. 795 : 111 I. C. 123 : 48 C. L. J. 92 : 32 C. W. N. 1062 : 10 A. I. Cr. R. 572 : A. I. R. 1928 Cal. 339.

—S. 167—*Recruiting coolies without licence—Offence.*

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If an accused is running a recruiting concern for his own benefit, either under the guise of a licensed person or independently, without having secured the necessary protection of a licence, he ought to be prosecuted and if convicted, punished according to law but if all that the accused is doing is, for some remuneration, giving genuine assistance to a person authorised to carry on a depot and to recruit, he is not guilty of an offence under the Act. *Qasim Ali v. Emperor*. 17 Cr. L. J. 407 : 35 I. C. 967 : 14 A. L. J. 1222 : A. I. R. 1916 All. 126.

—Ss. 220, 223—*Offence under S. 221—Sanction for prosecution, essentials of—Sanction to prosecute servant—Prosecution of master, legality of—Construction of order granting sanction.*

The Health Officer of a Municipality purchased a quantity of mustard oil from D. of Oil Mill and found the same adulterated, and requested that sanction might be accorded for a prosecution under S. 221. The Deputy Commissioner ‘sanctioned prosecution’ of R who was the owner of the mill and the master of D was prosecuted and convicted : *Held*, that the order of the Deputy Commissioner could not be construed as one granting permission for the prosecution of R and the conviction of R was consequently, illegal. *Radha Kishan v. Chairman of Gauhati Municipality*. 30 Cr. L. J. 12 : 112 I. C. 780 : 48 C. L. J. 293 : I. R. 1929 Cal. 45 : A. I. R. 1928 Cal. 357.

ASSAULT

See Penal Code, Ss. 349 to 358.

ASSESSORS

See also Cr. P. C. 1898, S. 309.

—*Assessor not allowed to give independent opinion—Effect.*

A trial is altogether vitiated if the assessors are not asked and are apparently not allowed to give an independent opinion on the case. *Najumuddi v. Emperor*. 17 Cr. L. J. 497 : 40 Cal. 163 : 15 I. C. 641.

—*Opinion of, how to be taken—cross-examination of assessors is contrary to law.*

The cross-examination of the assessors is entirely contrary to law. S. 309 of the Code of Criminal Procedure gives the Judge no power to question the assessors until they have delivered their opinions orally and he has recorded such opinions. If there is anything obscure in their verdicts, there is no objection to the Judge asking questions to clear up such obscurity ; but he is bound to allow the assessors to express their own opinions independently in their own words on the whole case before interfering with them in any way or asking them any question whatever except “what is your opinion.” *Najumuddi v. Emperor*. 13 Cr. L. J. 497 : 40 Cal. 163 : 15 I. C. 641.

—*Person not summoned to act as assessor acting as such—Trial with the aid of person not summoned to act as assessor, legality of—Constitution of Court, defect in, whether mere irregularity—Accused, want of objection by.*

The Sessions Judge under S. 326, Cr. P. C., had requested the District Magistrate to summon five persons to attend as assessors.

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When the case was taken up, only one of those persons was present. Thereupon the Sessions Judge directed that a search should be made as to whether there was any one present in the precincts of the Court who was acquainted with English and who could be required to act as an assessor. The result of the search was that the Nazir of the Court was produced and was directed by the Judge to act as an assessor. The Judge noted that no objection was raised to the course taken by him: *Held*, that as the Nazir was not a person summoned to act as an assessor, and there was nothing to show that he was on the list of assessors and could have been summoned, the trial was illegal: *Held*, further, that in the circumstances the Court was not properly constituted and a defect of this kind was not a mere irregularity which could be cured by S. 537, Cr. P. C.: *Held*, also, that the fact that the appellant did not object to the Nazir's sitting as an assessor was immaterial. *Queen-Empress v. Bastirno*, 15 Bom. 514 and *King Emperor v. Jayaram*, 25 Bom. 695, 3 Bom. L. R. 274, referred to. *Khub Singh v. Emperor*, 8 I. C. 874 : 13 O. C. 337.

ATTACHMENT

See Criminal Procedure Code, Ss. 87, 145.

ATTACHMENT OF PROPERTY

See Criminal Procedure Code, S. 146.

ATTEMPT

———*To murder—Firing two shots.*

A person's firing two shots successively at another person clearly shows murderous intent. *Ahmad Yar Khan v. Emperor*.

5 I. C. 602 : 1 P. W. R. 1910 Cr.

ATTORNEY

———*Appearing for plaintiff and defendant—Unprofessional conduct.*

An attorney who in the name of a firm of which he was the sole partner appeared on behalf of the plaintiff, also appeared in his own personal capacity for the defendants. *Held*, that he was guilty of contempt of Court and of improper behaviour, and must be suspended. *In re : Lawrence Wilson*, 8 Cr. L. J. 131 :

8 C. L. J. 165 : 4 M. L. T. 153.

ATTORNEY'S LIEN

The lien does not depend on actual possession of property and is not liable to be defeated on the grounds that assignee of decree or attaching creditor had no express notice of existence of the law. The fact of there being a fund in Court amounts to notice of its existence. *Ghulam Moideen Sahib v. Mohammad Omer Sahib*, 131 I. C. 158 : 60 M. L. J. 133 :

33 L. W. 430 : I. R. 1931 Mad. 494.

A. I. R. 1931 Mad. 183.

AUTREFOIS ACQUIT

See also Cr. P. C., S. 403.

———*Acquittal under S. 182, Penal Code, if bar to trial under S. 500, Penal Code.*

An acquittal on a charge of giving false information to a public servant under S. 182, Penal Code, on the ground that the person to whom

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the information was given was not a public servant, is not a bar, within the meaning of S. 403 of the Cr. P. C. to a trial for defamation in statement. *Sharbekhan Gohain v. Emperor*, 10 C. W. N. 518 : 3 Cr. L. J. 388, distinguished. *Ram Sewak Lal v. Maneshwar Singh*, 6 I. C. 352.

———*Previous acquittal—Summons case—Process issued for offence including previous offence.*

Where a Magistrate issued processes against and summoned accused persons for one of several offences alleged against them and acquitted them of the offence for which they were summoned, no fresh processes could, in view of the provisions of S. 403, Cl. (1) of the Code of Criminal Procedure, be issued against them in respect of all the offences alleged against them on the previous occasion including the one for which they were summoned and acquitted. *Suresh Chandra Sinha v. Banku Sadhukhan*, 2 C. L. J. 622.

B**BAIL**

See (i) Cr. P. C., 1898, Ss. 496—502.

(ii) Criminal trial.

———*English decisions, value of.*

In considering whether the bail should be granted, English decisions are not a safe guide. *Rajah Narendra Lal Khan v. Emperor*, 9 Cr. L. J. 375 :

13 C. W. N. 43 : 36 Cal. 166 : 1 I. C. 738.

———*Surety—Deposit of money as bail—Court's power to deal with money—Recovery of fine out of it.*

Where a sum of money is deposited in Court by a surety as bail for the appearance of an accused person and the latter satisfies the conditions of the bail, the Court has no further authority to deal with the amount of the deposit, but is bound to return it to the person who had made the deposit. Consequently it cannot direct that the fine imposed upon the accused person on conviction be recovered out of the deposit. *Raghunandan v. Emperor*, 26 Cr. L. J. 113 :

83 I. C. 673 : 11 O. L. J. 296 :

A. I. R. 1924 Oudh 396.

———*High Court's power to grant—Serious offences, accused committed for—Exercise of power.*

The High Court can admit to bail a person committed on serious charges. But where in a case after an exhaustive enquiry the accused has been committed by a competent Magistrate on grave and serious charges relating to non-bailable offences, it should not lightly enlarge him on bail. *Mohi-ud-Din Lal Badshah v. Emperor*, 40 Cr. L. J. 127 :

178 I. C. 632 (2) : 40 P. L. R. 716 :

11 R. L. 482 : A. I. R. 1938 Lah. 762.

———*Forfeiture of bond on suicide of accused.*

Where an accused person commits suicide, the sureties are not liable for the default of his appearance. The fact that the sureties did not take steps to prevent the accused from

BANKERS BOOKS EVIDENCE ACT, 1891.

committing suicide even though the possibility of his doing so may have passed through their minds, does not amount to such neglect or default as to make them liable on the bond. *Vijayaraghavulu Naidu v. Emperor*.
13 Cr. L. J. 684 :

16 I. C. 332 : 1913 M. W. N. 77.

———*Complaint of robbery against person claiming to be head of Mutt in respect of Mutt property—Bailable warrants to be issued.*

Where on a complaint made before a Magistrate only two witnesses are examined to prove a charge of robbery against the accused, in respect of certain *saman* belonging to a *mutt* of which he claims to be the head, the Court should issue against the accused bailable and not unbailable warrants. *Marula Sidda Sivamulu v. Emperor*.
12 Cr. L. J. 430 :

11 I. C. 314 : 1911 2 M. W. N. 452.

BAIL BOND

See also Cr. P. C. Ss. 502, 514.

———*Suicide by accused—Discharge of surety.*

When the accused commits suicide, the surety is discharged. *Nrisingha Deb Chatterjee v. Emperor*.
13 Cr. L. J. 592 :

16 C. W. N. 550 : 15 I. C. 1008.

BAILEE AND BAILOR

See Railways Act.

BAILMENT

See (i) Penal Code, 1860, S. 405.

(ii) Railways Act.

———*Bailee parting with possession with consent of bailor—Bailee's right to reclaim possession.*

One K. made over a quantity of *ghee* to P. for finding out whether the *ghee* was pure or adulterated. While the *ghee* was in P's custody, K. applied to the Chairman of the Municipality asking that the *ghee* might be taken in custody, by the Municipality and that if on chemical examination it was found to be adulterated, it might be destroyed. The Chairman forwarded the application to a Magistrate, who seized the *ghee* under S. 250 of the Bengal Municipal Act: Held, that (1) the petitioner, who was a mere bailee, having parted with possession of the *ghee* with the consent of the owner, could not claim it back, and (2) that the action of the Magistrate was *ultra vires*. *Ram Chandra v. Ram Pratap*.
19 Cr. L. J. 220 :

43 I. C. 796 : 4 P. L. W. 62 :

A. I. R. 1918 Cal. 517 (1).

BANKERS BOOKS EVIDENCE ACT (XVIII OF 1891).

———S. 5—*Legal proceedings—Proceedings before investigating officer—Police Officer's right for inspection of Bank accounts.*

Proceedings before a Police Officer investigating an offence are not legal proceedings within the meaning of S. 5. Therefore, where a Police Officer investigating a charge under S. 420, Penal Code, against a customer of a Bank asks for inspection of his accounts in the Bank, S. 5 does not prevent the Police from inspection of the books of the Bank even without the order of a Court. *A. F. G. Price v. Emperor*.
38 Cr. L. J. 435 :

167 I. C. 555 : 17 Lah. 593 : 38 P. L. R. 1042 :
9 R. L. 515 : A. I. R. 1937 Lah. 160.

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———Ss. 5, 2—*'Evidence' meaning of—Proceedings before Police Officer, not legal proceedings.*

'Evidence' in the Act has the same meaning as in the Evidence Act, and as evidence is not given before a Police Officer, proceedings before him are not 'legal proceedings' as defined in that Act. Statements made by persons during investigation to a Police Officer are not made on oath; they need not be signed; they need not be made in the presence of the accused; and they are not subject to cross-examination, i.e., they lack many of the characteristics of 'evidence.' They can only be used as evidence within narrowly restricted limits. *A. F. G. Price v. Emperor*.
38 Cr. L. J. 435 :

167 I. C. 555 : 17 Lah. 593 : 38 P. L. R. 1042 :
9 R. L. 515 : A. I. R. 1937 Lah. 160.

———S. 6—*Provisions of—Criminal Procedure Code, whether conflict with them.*

The Bankers' Books Evidence Act is a Special Act dealing with the subject-matter of bankers books, and being a Special Act, the provisions of the Criminal Procedure Code, do not, in any way, conflict. A Bank has, under S. 6, a statutory right to object to any order directing inspection to be given of their books though the order is one under S. 94, Criminal Procedure Code. The order must be deemed to have been made under S. 6, and where it is made without hearing the Bank, it is not binding on it. *Central Bank of India, Ltd. v. P. D. Shandasan*.
39 Cr. L. J. 207 :

172 I. C. 684 : 39 Bom. L. R. 1187 :
10 R. B. 291 : I. L. R. 1938 Bom. 119 (S. B.) :
A. I. R. 1938 Bom. 33.

BAR COUNCILS ACT, 1926.

———S. 9—*Advocate, enrolment of—Rules of Sind Court.*

Rules by Sind Court—Application for enrolment as Advocate—Necessity of degree or diploma. *In the matter of Gopal Aiyer*.
158 I. C. 707 : 8 R. S. 54 :

A. I. R. 1935 Sind 196.

———S. 10—*Advocate—Misconduct—Procedure.*

The procedure by which an Advocate of a High Court to which the provisions of the Bar Councils Act have been applied by a Notification of the Governor-General-in-Council under S. 1, sub-S. (3) of the Act, can be called upon to answer for misconduct is governed by S. 10 and the following sections of the said Act and not by the Letters Patent. *In the matter of a Vakil of Azamgarh*.
29 Cr. L. J. 998 :

112 I. C. 214 : 26 A. L. J. 1039 : 51 All. 76 :
A. I. R. 1928 All. 439.

———S. 10—*Complaint under—Persons entitled to make—Communal remark by Mohammadan Council—Hindu Association's right to complain.*

Any person may complain to the Court as to the undesirability of certain remarks made by a Counsel during the course of a trial. Consequently, it has been held that a Hindu Association can make a complaint to the High Court for taking action, against a Muhammadan Counsel who is alleged to have made a certain communal remark during the course of a trial.

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In re Mahomed Islam. 37 Cr. L. J. 783 :
162 I. C. 919 : 1936 Cr. C. 487 : 8 R. S. 177 :
A. I. R. 1936 Sind 49.

———S. 10—*Advocate—Conviction as evidence of misconduct—Misconduct not professional—Disciplinary action.*

Conviction of Advocate for criminal offence is evidence of misconduct—Court can take disciplinary action though misconduct is not committed in his professional capacity. *Advocate-General of Bombay v. Phiroz Rustomji Bharucha.*

157 I. C. 428 : 42 L. W. 480 : 69 M. L. J. 431 :
37 Bom. L. R. 722 : 39 C. W. N. 1281 :
1935 A. L. J. 1092 : 59 Bom. 676 :
1935 O. L. R. 517 : 1935 A. L. R. 870 :
1935 O. W. N. 964 : 1 B. R. 828 :
1935 M. W. N. 913 : 8 R. P. C. 33 :
A. I. R. 1935 P. C. 168.

———S. 10—*Duty of High Court to refer to or consult Bar Council.*

Under S. 10 of the Bar Councils Act, the High Court, unless it summarily rejects a complaint against a legal practitioner for misconduct, must refer the case for inquiry, or, after consultation with the Bar Council refer it to the Court of the District Judge. *In the matter of a Vakil of Azamgarh.*

29 Cr. L. J. 998 :
112 I. C. 214 : 26 A. L. J. 1039 : 51 All. 76 :
A. I. R. 1928 All. 439.

———S. 10—*Professional misconduct—Advocate engaged to file suit presenting plaint through unregistered clerk—Clerk not filing suit—Advocate not ascertaining whether plaint was filed—Dispute compromised between parties—Advocate getting refund for unused stamps but not returning that money to client and also failing to account for money taken for other expenses—Advocate held guilty of gross misconduct.*

An Advocate who was engaged to file a suit, had employed an unregistered clerk to help him and the plaint in the suit was handed over to him for being filed. The client had given the Advocate certain moneys to cover his fees, stamps and other incidental expenses. The clerk, however, failed to file the suit and the Advocate did not take care to ascertain that the suit was filed and thus allowed his clerk to cheat his client. The dispute was subsequently compromised between the parties and it was agreed that the suit should be withdrawn. The Advocate subsequently applied for the refund of the unused stamps purchased for the suit but failed to return the money to his client and also failed to account for the money he had taken for other incidental expenses: *Held*, that the conduct of the Advocate amounted to gross misconduct. *In the matter of a Barrister-at-Law.*

40 Cr. L. J. 53 (S. B.) :
178 I. C. 398 : 11 Rang. 228 (S. B.) :
A. I. R. 1938 Rang. 423.

———S. 10.—*Misconduct, meaning of.*

The words 'professional or other misconduct' in S. 10 (1), should be read in their plain and natural meaning. Legislature intended to confer on the Court jurisdiction to take action in all cases of misconduct, misconduct in a professional or other capacity. But a discretion is

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left to Court to take action in suitable cases only. *In the matter of an Advocate.*

37 Cr. L. J. 534 :
162 I. C. 170 : 40 C. W. N. 366 :
63 Cal. 867 : 8 R. C. 575 :
A. I. R. 1936 Cal. 158.

———S. 10—*Complaint—Summary dismissal.*

Under S. 10 Court should not dismiss complaint summarily, unless satisfied that even if statements in complaint are true, there would be no case for taking action. *Ramkrishna Bhai Thakur v. J. D. Davar.*

138 I. C. 543 : 34 Bom. L. R. 443 :
I. R. 1932 Bom. 401 : A. I. R. 1932 Bom. 199.

———S. 10 (1).—*Misconduct other than professional, liability for.*

An Advocate or Pleader is punishable in his professional capacity for misconduct other than professional misconduct. Each case should be dealt with according to the circumstances. *In re : Pleader.*

145 I. C. 847 : 1933 A. L. J. 251 :
55 All. 148 : 6 R. A. 171 :
A. I. R. 1933 All. 224.

———Ss. 10 (2), 12—*Advocate—Conviction for perjury—High Court's power to go into question of guilt.*

When an Advocate is convicted of perjury, and proceedings are taken against him under S. 12, High Court has no jurisdiction to decide question whether he is guilty of the offence or not. But it can look into the nature of the offence to consider the propriety of the order or the measure of the disciplinary sentence. *In the matter of Ganpat Sahai.*

32 Cr. L. J. 625.
131 I. C. 67 : 8 O. W. N. 267 :
I. R. 1931 Oudh 179 :
A. I. R. 1931 Oudh 161.

———S. 12—*Misconduct—Enquiry.*

Case of misconduct against an Advocate under the Bar Councils Act must proceed on an inquiry. *In the matter of Ganpat Sahai.*

32 Cr. L. J. 625 :
131 I. C. 67 : 8 O. W. N. 267 :
I. R. 1931 Oudh 179 :
A. I. R. 1931 Oudh 161.

———S. 12—*Charge against advocate involving criminal offence—Procedure.*

Charge against Advocate involving criminal offence. No private complaint is necessary. Inquiry for misconduct before prosecution is improper and may have serious consequences. *In the matter of S. Venkatachariar.*

32 Cr. L. J. 1085 :
134 I. C. 33 : 61 M. L. J. 148 :
54 Mad. 857 : I. R. 1931 Mad. 785 :
A. I. R. 1932 Mad. 131.

———S. 12.—*Finding regarding moral delinquency not clear—Procedure.*

Finding of Tribunal not clear as to question of moral delinquency—Case should be sent back to Tribunal. *In the matter of an Advocate.*

36 Cr. L. J. 1130 :
157 I. C. 374 : 62 Cal. 158 :
8 R. C. 98 : A. I. R. 1935 Cal. 484.

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—S. 12.—*Tribunal not unanimous—Powers of High Court.*

Minutes of Tribunal not unanimous. High Court can consider even opinion of minority. *In the matter of S. Venkatachariar.*

32 Cr. L. J. 1085 :
134 I. C. 33 : 34 L. W. 19 :
61 M. L. J. 148 : 54 Mad. 857 :
I. R. 1931 Mad. 785 :
A. I. R. 1932 Mad. 131.

—S. 12.—*Perjury by Counsel, gravity of.*

Perjury is an offence, the gravity of which cannot be minimised, especially when committed by a member of the Bar who knows its full import. At the same time it has many degrees of gravity and there may be several factors which may have the effect of extenuating the gravity of the offence. *In the matter of Ganpat Sahai.*

32 Cr. L. J. 625 :
131 I. C. 67 : 8 O. W. N. 267 :
I. R. 1931 Oudh 179 :
A. I. R. 1931 Oudh 161.

—S. 12.—*Tribunal's opinion, weight of.*

Witnesses examined by Tribunal. Question of appreciation of evidence. High Court would attach great weight to opinion of Tribunal. *In the matter of S. Venkatachariar.*

32 Cr. L. J. 1085 :
134 I. C. 33 : 34 L. W. 19 :
61 M. L. J. 148 : 54 Mad. 857 :
I. R. 1931 Mad. 785 :
A. I. R. 1932 Mad. 131.

—S. 12 (1)—*Rules under—Special jurisdiction conferred on District Judge—Delegation of authority to others—legality.*

Where a special jurisdiction is conferred upon a District Judge, the exercise of that jurisdiction by others, upon whom it has not been conferred, is barred. Where, therefore, a complaint against an Advocate is referred for inquiry to the District Court under the rules made under S. 12 (1), he cannot delegate it to one of his assistants. *In the matter of a Bar-at-Law.*

38 Cr. L. J. 664 (a) :
168 I. C. 992 : 9 R. S. 251 (1) :
A. I. R. 1937 Sind 98.

—S. 12 (5)—*Proceedings—Costs.*

Proceedings after Act relating to misconduct prior to Act. Costs can be ordered against the Advocate. *In the matter of S. Venkatachariar.*

32 Cr. L. J. 1085 :
134 I. C. 33 : 34 L. W. 19 :
61 M. L. J. 148 : 54 Mad. 857 :
I. R. 1931 Mad. 785 :
A. I. R. 1932 Mad. 131.

—S. 12 (6)—*High Court's power of review, nature of.*

The power of review conferred upon High Courts under Sub-S. (6) of S. 12 cannot be extended to an order passed under S. 41 of the Legal Practitioners' Act. *In re : Mohammad Yusuf Husain Khan.*

35 Cr. L. J. 678 :
148 I. C. 299 : 11 O. W. N. 368 :
6 R. O. 401 (F. R.) : A. I. R. 1934 Oudh 140.

—S. 15 (b)—*Rules under—Advocate of one High Court when may appear in another High Court—Grounds on which permission to be granted stated.*

The Chief Justice is to use the judicial discretion in permitting appearance of Advocate of another High Court. Good reason must be

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shown for the exercise of the discretion and the permission is not to be granted on mere application. The right of an Advocate of any particular Bar to appear in other High Courts does not exist as a matter of right. The Chief Justice will apply his mind to the circumstances of the application. One of the good reasons is that the Advocate for whom permission is sought to appear has, from the very beginning, in the lower Court, made a complete study of the case and is familiar with its details. Or it may appear that the litigant has his normal residence and carries on his normal business in another province and habitually consults a lawyer of that other province who is familiar with his business : and in such circumstances, again it is reasonable that the Advocate should be allowed to appear. A third circumstance may be the great magnitude of a case, the fact that it raises some extremely new and important questions of principle and of the jurisdiction of the Court, in which case again it may be right and proper that one of the more distinguished Advocates in India should be admitted to argue the case. But the position of the accused as the Acting Chief Manager of a big and important estate is no good reason and the mere fact that the proceedings are in respect of contempt of Court is also not sufficient for granting permission. *In the matter of Pandit Girindra Mohan Mishra.*

38 Cr. L. J. 392 :
Cr. Cas. 663 : I. L. R. 1936 Nag. 99 :
9 R. N. 186.

BAR TO FRESH TRIAL

See Cr. P. C. 1898, S. 403.

BAR TO PROSECUTION

See (i) Cr. P. C. 1898, S. 403,
(ii) Criminal Trial.

BARRISTER

See (i) Advocate.
(ii) Legal Practitioner.
(iii) Legal Practitioners' Act.

—*English Barrister enrolled as Advocate of High Court becomes subject to its disciplinary jurisdiction.*

A member of the English Bar who is enrolled and admitted as an Advocate of the Allahabad High Court becomes thereupon subject to its disciplinary jurisdiction. The High Court has, therefore, power to suspend him from practice in that Court. *In re : S. D. Sarbadhicary.*

5 Cr. L. J. 57 :
I. L. R. 29 All. 95 : 17 M. L. J. 74 :
9 Bom. L. R. 9 : 5 C. L. J. 130 :
11 C. W. N. 230 : 13 Bur. L. R. 10.

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See also Cr. P. C. 1898, Ss. 15, 16, etc.

—*Difference of opinion between Magistrates—Accused, if should be acquitted in appeal.*

It is not possible to lay down as a general rule that in case of difference of opinion between two Magistrates composing a Bench, the accused should be acquitted in appeal, although the fact that one of the two trying Magistrates is in favour of acquittal is a very important

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therefore, the permission of the Collector to commence prosecution is not necessary for such an offence. *Sashi Bhusan De Sarkar v. Ful Khan*.

41 Cr. L. J. 951 :
190 I. C. 448 : 44 C. W. N. 763 :
I. L. R. 1940 (2) Cal. 158 : 13 R. C. 186 :
A. I. R. 1940 Cal. 454.

BENGAL ALLUVIAL LANDS ACT (V OF 1920)

Collector's order for sale of huts erected on char land—Revision.

An order passed by a Sub-Divisional Officer under the Bengal Alluvial Lands Act, directing certain huts erected on disputed char land to be sold and the sale proceeds to be credited to the treasury cannot be revised by the High Court in the exercise of its criminal jurisdiction, such an order being an executive and not a judicial one. *Osman Munshi v. Kader Pramanick*.

31 Cr. L. J. 441 :
122 I. C. 640 : 33 C. W. N. 836 :
57 Cal. 282 : A. I. R. 1929 Cal. 768.

BENGAL CHILDREN ACT, 1922.

S. 20—Child undefended—Legality of trial.

Where the attendance of parent or guardian of a child of twelve years is not secured and the child is consequently undefended, the trial so held is illegal and the conviction of the child bad. *Aswini Kumar Bose v. Emperor*.

32 Cr. L. J. 1020 :
133 I. C. 334 : 35 C. W. N. 289 :
58 Cal. 951 : I. R. 1931 Cal. 686 :
A. I. R. 1931 Cal. 522.

S. 40—Absence of evidence showing custody, etc.—Conviction, legality of.

The question whether a person has the custody of another within the meaning of S. 40, is purely a question of fact, and no question of lawful custody or legal custody arises. But where in a case, there is no evidence whatever to establish that the custody, charge or care of the child alleged to have been ill-treated was with the person convicted under S. 40, the elements of an offence under S. 40 are not established, and the conviction and sentence are not maintainable. *Bhagwati Dasi v. Emperor*.

39 Cr. L. J. 974 :
177 I. C. 943 : 42 C. W. N. 993 : 11 R. C. 302 :
A. I. R. 1938 Cal. 638.

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Act is not *ultra vires* of the Legislature. *Jitendra Nath v. Chief Secretary of the Bengal Government*.

34 Cr. L. J. 245 :
141 I. C. 866 : 36 C. W. N. 1088 : 60 Cal. 364 :
I. L. R. 1933 Cal. 198 : A. I. R. 1932 Cal. 753.

Not *ultra vires*.

The Bengal Criminal Law Amendment Act, 1930, is not *ultra vires* of the Bengal Legislature under S. 80-A. (4), Government of India Act. *Pramila Gupta v. W. S. Hopkyns*.

33 Cr. L. J. 609 :
138 I. C. 358 : 36 C. W. N. 669 :
1932 Cr. C. 460 : 59 Cal. 140 :
I. R. 1932 Cal. 455 : A. I. R. 1932 Cal. 470.

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S. 2 (1).

Order not reviewed within time required by law—Order, is not in force beyond the period—Disobedience after the period—Conviction is not legal. *Hiramudhy Bhowmik v. Emperor*.

37 Cr. L. J. 377 :
160 I. C. 743 : 8 R. C. 452 :
A. I. R. 1936 Cal. 16.

S. 2 (1) (f) as amended.

Local Government is sole Judge as to reasons for detention. *Pramila Gupta v. W. S. Hopkyns*.

33 Cr. L. J. 609 :
138 I. C. 358 : 36 C. W. N. 669 :
1932 Cr. C. 460 : 59 Cal. 1440 :
I. R. 1932 Cal. 955 : A. I. R. 1932 Cal. 470.

S. 3 (2)—Reference, competency of.

A reference under S. 3 (2) is not incompetent simply because the records were submitted by the District Magistrate and not by the Commissioners. *Prodyot Kumar Bhattacharjya v. Emperor*.

33 Cr. L. J. 837 :
140 I. C. 80 : I. R. 1932 Cal. 673 :
A. I. R. 1933 Cal. 1.

S. 3 (2)—Diligence required—Judge.

Under S. 3 (2), the Local Government is the sole Judge of the due diligence required by the section. *Ananta Kumar Chakravarty v. Emperor*.

37 Cr. L. J. 922 :
164 I. C. 285 : 62 Cal. 1041 :
40 C. W. N. 255 : 9 R. C. 186.

S. 3 (2)—Judgment, form of.

There can be only one single judgment embodying the findings and views of the Commissioners who compose the tribunal. *Prodyot Kumar Bhattacharjya v. Emperor*.

33 Cr. L. J. 837 :
140 I. C. 80 : I. R. 1932 Cal. 673 :
A. I. R. 1933 Cal. 1.

S. 6—Charge of abetment—Private order

—Conviction.

Accused charged with aiding and abetting detainee in contravention of order—Order not served on him : *Held*, order being private order and not served on him, accused could not be convicted of contravention. *Hem Chandra Chongdar v. Emperor*.

37 Cr. L. J. 69 :
159 I. C. 31 : 40 C. W. N. 64 : 8 R. C. 296 :
A. I. R. 1935 Cal. 681 :

S. 6—Sentence.

Attempt by one of the conspirators to fire at Governor with intent to murder : *Held*, sentence of death was proper. *Emperor v. Bhowani Prasad Bhattacharji*.

36 Cr. L. J. 1275 :
157 I. C. 1070 : 39 C. W. N. 334 : 62 Cal. 433 :
8 R. C. 153 (S. B.) : A. I. R. 1935 Cal. 561.

S. 6—Construction of.

The Act being a penal enactment, has to be construed strictly. *Emperor v. Bhowani Prasad Bhattacharji*.

36 Cr. L. J. 1275 :
157 I. C. 1070 : 39 C. W. N. 334 : 62 Cal. 433 :
8 R. C. 153 (S. B.) : A. I. R. 1935 Cal. 561.

S. 6.—Conspiracy—member only aiding

—Sentence.

Where a member of the conspiracy only aids other members who actually attempt to murder, and does not take a part under it, a sentence of death cannot be passed on him under the Act. *Emperor v. Bhowani Prasad*.

35 Cr. L. J. 1275 :
157 I. C. 1070 : 39 C. W. N. 334 : 62 Cal. 433 :
8 R. C. 153 (S. B.) : A. I. R. 1935 Cal. 561.

BENGAL DISORDERLY HOUSES ACT, 1906.

—S. 6 (2)—*Notification under S. 6 (2)—Opinion of the Local Government, recited therein—Presumption under S. 114 (c), Evidence Act—Omnia praesumentur rite esse acta.*

It is not necessary to call any witness to prove that the Government had formed the opinion recited in a Government Notification under S. 6 (2). Upon the proof that the notification referred to in S. 6 (2), was duly authenticated within the meaning of S. 49 of the Government of India Act and signed by the Additional Secretary to the Government of Bengal, the Court is entitled to presume that judicial and official acts have been regularly performed, by reason of the provisions of S. 114, illus. (c) of the Evidence Act, and the maxim *omnia praesumentur rite esse acta*, and the recital in the Notification that such and such was the opinion of Government comes within the ambit of these provisions. *Ananta Kumar Chakravarty v. Emperor.* 37 Cr. L. J. 922 : 164 I. C. 285 : 62 Cal. 1041 : 40 C. W. N. 255 : 9 R. C. 186 :

BENGAL CRUELTY TO ANIMALS ACT (I OF 1920).

—S. 6—*Accused prosecuted for performing phuka—Charge not established—Conviction for being owner of animal upon which phuka was performed while in his possession, legality of.*

Accused charged under S. 6, for performing *phuka* on a milch-buffalo, cannot be convicted for being the owner of the animal on which the *phuka* was performed while in his possession, when there is no such allegation and the trial has not proceeded on any such footing. (In the interest of justice new trial was ordered). *Daragali Miah v. Emperor.* 41 Cr. L. J. 736 : 189 I. C. 369 : 44 C. W. N. 398 : 71 C. L. J. 179 : 13 R. C. 111 : A. I. R. 1940 Cal. 328.

BENGAL DISORDERLY HOUSES ACT (III OF 1906 B. C.)

—S. 2—*Necessary ingredients of offence—Brothel, what—Dancing girls singing obscene songs.*

In order to bring a case under S. 2, it must be shown, (1) that the house is in the vicinity of an educational institution or a boarding house, hostel or mess, and (2) that it is used as a brothel for the purpose of habitual prostitution or is used by disorderly persons of any description. Where a house is occupied by a male and the members of his family, two of the members being dancing girls, who are kept mistresses of gentlemen and who sing songs sometimes of an obscene nature: *Held*, that the house can be said to be used as a brothel or for the purpose of habitual prostitution. *Kokil v. Emperor.* 6 Cr. L. J. 423 : 6 C. L. J. 710.

—S. 2 (2)—*Offence—Trial.*

A conviction under S. 2 (2) can only be had upon regular trial and on proof of the ingredients of an offence under the section. *Munshi Mian v. Emperor.* 30 Cr. L. J. 517 : 115 I. C. 690 : I. R. 1929 Pat. 242 : 10 P. L. J. 523 : A. I. R. 1929 Pat. 406.

—S. 2 (2)—*Owning house used by prostitutes—Offence nature of—Procedure for trial.*

BENGAL EMBANKMENT ACT, 1882.

S. 2 (2) creates an offence within the definition of S. 4 (o) of the Code of Criminal Procedure and under S. 5 of that Code the offence is triable according to the provisions of that Code. The trial must, therefore, be held in accordance with S. 244 of the Code. *Munshi Mian v. Emperor.* 30 Cr. L. J. 517 :

115 I. C. 690 : I. R. 1929 Pat. 242 : 10 P. L. J. 523 : A. I. R. 1929 Pat. 404.

—S. 2 (2).—*Prostitute living en-famille, if disorderly person.*

If a prostitute lives with a man *en-famille* she is not necessarily disorderly person within meaning of Act. *Munshi Mian v. Emperor.*

30 Cr. L. J. 517 : 115 I. C. 690 : I. R. 1929 Pat. 242 : 10 P. L. J. 523 : A. I. R. 1929 Pat. 406.

BENGAL EMBANKMENT ACT (II of 1882)

—Cases under Act to be heard by experienced Magistrates.

Cases under the Bengal Embankment Act, ought preferably to be heard by experienced Magistrates. *Kameshwar Singh Bahadur of Darbhanga v. Emperor.* 37 Cr. L. J. 875 :

163 I. C. 965 : 17 P. L. T. 412 : 2 B. R. 688 : 9 R. P. 74 : 1936 Cr. C. 660 : A. I. R. 1936 Pat. 413.

—Object of.

The Act is largely composed of provisions designed for the maintenance of the *status quo* and to prevent interference therewith except by competent persons or under competent advice and sanction. *Ramadhikari Singh v. Emperor.* 38 Cr. L. J. 266 :

166 I. C. 699 : 9 R. P. 337 : 3 B. R. 214 : A. I. R. 1937 Pat. 14

—S. 6.—*‘Existing embankment,’ meaning of.*

An “existing embankment” in S. 6 of the Embankment Act means an embankment existing at the date when the addition is made and not an embankment which existed at the date of notification under S. 6. *Lakshmi Kante Hazrah v. Emperor.* 20 Cr. L. J. 333 :

50 I. C. 669 : 29 C. L. J. 328 : 23 C. W. N. 572 : 46 Cal. 825 : A. I. R. 1919 Cal. 669.

—S. 6.—*Nature of.*

The last clause of S. 6 of the Embankment Act is directory and not mandatory. *Lakshmi Kanta Hazrah v. Emperor.*

20 Cr. L. J. 333 : 50 I. C. 669 : 29 C. L. J. 328 : 23 C. W. N. 572 : 46 Cal. 825 : A. I. R. 1919 Cal. 669.

—S. 6.

Notification under last para of S. 6 is directory and not mandatory. *Damodar Narayan Chaudhury v. Emperor.* 34 Cr. L. J. 275 :

142 I. C. 35 : 13 P. L. J. 652 : I. R. 1933 Pat. 108 : A. I. R. 1933 Pat. 40.

—Ss. 6, 76 (b)—*Publication of notification under S. 6, relating to provisions of S. 76 (b)—Presumption under S. 114, cls. (e) and (f), Evidence Act, reliance on.*

To prove the local publication of a notification under S. 6, after an interval of time exceeding

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25 years, the Crown can be permitted to rely on the presumption under S. 114, cls. (c) and (f). Evidence Act, namely, that judicial and official acts have been regularly performed and the common course of business has been followed in particular cases. *Ramadhikari Singh v. Emperor*.

38 Cr. L. J. 266 :
166 I. C. 699 : 9 R. P. 337 : 3 B. R. 214 :
A. I. R. 1937 Pat. 14.

—Ss. 6, 80—Nature of.

The latter part of S. 6 and S. 80, Bengal Embankment Act, relating to publication of the notification are directory and not mandatory. *Supdt. & Rem. of L. A., Bengal v. Harakali Biswas*.

32 Cr. L. J. 813 :
131 I. C. 859 : 35 C. W. N. 163 :
58 Cal. 874 : I. R. 1931 Cal. 507 :
A. I. R. 1931 Cal. 435.

—S. 23 and Ch. IX—Beng. Tenancy Act, effect of.

The general provisions contained in S. 23 and in that part of Chapter IX of the Bengal Tenancy Act which deals with "improvement" cannot be said to have repealed the Embankment Act. The principle applicable in a case like this is *generalia specialibus non derogant*. *Lakshi Kanta Hazrah v. Emperor*.

20 Cr. L. J. 333 :
50 I. C. 669 : 29 C. L. J. 328 :
23 C. W. N. 572 : 46 Cal. 825 :
A. I. R. 1919 Cal. 669.

—S. 76—Offence—Additions to embankment.

Section 76 prohibits not only the construction of new *bundhs* but also additions to old *bundhs* so as to obstruct the flow of water. *Dwarka Nath v. Emperor*.

7 Cr. L. J. 185 :
12 C. W. N. 344 : 7 C. L. J. 239.

—Ss. 76, 91—Erection of dam across channel—Impediment to river and embankment and diversion of water from channel—offence.

A person cannot be convicted under S. 76 (a) for causing impediment to a river which is under the operation of the Bengal Canal Act, 1861. The accused was convicted under S. 76 for having erected a dam across a *khal* and thereby to have (1) impeded a river, (2) interfered with a public embankment in the *khal* and (3) to have diverted the water from the *khal*. The river was one to which the Canal Act applied: *Held*, that the accused could not be convicted for impeding the river though he could be convicted on the remaining heads of the charge. *Hem Chandra Naskar v. Emperor*.

30 Cr. L. J. 914 :
118 I. C. 355 : 33 C. W. N. 88 :
I. R. 1929 Cal. 643.

—S. 76 (a) and (b)—Proviso—Omission to take sanction of Collector for addition to embankment.

There is no such proviso attached to S. 76 (b) as is attached to S. 76 (a). The only offence contemplated by clause (b) is that of omitting to obtain sanction of the Collector in making any addition to an existing embankment within the prohibitory area. *Rama Nath v. Emperor*.

12 Cr. L. J. 65 :
9 I. C. 360 : 13 C. L. J. 333 : 28 Cal. 413.

BENGAL EMBANKMENT ACT, 1882.

—S. 76 (b).—Conviction under S. 76 (b).—Proper order.

The order contemplated in the case of persons erecting new embankment is one directing them to demolish so much of the embankment as is new and to remove so much of the new earth as is addition to existing embankment thus restoring the locality as nearly as possible to its *status quo ante* and not to convict them under S. 76 (b). *Ramadhikari v. Emperor*.

38 Cr. L. J. 266 :
166 I. C. 699 : 9 R. P. 337 :
3 B. R. 214 : A. I. R. 1937 Pat. 14.

—S. 76 (b).—Existing embankment, what is—Repairs—Permission, necessity of.

Existing embankment in S. 76 (b), means the embankment as it existed at the date when the additions were made, and permission of the Collector is necessary even for repairs if they involve additions. *Hatu Naik v. Emperor*.

34 Cr. L. J. 195 :
141 I. C. 647 : 56 C. L. J. 15 :
36 C. W. N. 877 : 60 Cal. 131 :
I. R. 1933 Cal. 159 (2) :
A. I. R. 1933 Cal. 3.

—S. 76 (b)—Existing embankment what is. "Existing embankment" is one existing at time of additions. *Damodar Narayan Chaudhury v. Emperor*.

34 Cr. L. J. 275 :
142 I. C. 35 : 13 P. L. T. 652 :
I. R. 1933 Pat. 108 : A. I. R. 1933 Pat. 40.

—S. 76 (b)—Making sluice in *bandh*. Making sluice in *Bandh* is an offence. *Damodar Narayan Chaudhury v. Emperor*.

34 Cr. L. J. 275 :
142 I. C. 35 : 13 P. L. T. 652 :
I. R. 1933 Pat. 108 : A. I. R. 1933 Pat. 40.

—S. 76 (b).—Lease granting permission to add to embankment—Operation of section.

S. 76, (b) will even supersede the stipulation in the lease of a prior date granting permission to the accused to add to or erect embankments. *Lakshmi Kanta Hazrah v. Emperor*.

20 Cr. L. J. 333 :
50 I. C. 669 : 29 C. L. J. 328 :
23 C. W. N. 572 : 46 Cal. 825 :
A. I. R. 1929 Cal. 669.

—Ss. 76 (b), 3.—River, whether water-course—Diversion or obstruction of river—Application of section.

The definition of "water-course" in the Act includes a line of drainage, weir, culvert, pipe or other channel, whether natural or artificial, for the passage of water. The definition is not exhaustive. It only mentions certain items by the word "includes." In ordinary language, every river is a water course. Therefore S. 76 (b) of the Act clearly applies in a case in which there has been a diversion or obstruction of a river. *Pasupati Karmakar v. Emperor*.

40 Cr. L. J. 808 :
183 I. C. 470 : I. L. R. 1939 (1) Cal. 334 :
42 C. W. N. 391 :
12 R. C. 162 : A. I. R. 1939 Cal. 528.

—S. 78—Destroying or diminishing efficiency of embankment—Mala fides, whether necessary.

In order to support a conviction under S. 78 on the ground that the accused by a wilful act

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destroyed or diminished the efficiency of an embankment, it is not necessary that there should be a finding that the accused acted *mala fide*. The section makes punishable acts endangering embankments even when the offender has no *mens rea*. *Executive Engineer, Nadia Rivers Division v. Ashutosh Saha*.

26 Cr. L. J. 1407 :
89 I. C. 719 : 52 Cal. 573 :
A. I. R. 1925 Cal. 921.

———S. 78—*Wilful act, significance of.*

The word "wilful" in S. 78 does not qualify the ultimate result of the act but the act itself. *Executive Engineer, Nadia Rivers Division v. Ashutosh Saha*.

26 Cr. L. J. 1407 :
89 I. C. 719 : 52 Cal. 573 :
A. I. R. 1925 Cal. 921.

———S. 79—*Accidental breach filled up without sanction—Offence—Proper order.*

When there is an accidental breach in the embankment and a technical offence is committed by filling up the breach without sanction, and it appears that the Collector was not averse to the repair of the breaches in itself, if his formal sanction had been taken, an order under S. 79, is not appropriate. *Kameshwar Singh Bahadur of Darbhanga v. Emperor*.

37 Cr. L. J. 875 :
163 I. C. 965 : 17 P. L. T. 412 : 2 B. R. 688 :
I. R. P. 74 : 1936 Cr. C. 660 :
A. I. R. 1936 Pat. 413.

———S. 80—*Publication, nature of.*

The publication under S. 80 is directory and not mandatory. *Ramadhikari Singh v. Emperor*.

38 Cr. L. J. 256 :
166 I. C. 699 : 9 R. P. 337 : 3 B. R. 214 :
A. I. R. 1937 Pat. 14.

———Ss. 89, 79—*Order of Subordinate Court set aside otherwise than in appeal, legality of.*

An order of the District Magistrate under the Bengal Embankment Act, passed otherwise than in appeal that an order of the Subordinate Court need not be carried out, is without jurisdiction. *Kameshwar Singh Bahadur of Darbhanga v. Emperor*.

37 Cr. L. J. 875 :
163 I. C. 965 : 17 P. L. T. 412 : 2 B. R. 688 :
9 R. P. 74 : 1932 Cr. C. 660 :
A. I. R. 1936 Pat. 413.

———S. 91—*Scope of.*

It is the portion between the highest water line and the lowest water line which is under the protection of the Embankment Act. *Emperor v. Lakshmi Narain Addy*.

36 Cr. L. J. 390 :
153 I. C. 771 : 38 C. W. N. 926 :
7 R. C. 398 (2) : A. I. R. 1934 Cal. 836.

BENGAL EMERGENCY POWERS ORDINANCE (11 OF 1931) S. 30.

Order for trial of accused by Special Magistrate under S. 30—Re-trial ordered under S. 423, Cr. P. C.—Magistrate has jurisdiction until he finishes re-trial, even though the ordinance lapses in the meanwhile. *Jiban Molla v. Emperor*.

34 Cr. L. J. 684 (2) :
144 I. C. 90 : 37 C. W. N. 906 :
I. R. 1933 Cal. 500 : A. I. R. 1933 Cal. 551.

———S. 31.

The expression "cases under the ordinance" relates to trial of cases by Special Magistrates and does not mean "offences punishable under

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the ordinance." *Jogendra Mohan Guha v. Emperor*.

34 Cr. L. J. 879 :
144 I. C. 957 : 60 Cal. 545 : 6 R. C. 68 :
A. I. R. 1933 Cal. 516.

———S. 33—*Appeal—Forum.*

No appeal lies to the High Court from a sentence of four years' rigorous imprisonment under S. 33. *Sukumar Majumdar v. Emperor*.

34 Cr. L. J. 107 (1) :
140 I. C. 891 : 59 Cal. 1248 :
1932 Cr. C. 891 (2) : A. I. R. 1932 Cal. 867 (2).

———S. 39—*Scope of—High Court's power of superintendence.*

The power of Superintendence that the High Court derives from S. 107, Government of India Act is not taken away by S. 39. *Manmatha Nath v. Emperor*.

34 Cr. L. J. 299 :
142 I. C. 280 : 37 C. W. N. 201 :
60 Cal. 618 : I. R. 1933 Cal. 246 :
A. I. R. 1933 Cal. 132.

BENGAL EXCISE ACT (VII OF 1878 B. C.) Ss. 53, 59, 61.

———*Possession of ganja—Sale without licence—Contravention of condition of licence.*

A person who is licensed to sell ganja at one place would be guilty under S. 59 and not under Ss. 53 and 61, if he is found to have been in possession of ganja and to have sold a part of the same at another place. His servant would, in such a case, not be guilty of any offence. *Gostho Behari Saha v. Emperor*.

7 Cr. L. J. 344 :
7 C. L. J. 377 : 12 C. W. N. 461.

BENGAL EXCISE ACT (V OF 1909)

———*Rules—Possession of opium—Offence—Opium diluted in water, whether admixture for smoking—Conviction for possession, legality of.*

Opium diluted in water is not an admixture of opium for the purpose of smoking within the meaning of the rules under the Bengal Excise Act. Therefore, a person cannot be convicted of being in possession of an excess quantity of mixture for smoking than permitted, merely because in addition to a quantity of smoking mixture, which is permissible, he has some opium diluted in water and both the quantities taken together exceed the prescribed limit. *Dicarka Nath Misra v. Emperor*.

27 Cr. L. J. 1133 :
97 I. C. 653 : 30 C. W. N. 984 : 44 C. L. J. 111 :
A. I. R. 1926 Cal. 1120.

———S. 2, (3), (7), (15)—*Manufacture—Dilution of denatured spirit with water, if process for manufacture of excisable article.*

The essence of "manufacture" as defined in clause 15 of S. 2 is that it is a process and the mere dilution of denatured spirit with water is not a process for the manufacture of an excisable article, assuming that the diluted liquid is an excisable article within the meaning of the Act. The Act does not intend that spirit which had been effectually and permanently rendered unfit for human consumption should, by reason of mere dilution with water, be deemed to have become an intoxicating liquor within the meaning of the Act. *C. M. N. Biswas v. Emperor*.

15 Cr. L. J. 73 :
22 I. C. 425 : 9 C. L. J. 53 : 18 C. W. N. 586 :
41 Cal. 694 : A. I. R. 1914 Cal. 603.

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—Ss. 2 (14), (20), 9 (2), 10, 46, 52, 55, 57—*Exciseable liquor, meaning—Tinctures, if liquor—Prevention of smuggling of drugs—“Juice drawn from any cocoanut,” meaning of—Taking order for foreign goods whether abetment of transport.*

The definition of “Exciseable liquor” given in the Excise Act of 1909, prevents chemists and vendors of drugs from selling intoxicating liquors or otherwise dealing with them as medicinal preparations. Tinctures of Cinchona, Cardamon or Ginger and Spirits of Nitric Ether are not exciseable liquor. The smuggling of drugs prepared in French territory with French spirits in Bond into British territory can be prevented under the Customs Law. Therefore, those articles ought to be dealt with by the Customs Authorities; but the omission of these authorities to do so does not render the accused liable to punishment under the Excise Act. “Juice drawn from any cocoanut” in S. 2, cl. 20, of the Excise Act, does not refer to the milk of the cocoanut itself but means juice of the palm tree of whatever species and not its fruit. The act of taking an order for foreign goods does not constitute an abetment of their transport, though it might be an abetment of their import. *Emperor v. Moti Lal Chander.*

13 Cr. L. J. 545 :

16 C. W. N. 785 : 39 Cal. 1053 : 15 I. C. 961.

—Ss. 2 (14), 46, 90—*Medicinal preparation containing alcohol, whether excisable—Mrita Sanjivani Sudha, preparation of, without licence—offence.*

A preparation containing alcohol is not outside the provisions of the Bengal Excise Act as amended by Bengal Act VII of 1914, simply because it is a medicinal preparation or may be used for medicinal purposes. The manufacture and sale of Mrita Sanjivani Sudha, prepared in accordance with the “Ayurvedic” Pharmacopœia and used for medicinal purposes only, otherwise than in conformity with the provisions of the Excise Act is an offence, unless it is exempted by notification under the provisions of S. 90 of the Act. *Ganesh Chandra Sikdar v. Emperor.*

18 Cr. L. J. 740 :

40 I. C. 740 : 26 C. L. J. 342 : 45 Cal. 82 :

22 C. W. N. 328 : A. I. R. 1918 Cal. 822.

—S. 46—*Cocaine—Illicit possession—Offence—Exemption—Onus.*

Under the Government Notification of November 20th, 1911, it is an offence for any person other than those specified to have any cocaine at all except with medical man's prescription, and then only five grains. In all cases, the burden of proof to show under what authority he obtained cocaine lies on the accused. *Makund Sahu v. Emperor.*

15 Cr. L. J. 262 :

23 I. C. 470 : 18 C. W. N. 1023 :

A. I. R. 1914 Cal. 634.

—S. 46—*Excise offence—Statement to Excise Officer and opinion of Excise Officer, admissibility of—Search witnesses, duty of Magistrate to call.*

In a prosecution for an offence under the Act statements obtained from the accused by Excise Officers after the accused had been taken to the excise barracks and was in the custody of the Excise Officers are not admissible in evidence as they cannot be considered to be voluntary.

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The opinion of an Excise Officer that a person accused of illicit sale and possession of cocaine had a reputation of being a dealer in such article on a large scale is wholly inadmissible in evidence. A Magistrate should insist on the production in Court of the witnesses who were present at the search of the accused's premises, where the only witness of the search examined is a person who stands well with the Excise Authorities. *Batasi Moni Dasi v. Emperor.*

27 Cr. L. J. 1329 :

98 I. C. 401 : 53 Cal. 706 : 30 C. W. N. 854 :

A. I. R. 1926 Cal. 1163.

—Ss. 45, 54, 56—*Criminal Procedure Code s. 239—Trial—Misjoinder—Trial of licensed vendor along with agent, whether legal.*

A licensed vendor, who is punishable by implication under S. 56 may be tried together with his agent who commits the offence, for the case is one of abetment by implication, and S. 239 of the Criminal Procedure Code clearly allows an abettor to be tried along with the principal.

The petitioners were charged with offences which fall either within S. 46 in the case of accused No. 1 read with S. 56, or independently in the case of No. 1 within S. 54 of the Bengal Excise Act. One S. who was employed as a menial servant had been convicted as an instrument used for the conveyance of this liquor. S. gave his evidence at the trial of the petitioners :

Held, that S. had entirely ceased to be in the position of an accomplice, inasmuch as he had been convicted of a different offence before the trial of the petitioners, and had nothing to gain or lose by the evidence he gave in Court. *Priya Nath Bishoi v. Emperor.*

13 Cr. L. J. 255 :

15 C. L. J. 962 : 14 I. C. 607.

—Ss. 46, 56—*Master's liability for offence by servant—Removing ganja—“on behalf of” meaning of.*

A master is not criminally responsible for the wrongful act of a servant unless he can be shown to have expressly authorized it. Under S. 56 the prosecution must show that the servant was not only in the employ of his master but also acted on his behalf in committing the offence. The expression “on behalf of” connotes some benefit to the person on whose behalf another person may act. When a servant does anything within the scope of his employment for that purpose, his action will be binding on his master, and the master will be criminally liable for any wrongful act of the servant. *Uttam Chand v. Emperor.*

13 Cr. L. J. 591 :

16 C. W. N. 551 : 15 C. L. J. 401 : 39 Cal. 344 :

15 I. C. 1007.

—Ss. 46, 83 (a)—*Offence under s. 46—Complaint by Police Officer below rank of officer-in-charge of Police Station—Magistrate, jurisdiction of, to take cognizance of offence.*

On the report of a Junior Sub-Inspector of Police below the rank of an officer-in-charge of a Police Station, a Magistrate cannot take cognizance of a case under S. 46 of the Bengal Excise Act and convict the offender. *Jalal-uddin Peshawari v. Emperor.*

19 Cr. L. J. 961 :

47 I. C. 813 : A. I. R. 1918 Cal. 50.

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———Ss. 46 (A), 52 and 61.—*Cocaine—Illegal possession—Possession of bill of lading—Constructive possession—Attempt to effect illicit importation of cocaine—Criminal Procedure Code, Ss. 236, 237—No charge—Conviction.*

The accused was in possession of an invoice and bill of lading which purported to cover old wearing apparel exported by B. and Co. of L. to R. at D. This bill of lading with endorsements by B. and Co. and R. was made over by the accused to K. and Co. in order that the goods might be cleared and passed through the Customs House. The goods were found to contain a large quantity of cocaine sought to be illicitly imported. The accused, when apprised of the discovery, professed to be acting on behalf of R. about whom he completely failed to give any clue : *Held*, that the accused was not in possession of the cocaine as he had no dominion or control over the goods, and, therefore, his conviction under Ss. 46 and 52 could not be supported : *Held*, further that the accused was liable to be convicted of the offence of attempting to import cocaine in contravention of the Excise Act, and to be punished under S. 61 read with S. 46, Cl. (a) and S. 2, Cl. (12).

The High Court, under Ss. 236 and 237 of the Cr. P. C. convicted the accused of the offence although he was not charged with it. *Kali Charan Mukherjee v. Emperor.* 15 Cr. L. J. 4 :

22 I. C. 148 : 18 C. L. J. 514 :
18 C. W. N. 309 : 41 Cal. 537 :
A. I. R. 1914 Cal. 473.

———S. 48—*Offence—Attempt and not success in rendering spirit for human consumption penalised.*

The Act provides for the punishment of an attempt to render fit for consumption denatured spirit, but it does not provide any punishment for a successful attempt, i.e., the completed act. Therefore, where the spirit is not denatured and it is found that the accused not only attempted to render the spirit fit for human consumption but actually succeeded in his attempt, a conviction under S. 48 cannot be had. *C. U. N. Biswas v. Emperor.*

15 Cr. L. J. 73 :
22 I. C. 425 : 9 C. L. J. 53 : 18 C. W. N. 586 :
41 Cal. 694 : A. I. R. 1914 Cal. 603.

———S. 48—*Offence—Necessary ingredients—denatured spirit, what is.*

To support a conviction under S. 48, two elements must be established, *first* that the spirit is a denatured spirit, and *secondly*, that the accused had attempted to render such spirit fit for human consumption. The Legislature could not have intended to mean by "denatured spirit" such as would remain unfit for human consumption in spite of dilution with water. *C. U. N. Biswas v. Emperor.*

15 Cr. L. J. 73 :
22 I. C. 425 : 9 C. L. J. 53 : 18 C. W. N. 586 :
41 Cal. 694 : A. I. R. 1914 Cal. 603.

———Ss. 63, 64—*Liquor in Excise and Customs bond—Confiscation of.*

Liquor in Excise and Customs bond is not liable to confiscation under any of the pro-

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visions of the Bengal Excise Act. *J. E. Gubbay v. Emperor.* 41 Cr. L. J. 556 :

188 I. C. 267 : 12 R. C. 668 :
A. I. R. 1940 Cal. 205.

———S. 63—*Identity of possessor or premises, necessity of.*

What is material under S. 63, is not identity of premises but identity of the possessor. *J. E. Gubbay v. Emperor.*

41 Cr. L. J. 556 :
188 I. C. 267 : 12 R. C. 668 :
A. I. R. 1940 Cal. 205.

———Ss. 63, 64 (1)—*Any liquor "lawfully had in possession along with and in addition to" liquor liable to confiscation—Person in possession, whether should be guilty of offence—Licit liquor on different premises from illicit liquor, effect of.*

Under S. 63, any liquor lawfully "had in possession along with or in addition to any liquor liable to confiscation under S. 63 (1) is likewise liable to confiscation. It is immaterial who is the person in possession ; all that the sub-section requires is that some person should be in possession at some point of time subsequent to the commission of an excise offence, both of the illicit liquor and also of some licit liquor. When this condition is fulfilled, the licit liquor is confiscated equally with the illicit. The sub-section does not say that the person in possession need be guilty of any offence, and the Proviso to the sub-section distinctly implies that in the case of liquor even the owner need not be guilty. The section has to be construed according to its plain language. The fact that the licit liquor was on different premises from illicit is immaterial ; the point is that it was lawfully "had in possession" "in addition to" the illicit liquor. Therefore, the additional liquor is liable to confiscation under S. 63 (2). The fact that the person in possession of licit has not been prosecuted for or convicted of any offence is entirely irrelevant to the construction of S. 63 (2). *Ezekiel Ephraim Ezekiel v. Emperor.* 40 Cr. L. J. 608 :

181 I. C. 955 : 43 C. W. N. 522 :
11 R. C. 875 : I. L. R. 1939 (1) Cal. 549 :
A. I. R. 1939 Cal. 346.

———Ss. 63, 64 (1)—*Magistrate, power to confiscate anything liable to confiscation.*

A Magistrate who tries the case has power to order confiscation of anything which is liable to confiscation whether it is within or without the district where the case is tried. *Ezekiel Ephraim Ezekiel v. Emperor.*

40 Cr. L. J. 608 :
181 I. C. 955 : 43 C. W. N. 522 :
11 R. C. 875 : I. L. R. 1939 (1) Cal. 549 :
A. I. R. 1939 Cal. 346.

———Ss. 63, 64 (1)—*Order of confiscation—Parties not heard—Omission, if fatal.*

Before a Magistrate can make an order of confiscation, he has to decide that the articles in question are liable to confiscation. A decision necessarily implies the hearing of parties. In ordinary circumstances, the omission is fatal to the order of confiscation ; but where facts sufficient for a decision of the question of liability to confiscation are stated by the petitioners themselves in the application, the omis-

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sion cannot be said to have caused any real prejudice. *Ezekiel Ephraim Ezekiel v. Emperor*.

40 Cr. L. J. 608 :

181 I. C. 955 : 43 C. W. N. 522 :

11 R. C. 875 : I. L. R. 1939 (1) Cal. 549 :

A. I. R. 1939 Cal. 346.

—Ss. 63, 64 (1)—“Possession” meaning of—*Liquor in dual possession of revenue authorities and person from whom it is sought to be seized—Confiscation.*

Possession implies full and uncontrolled physical dominion. One quantity of liquor cannot be said to be “had in possession along with or in addition to” another, unless the possessor of both is the same. Liquor which is in the dual possession of the revenue authorities and the company from whom it is sought to be seized, cannot be said to be in “possession” of the company within the meaning of S. 63 (2) and, therefore, is not liable to confiscation under S. 63 (2) and where there is no evidence that any portion of it is illicit, it is not liable to confiscation under S. 63 (1) either. *Ezekiel Ephraim Ezekiel v. Emperor*.

40 Cr. L. J. 608 :

181 I. C. 955 : 43 C. W. N. 522 :

11 R. C. 875 : I. L. R. 1939 (1) Cal. 549 :

A. I. R. 1939 Cal. 346.

—S. 67—*Excise Officers assaulted before they entered any house or made any arrest or search—Offence.*

An Excise Officer on receiving information, that he would find certain persons in the act of illicitly distilling liquor, went to a certain village, with other officers and peons, who actually saw the accused and their men removing distilling apparatus. But before they had time to enter the house and arrest them or to make any search whatever, the accused sallied out and proceeded to beat the peons. The accused were convicted of rioting and using criminal force to deter a public servant from the discharge of his duty: *Held*, that the Excise Officers were acting under S. 67, and that as there was no search, it could not be said that there was a search not in accordance with law. *Prakash Chandra Kandu v. Emperor*.

15 Cr. L. J. 251 :

23 I. C. 203 : 18 C. W. N. 918 : 41 Cal. 836 :

A. I. R. 1914 Cal. 675.

—S. 74—*Excise Sub-Inspector, statement made to—Admissibility.*

In making an investigation under the Excise Act, the Excise Sub-Inspector has the status of a Police Officer and, therefore, a statement made to him in the course of an investigation would also be inadmissible under the provisions of S. 162, Cr. P. C. *Jogendra Nath Gora v. Emperor*.

36 Cr. L. J. 1366 :

153 I. C. 385 : 40 C. W. N. 29 :

7 R. C. 181 : A. I. R. 1935 Cal. 621.

—S. 74—*Procedure.*

Procedure laid down in Cr. P. C. has to be followed in investigation into offences under the Act. There can, therefore, be no question of the applicability of S. 5, Identification of Prisoners Act. *Chaitkanathaswami Temple, Virudunagar v. Pooranna Navanna Vadivelmurugai Nadar*.

37 Cr. L. J. 438 :

161 I. C. 238 : 40 C. W. N. 415 :

63 Cal. 786 : 8 R. C. 499 :

A. I. R. 1936 Cal. 65.

BENGAL FERRIES ACT, 1885.

—Ss. 75, 81—*Applicability.*

Ss. 75 and 81 apply only to proceedings before the Collector, but the Cr. P. C. is applicable to trials before a Magistrate, subject to certain specified restrictions. *C. U. N. Biswas v. Emperor*.

15 Cr. L. J. 73 :

22 I. C. 425 : 9 C. L. J. 53 :

18 C. W. N. 586 : 41 Cal. 694 :

A. I. R. 1914 Cal. 603.

BENGAL EXCISE AND LICENSING ACT (VII OF 1878), S. 75.

—*Interpretation of—Excisable articles carried in boat—Confiscation of boat.*

The boat in which excisable articles are carried in contravention of the excise law should not be confiscated under the provisions of S. 75, unless it is found that the owner of the boat was in some way implicated in the offence under the excise law. *Golap Sahai v. Emperor*.

6 Cr. L. J. 433 :

12 C. W. N. 139.

BENGAL FERRIES ACT (I OF 1885), S. 6 (d).

—*Ferries, limits of—Proof.*

Limits of ferries can be proved by oral evidence. Notification is not necessary but it only obviates necessity of adducing proof. *Abdul Ghani v. Emperor*.

35 Cr. L. J. 128 :

146 I. C. 605 : 14 P. L. T. 720 :

6 R. P. 278 : A. I. R. 1933 Pat. 603.

—S. 6 (d)—*Ferries—Limits, determination of.*

Mere name of Ghat coupled with evidence as to situation of village is not sufficient to locate point from which ferry starts or at which it terminates. *Abdul Ghani v. Emperor*.

35 Cr. L. J. 128 :

146 I. C. 605 : 14 P. L. T. 720 :

6 R. P. 278 : A. I. R. 1933 Pat. 603.

—Ss. 6, 16, 28—*Offence, ingredients of—Public ferry, what is.*

For a conviction under S. 28 it is necessary to prove that the ferry is a public ferry. No ferry is a public ferry unless it has been declared to be such by a notification under S. 6 of the Act or unless it has, previous to 1885, been determined or declared to be a public ferry under Regulation VI of 1819 or Bengal Act I of 1866. *Jacobaran Singh v. Ram Krishun Lal*.

27 Cr. L. J. 970 :

96 I. C. 522 : A. I. R. 1926 Pat. 520.

—S. 16—*Limits of ferry—Distance of two miles, measurement of.*

The distance of two miles referred to in S. 16, must be measured by reference to the water frontage and not by land. *Chairman of Serajganj Local Board v. Pudhiswar Patni*. 32 Cr. L. J. 38 : 127 I. C. 799 : 31 C. W. N. 422 : 51 C. L. J. 199 : 57 Cal. 1261 : A. I. R. 1930 Cal. 281.

—S. 16—*Application of.*

Ss. 16 and 28 are not made conditional on the fulfilment of conditions imposed by S. 8. *Abdul Ghani v. Emperor*.

35 Cr. L. J. 128 :

146 I. C. 605 : 14 P. L. T. 720 :

6 R. P. 278 : A. I. R. 1933 Pat. 603.

—Ss. 16, 28—*Criminal Procedure Code, S. 234—Ferry, unauthorized, maintenance of—*

BENGAL FERRIES ACT, 1885.

Liability for damages—Injunction—Carriage of passengers or property—Offence—Several offences, trial of—Procedure.

The maintenance of a private ferry is in contravention of S. 16 and the person maintaining it may be liable for damages and an injunction may also be issued against him. If, however, in addition to maintaining such a prohibited private ferry, he carries passengers or property, he is liable criminally under S. 28 and each time he conveys passengers or property for hire he commits an offence. Each trip is a separate transaction and can be tried separately. Where several trips are made within the course of a few days, the proper procedure is for the Magistrate to try the accused at one time only in respect of three of these transactions and to use the remaining transactions as evidence in the case for the purpose of determining the amount of the damages payable under the Act. If a conviction is obtained in respect of transactions selected for trial, the Court should stay the inquiry into or trial of the other charges which will have the effect of the acquittal of the accused on those charges subject to the event of the conviction being set aside on appeal or revision. If the conviction is set aside, the Magistrate may proceed with the trial of or inquiry into other charges. *Jacobaran Singh v. Ramkrishun Lal.* 27 Cr. L. J. 359 :

92 I. C. 871 : 4 Pat. 503 : 7 P. L. T. 734 : A. I. R. 1925 Pat. 623.

———Ss. 16, 28—Ferry—Persons liable—Lessor proprietor, liability of.

The person who is liable under Ss. 16 and 28 is the person who conveys passengers for hire. In other words the persons really liable under the Act are the lessees or farmers of the *ghat* who collected tolls and conveyed passengers across the river by means of their hired boatman. The proprietor of a village who merely leases out the ferry to lessees but does neither convey passengers nor collect tolls from them is not liable. *Abdul Ghani v. Emperor.*

83 Cr. L. J. 454 : 167 I. C. 757 : 15 Pat. 65 : 17 P. L. T. 845 : 9 R. P. 425 : 3 B. R. 328 : A. I. R. 1937 Pat. 144.

———Ss. 16, 28.—Limits of ferry should be known for prosecution under S. 16.

In view of the proviso to S. 16, it is important that the limits of each ferry should also be known for purposes of a prosecution under S. 16 read with S. 28. The plying of a boat for hire along the one bank of a river is no offence. Persons who have not obtained a lease from the District Magistrate but are only sub-lessees have no right to ply a ferry. *Jeobaran Singh v. Ramkrishun Lal.* 27 Cr. L. J. 970 :

96 I. C. 522 : A. I. R. 1926 Pat. 520.

———S. 28—Ferry, existence of.

Existence of ferry depends on right to maintain it. *Abdul Ghani v. Emperor.*

35 Cr. L. J. 128 : 146 I. C. 605 : 14 P. L. T. 720 : 6 R. P. 278 : A. I. R. 1933 Pat. 603.

———S. 28—Servants, liability of.

The persons intended to be punished under S. 28 are those who maintain a ferry in contravention of S. 16 and who work such ferry for hire

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and not servants or other persons helping them. *Jeobaran Singh v. Ramkrishun Lal.*

27 Cr. L. J. 970 :

96 I. C. 522 : A. I. R. 1926 Pat. 520.

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———Construction—Liberal.

As the Act is intended for the safety of the people, it should be construed liberally. *Rakhal Chandra Dutta v. Purna Chandra Ghose.*

31 Cr. L. J. 1151 :

127 I. C. 57 : 34 C. W. N. 281 :

51 C. L. J. 227 : A. I. R. 1930 Cal. 273.

———Object of Act—Adulteration—Knowledge of purchaser.

The object of the Act is to protect the public from using adulterated articles and, therefore, it penalises to sell adulterated articles to any person irrespective of the fact that the purchaser knew the article to be adulterated or otherwise. *Rakhal Chandra Dutta v. Purna Chandra Ghose.*

31 Cr. L. J. 1151 :

127 I. C. 57 : 34 C. W. N. 281 :

51 C. L. J. 227 : A. I. R. 1930 Cal. 273.

———S. 4—"Conditions" meaning of.

The word "conditions" is quite obviously very wide. It embraces a multitude of things. It may range over such matters as storing, packing, temperature, standard of purity, physical condition and chemical condition. *Nowranga Lal Marwari v. Chairman, Midnapore Municipality.*

41 Cr. L. J. 849 :

190 I. C. 186 : I. L. R. 1940 (2) Cal. 82 :

44 C. W. N. 615 : 13 R. C. 152 :

A. I. R. 1940 Cal. 324.

———S. 4.—Presumption, nature and application of.

The presumption under S. 4 only applies to those articles of which the normal constituents have actually been declared. One presumption arising is that the article is not genuine, that is to say, that it had constituents other than those covered by the declaration. 184 I. C. 423 (1), explained. *Nowranga Lal Marwari v. Chairman, Midnapore Municipality.*

41 Cr. L. J. 849 :

190 I. C. 186 : I. L. R. 1940 (2) Cal. 82 :

44 C. W. N. 615 : 13 R. C. 152 :

A. I. R. 1940 Cal. 324.

———Ss. 4, 6—Ghee—Presumption under S. 4 and rules thereunder—Under S. 6, additional constituents presumed to be present must be shown to be other than curds.

The presumption in case of prosecution for sale of adulterated *ghee* would be that the *ghee* in the sample contained some substance other than the milk fat of cows or buffaloes. But inasmuch as in the case of *ghee* the notification is more severe than the conditions laid down in S. 6, the presumption would be of very little help to the prosecution. Under S. 6 *ghee* may contain curds and the prosecution would have to show that the additional constituents presumed to be present were something other than curds. The essential thing is that the rules under the Act should refer to deficiencies in or additions to any article of food, that is to say, they must lay down the absence of some-

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thing or the presence of something. *Nowranga Lal Marwari v. Chairman, Midnapore Municipality*. 41 Cr. L. J. 849 :

190 I. C. 186 : I. L. R. 1940 (2) Cal. 82 :
44 C. W. N. 615 : 13 R. C. 152 :
A. I. R. 1940 Cal. 324.

—Ss. 4, 6—Standard of quality—Fixation by Government.

It is *intra vires* of the Local Government to fix a standard of quality, and in so doing, to prescribe conditions within the meaning of S. 6. *Nowranga Lal Marwari v. Chairman, Midnapore Municipality*. 41 Cr. L. J. 849 :

190 I. C. 186 : I. L. R. 1940 (2) Cal. 82 :
44 C. W. N. 615 : 13 R. C. 152 :
A. I. R. 1940 Cal. 324.

—Ss. 4, 6—Scope of—Effect on presumption under S. 4.

Section 6 enacts an absolute prohibition and renders any presumption, arising under S. 4 and the rules made thereunder that the *ghee* is not genuine or is injurious to health, entirely superfluous. *Nowranga Lal Marwari v. Chairman, Midnapore Municipality*. 41 Cr. L. J. 849 :

190 I. C. 186 : I. L. R. 1940 (2) Cal. 82 :
44 C. W. N. 615 : 13 R. C. 152 :
A. I. R. 1940 Cal. 324.

—Ss. 4, 6—Scope of—Sections deal with different matters.

There is nothing in the terms of S. 4 itself to suggest that articles mentioned in S. 6 milk, butter, *ghee*, wheat, flour and mustard oil are excluded. The section provides that the Local Government may declare the normal constituents of any article of food. Ss. 4 and 6 are really dealing with different matters. The former is concerned merely with the constituents of different articles of food and the latter with the conditions under which they may be sold. Certain constituents are only mentioned in S. 6 in order to ensure a certain standard of purity in any article put on the market. *Nowranga Lal Marwari v. Chairman, Midnapore Municipality*. 41 Cr. L. J. 849 :

190 I. C. 186 : I. L. R. 1940 (2) Cal. 82 :
44 C. W. N. 615 : 13 R. C. 152 :
A. I. R. 1940 Cal. 324.

—S. 5—Report of analyst.

Sanitary Inspector not having jurisdiction submitting sample for analysis—Report of Analyst is admissible. *Sawal Ram Agarwal v. Emperor*. 36 Cr. L. J. 372 :

153 I. C. 632 : 62 Cal. 374 : 7 R. C. 389 :
A. I. R. 1934 Cal. 858.

—S. 6—Stored for sale, meaning of—Goods in transit—Presumption.

Where consignment of adulterated mustard oil is found by the Sanitary Inspector in possession of the accused's cartier when it was in transit to the accused's shop in the ordinary sense of the expression, the goods in question were not being "stored for sale" under S. 6. Presumption under S. 6 (4) does not arise in such a case as the possession of the accused is merely constructive and not actual. 172 I. C. 869 (1), relied on. *Sachi Nandan Piri v. Chairman*.

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Midnapore District Board. 41 Cr. L. J. 582 :

188 I. C. 398 : 44 C. W. N. 173 :
I. L. R. 1940 (1) Cal. 333 : 13 R. C. 10 :
A. I. R. 1940 Cal. 213.

—S. 6—Offence—Storing for human consumption, necessity of proving.

It is not an essential part of the offence under the Act that what is done, viz., the storing, etc., should be done with a view to or for the purpose of human consumption. *Chairman, District Board, Midnapore v. Atul Chandra Pal*. 34 Cr. L. J. 1081 :

145 I. C. 841 : 57 C. W. N. 511 :
57 C. L. J. 429 : 6 R. C. 146 :
A. I. R. 1933 Cal. 619.

—S. 6—Scope of—Construction.

S. 6 is an entirely distinct and self-contained section, and ought to be interpreted as it stands without the help of S. 5. *Sawal Ram Agarwala v. Emperor*. 36 Cr. L. J. 372 :

153 I. C. 632 : 62 Cal. 374 : 7 R. C. 389 :
A. I. R. 1934 Cal. 858.

—Ss. 6, 4—Offence—Duty of prosecution.

The prosecution under S. 6 may prove either that the *ghee* does not fulfil the conditions laid down in S. 6 or that it does not fulfil such conditions as are prescribed by the Local Government. Although the *ghee* may be unadulterated, it may still be of poor quality and S. 4 applies to such a case. *Nowranga Lal Marwari v. Chairman, Midnapore Municipality*. 41 Cr. L. J. 849 :

190 I. C. 186 : I. L. R. 1940 (2) Cal. 82 :
44 C. W. N. 615 : 13 R. C. 152 :
A. I. R. 1940 Cal. 324.

—Ss. 6, 13 (2)—Presumption—"Possession", what is—Storage, defined.

Where a person is prosecuted for storing adulterated food for sale, it must ordinarily be proved affirmatively that such food is actually being stored and, such storage cannot be taken to include transit to a place of storage unless the adulterated food in question is actually in the physical possession of a person to whom sub-section (4) of S. 6 expressly applies. "Possession" in Sub-s. (4) must mean actual physical possession and cannot be extended to include constructive possession. *Sachi Nandan Piri v. Chairman, Midnapore District Board*. 41 Cr. L. J. 582 :

188 I. C. 398 : 44 C. W. N. 173 :
I. L. R. 1940 (1) Cal. 333 : 13 R. C. 10 :
A. I. R. 1940 Cal. 213.

—Ss. 6, 15—Sanction to prosecute by whom to be given—Chairman, if can sanction prosecution on behalf of Commissioners.

S. 44 of the Bengal Municipal Act does not empower the Chairman to sanction prosecution under the Bengal Food Adulteration Act under S. 15 of which no prosecution can be instituted without the order or consent in writing of the Municipal Commissioners. *Raghunath Moay v. Kurseong Municipality*. 25 Cr. L. J. 170 :

76 I. C. 394 : A. I. R. 1923 Cal. 561.

—S. 6 (1)—Sale of adulterated article—servant, liability of.

S. 6 (1) makes not only owner of the article sold guilty of an offence but also the servant

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who sells on behalf of the owner. *Peary Mohan Saha v. Harendra Nath Roy*. 31 Cr. L. J. 907 : 125 I. C. 669 : 34 C. W. N. 114 : 57 Cal. 1034 : A. I. R. 1930 Cal. 295.

—S. 6 (1)—*Selling adulterated food—Notice to public—Offence.*

The fact that the accused had notified to the public by a sign-board that he was selling an adulterated oil is no defence to a prosecution under S. 6 (1) for selling adulterated food. Nor is it a defence to the accused that the adulterated oil is stored in his shop for some purpose other than for consumption as an article of human food. *Rakhal Chandra Dutta v. Purna Chandra Ghose*. 31 Cr. L. J. 1151 :

127 I. C. 57 : 34 C. W. N. 231 : 51 C. L. J. 227 : A. I. R. 1930 Cal. 273.

—S. 6 (1)—*Mustard oil not of required standard—Offence.*

When a person stores for sale in his shop mustard oil which does not conform to the standard required by the section, he exposes himself to the penalty provided by the law, even though he has marked it as 'fuel oil.' *Chairman, District Board, Midnapore v. Atul Chandra Pal*. 34 Cr. L. J. 1081 :

145 I. C. 841 : 57 C. L. J. 429 : 37 C. W. N. 511 : 6 R. C. 146 : A. I. R. 1933 Cal. 619.

—S. 6 (4)—*Interpretation of.*

S. 6 (4) reverses the ordinary rule of evidence which rests the onus of proof in a criminal trial on the prosecution, it will, therefore, have to be strictly construed. *Ram Charita Ram Bhakat v. Chairman of District Board, Rajshahi*. 39 Cr. L. J. 252 :

172 I. C. 869 : 41 C. W. N. 1213 : 10 R. C. 469 : I. L. R. 1933 (1) Cal. 420 : A. I. R. 1937 Cal. 710.

—S. 6 (4)—*Offences—Attempt to commit—S. 511, Penal Code, if applicable.*

S. 511, Penal Code, can have no application to an attempt to commit an offence under the Bengal Food Adulteration Act. *Ram Charita Ram Bhakat v. Chairman of District Board, Rajshahi*. 39 Cr. L. J. 252 :

172 I. C. 869 : 41 C. W. N. 1213 : 10 R. C. 469 : I. L. R. 1933 (1) Cal. 420 : A. I. R. 1937 Cal. 710.

—S. 6 (4)—*"Possession" defined—Ghee in transit—Whether militates against presumption of storing for sale.*

"Possession" in S. 6 (4) means actual physical possession. Mere possession of any of the articles referred to therein is not an offence under the Act, but from the fact of possession a presumption is to be drawn which will establish an offence. The word "possession" cannot be extended to include "constructive possession." The fact that the ghee was not deposited in any place for the purpose of sale, but it was in transit, need not militate against the presumption of storing for sale. *Ram Charita Ram Bhakat v. Chairman of District Board, Rajshahi*. 39 Cr. L. J. 252 :

172 I. C. 869 : 41 C. W. N. 1213 : 10 R. C. 469 : I. L. R. 1933 (1) Cal. 420 : A. I. R. 1937 Cal. 710.

—S. 6 (4)—*Presumption under.*

The person against whom the presumption

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under S. 6 (4) is to be drawn must be shown to be a person who is in the habit of storing ghee for sale. *Ram Charita Ram Bhakat v. Chairman of District Board, Rajshahi*. 39 Cr. L. J. 252 : 172 I. C. 869 : 41 C. W. N. 1213 : 10 R. C. 469 : I. L. R. 1933 (1) Cal. 420 : A. I. R. 1937 Cal. 710.

—S. 7—*Offence under—Duty of prosecution—Human consumption.*

To obtain a conviction under S. 7 the prosecution must prove that the article in respect of which the offence is alleged to have been committed was intended as an article of food for human consumption. *Shco Proshad Halani v. Emperor*. 31 Cr. L. J. 568 :

123 I. C. 744 : 33 C. W. N. 1032.

—Ss. 9, 10—*Sanitary Inspector not authorised sending to analyst, legality of.*

A Municipal Sanitary Inspector took some samples from a ghee shop and sent them to Public Analyst. The Inspector was not specially authorised under S. 10, to act under Ss. 10 or 12 of the Act : *Held*, that he could take the samples and send them to Public Analyst for examination as a private individual under S. 9. *Manindra Nath Banerjee v. Joyotish Chandra Dutta*. 38 Cr. L. J. 745 :

169 I. C. 251 : 9 R. C. 910 : I. L. R. 1937 (1) Cal. 765 : A. I. R. 1937 Cal. 60.

—S. 11—*Sample for being sent to analyst—Notification of intention to seller, necessity of.*

The person buying the articles is bound by the statute to notify to the seller his intention to have the article analysed. But no particular form of words is required, nor even any words at all. What is necessary is that the seller must know that the samples are to be taken for the purpose of analysis, so that he may see the samples are to be fairly taken. *Manindra Nath Banerjee v. Joyotish Chandra Dutta*. 38 Cr. L. J. 745 :

169 I. C. 251 : 9 R. C. 910 : I. L. R. 1937 (1) Cal. 765 : A. I. R. 1937 Cal. 60.

—Ss. 10, 12—*Exercise of duties by Sanitary Inspector on authorisation by Chairman of Municipality.*

The Chairman of a Municipality has no power to authorise a Sanitary Inspector to perform the duties mentioned in ss. 10 and 12 of the said Act. S. 44 of the Bengal Municipal Act is not applicable to such a case. *Sailesh Chandra Lakiri v. Nehal Chand Marwari*. 33 Cr. L. J. 521 :

137 I. C. 812 : 36 C. W. N. 134 : 59 Cal. 234 : I. R. 1932 Cal. 384 : A. I. R. 1932 Cal. 462.

—S. 13 (2)—*Entire consignment of one brand—Sample from one tin—Confiscation of entire consignment.*

Where all the tins of one consignment of food are of the same brand, it would be unreasonable to expect the Sanitary Inspector to take a sample from each tin, and if a sample taken from one of the tins is found to contain adulterated substance, the Sanitary Inspector is entitled to seize the whole consignment and its forfeiture under S. 13 (2) is valid. *Sachi*

BENGAL GAMBLING ACT, 1867.

Nandan Piri v. Chairman, Midnapore District Board. 41 Cr. L. J. 582 :

188 I. C. 398 : 44 C. W. N. 173 :

I. L. R. 1940 (1) Cal. 333 : 13 R. C. 10 :

A. I. R. 1940 Cal. 213.

—S. 14 (2)—*Public Analyst's certificate, when admissible.*

The certificate of a Public Analyst to be admissible in evidence should be in the form prescribed in the Schedule to the Act. His report on a case by a letter in the ordinary official form is not admissible in evidence without proof of the truth of its contents. *Raghunath Mody v. Kurseong Municipality.*

25 Cr. L. J. 170 :

76 I. C. 394 : A. I. R. 1923 Cal. 561.

—S. 21—*Resistance to Sanitary Inspector trying to inspect food—Offence.*

A person who resists a Sanitary Inspector who has been so authorised by the Chairman in his attempt to inspect and examine food cannot be convicted under S. 21 of the Bengal Food Adulteration Act. But he can be convicted under S. 186, Penal Code, in view of Expl. 2 to S. 21, Penal Code. *Sailesh Chandra Lahiri v. Nihal Chand Marwari.*

33 Cr. L. J. 521 :

137 I. C. 812 : 36 C. W. N. 134 :

59 Cal. 234 : I. R. 1932 Cal. 384 :

A. I. R. 1932 Cal. 462.

—Rules under—R. 5—*Sanitary Inspector, whether Health Officer.*

A Sanitary Inspector who is merely directed by the Chairman to perform the duties of a Health Officer cannot be regarded as a Health Officer within the meaning of R. 5 of the rules under the Act. *Sailesh Chandra Lahiri v. Nihal Chand Marwari.*

33 Cr. L. J. 521 :

137 I. C. 812 : 36 C. W. N. 134 : 59 Cal. 234 :

I. R. 1932 Cal. 384 : A. I. R. 1932 Cal. 462.

BENGAL GAMBLING ACT, 1867, S. 10

—*Game of skill—Onus.*

The onus to show that any offence falls within a general exception of the Gambling Act is upon the accused and it is for him to show, in order to bring the case under S. 10 that the game played is a game of mere skill. *Ram Neeaz Lal v. Emperor.*

15 Cr. L. J. 276 :

21 I. C. 484 : A. I. R. 1914 Cal. 532.

—Ss. 10, 11—*Gambling—Ring game—Game of mere skill—S. 105.*

The words "mere skill" in S. 10 of the Bengal Gambling Act of 1867 import the meaning "pure skill." No form of the ring-game can be a game of pure skill. *Ram Neeaz Lal v. Emperor.*

15 Cr. L. J. 276 :

21 I. C. 484 : A. I. R. 1914 Cal. 532.

—Ss. 10, 11—*Games of mere skill—Ring-Games.*

The games of skill spoken of in S. 10 refer to games where there are two parties pitting their skill against each other. Therefore, a ring-game kept for the profit of a man who does not play himself and does not pit his skill at all against anybody cannot fall within the exception to S. 10. *Ram Neeaz Lal v. Emperor.*

15 Cr. L. J. 276 :

21 I. C. 484 : A. I. R. 1914 Cal. 532.

BENGAL GHEE ADULTERATION ACT (1 OF 1917), S. 2 (2)

—*Calcutta Municipal Act, S. 66-A (1) — Standard of genuineness—Statutory provision, absence of—"Commercial Ghee," adulteration of.*

As the Act does not lay down a standard raising a presumption that Ghee alleged to be adulterated is not genuine, and no standard having been fixed for the purpose by any board of experts, Courts of law have to decide questions of adulteration upon such evidence as is available in each individual case. Where a certain sample of "Commercial Ghee" or buffalo Ghee was found to contain some foreign fat substituted in part for genuine Ghee : *Held*, that the Ghee was adulterated within the meaning of S. 2, sub-clause (2), *Grande Venkatta v. Corporation of Calcutta.*

21 Cr. L. J. 490 :

56 I. C. 585 : 24 C. W. N. 388 : 47 Cal. 633 :

A. I. R. 1920 Cal 117.

BENGAL IRRIGATION ACT (III of 1876)

—Ss. 93, 47.—*Nature of—Demolition of unregistered village canal—Offence—Registration of village canal, whether compulsory.*

S. 3 applies to all canals, whether registered or not, and a person guilty of the demolition of a canal cannot escape from the provisions of the section merely because the canal in question was not registered in the books of the Canal Officer. S. 47 is merely directory and does not either impliedly or expressly require registration of village canals. *Ghura Singh v. Mandip Singh.*

18 Cr. L. J. 1004 :

42 I. C. 732 : 1917 Pat. 168 : 2 P. L. W. 178 :

A. I. R. 1917 Pat. 228.

BENGAL LAND REGISTRATION ACT (VII of 1876)

—*Requirements—Certificate, necessity of.*

There is no provision in the Act requiring anything that can be called a certificate. The Act merely requires that an application should be made, and that in this application, certain statements should be made. *Bal Kishen Gir v. Emperor.*

18 Cr. L. J. 978 :

42 I. C. 594 : 3 P. L. W. 201 :

A. I. R. 1917 Pat. 696.

BENGAL LOCAL SELF-GOVERNMENT ACT (III of 1885)

—*Bye-laws—District Board roadside land, encroachment on—Acquisition of right by District Board over land adjacent to road how to be made.*

A District Board can only take action and acquire right over a zemindar's land adjacent to its road. Accused were convicted under bye-laws for having encroached upon and cultivated land claimed by the District Board to be their roadside land from which its officers had been taking earth, although there had never been any formal acquisition of these lands by the District Board : *Held*, that the conviction was bad. *Jadu Ghosh v. District Board of Murshidabad.*

15 Cr. L. J. 267 :

23 I. C. 475 : 19 C. L. J. 635.

—S. 76.—*Channel—Property of private person—District Board's right to bring under control.*

A District Board can only bring a private

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channel under its control and administration by making an agreement with the person in whom the property in any channel is vested, under S. 76. *Shashi Bhushan Gupta v. Emperor*.

13 Cr. L. J. 580 :
15 I. C. 996.

—S. 138.

Bye-laws framed by District Board, have the force of law—Persons exposing goods are punishable. *Nazir Mian v. Emperor*.

36 Cr. L. J. 906 :
156 I. C. 15 (2) : 16 Pat. 115 :
7 R. P. 718 : A. I. R. 1935 Pat. 155.

—S. 139.—*Bye-law—Encroachment, what is—Highway—District Board road—Right of user by public—Hanging verandah, if invades right of user of public.*

Obiter.—An encroachment is an unlawful gaining upon the right or possession of another man. In the case of a District Board road, the right to the soil ordinarily rests with the owner of the land adjoining the road. But the public have an extended right of user in the road for the protection and control of which the District Boards were created.

A hanging *verandah*, therefore, would be an encroachment if it amounted to an unlawful gaining upon the right of user by the public. That right extends to all forms of traffic which have been usual or customary, and also all that are reasonably similar or incidental thereto. The question whether a hanging *verandah* amounts to an encroachment would depend in each case upon the question whether in the particular circumstances it constitutes an invasion of the public right of user as described above. The public have a right of user not merely on the roadway, but also on the side lands attached to the road. *Hirji Baldeo v. Manbhoom District Board*.

15 Cr. L. J. 187 :
22 I. C. 763 : 18 C. W. N. 1120 :
A. I. R. 1914 Cal. 668.

—Ss. 139, 78—*Bye-laws—Building part of house over public road.*

The building of a part of a house over part of a public road without the permission of the Chairman of the District Board is punishable under the bye-law. *Ramautar Sahu v. Arrah Municipal Board*.

6 Cr. L. J. 319 :
11 C. W. N. 1099.

—Ss. 139 and 78—*Ultra vires—Bye-law made under—Authority of the District Board to make the bye-law.*

A bye-law of a District Board made under S. 139 ran thus :—“Whoever encroaches on any road by cultivating crops or by ploughing it up for cultivation, or by the construction of any building or structure thereon except by the permission of the Chairman of the District Board, shall be liable to a fine not exceeding Rs. 50, and to a further fine not exceeding Rs. 2 for every day on which the offence is continued.”

Held : That the bye-law was not *ultra vires* of the District Board which had power under S. 139 read with S. 78 to make such a bye-law. *Ramautar Sahu v. Arrah Municipal Board*.

6 Cr. L. J. 319 :
11 C. W. N. 1099.

BENGAL MUNICIPAL ACT, 1884.

—S. 140—*Bye-law—Erection of fence—Slope of road—Encroachment not impeding passage along road—Legality of bye-law.*

A bye-law passed by a District Board ran thus : “No person shall encroach on any part of a road, its slopes or side-ditches by placing a fence thereon” :

Held, that the bye-law was not confined to cases in which the encroachment impeded the passage along the highway.

Held further, that, although the Board had no proprietary right in the road and its rights were confined to maintaining the road, it was empowered to make bye-law for the purpose. *Nilmani Ghatak v. Emperor*. 11 Cr. L. J. 540 :
7 I. C. 931 : 37 Cal. 671.

—S. 180—*Continuing offence—Daily fine.*

A daily fine imposed in respect of a continuing offence which may be committed after the date of the proceeding in which it was imposed, is illegal. *Nilmani Ghatak v. Emperor*.

11 Cr. L. J. 540 :
7 I. C. 931 : 37 Cal. 671.

BENGAL MOTOR-VEHICLES ACT

—S. 9.

Person paying tax must obtain delivery of token—Non-exhibition of token in cars by such person is an offence. *R. C. Curties v. Emperor*.

36 Cr. L. J. 842 (2) :
155 I. C. 710 : 39 C. W. N. 56 : 62 Cal. 169 :
7 R. C. 616 : A. I. R. 1935 Cal. 242.

BENGAL MUNICIPAL ACT (III OF 1884), Ss. 6 (4), 204, 218.

—‘House,’ meaning of—*Patit land adjoining house—Obstruction placed “in front of the house”, meaning of.*

For the purposes of S. 204, the term “house” as interpreted in S. 6, Cl. 4, is not confined merely to the four walls and the roof within which a man dwells or carries on business, but it may well include the land or premises which are enjoyed or held with the building. In the absence of a definite finding that the *patit* land is held and enjoyed along with the house as part of the premises, it cannot be said that the heap of *khapra* stocked on it is an obstruction placed in front of the house within the meaning of S. 204, so as to warrant a conviction under S. 218 of the Act. *Bhushan Chandra Datta v. Chairman of the Kotechandpur Municipality*.

19 Cr. L. J. 714 :
46 I. C. 298 : 22 C. W. N. 376 :
A. I. R. 1918 Cal. 280.

—S. 6 (11)—*Mahant of Akhara, rights of.*

The *mahant* of an *akhara* is entitled to the benefits of the provisions of S. 6, Cl. (11). *Kanai Das Mohanta v. Narayanganj Municipality*.

34 Cr. L. J. 1068 :
145 I. C. 692 : 37 C. W. N. 362 :
6 R. C. 136 : A. I. R. 1933 Cal. 553.

—S. 6 (11)—*Funds obtained by mahant insufficient—Sentence of fine.*

Where the funds obtained by the *mahant* from the properties of the *akhara* are not sufficient to do the required acts, it will not be just or pro-

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per to sentence him to a fine. *Kanai Das Mohanta v. Narayanganj Municipality*.

34 Cr. L. J. 1068 :
145 I. C. 692 : 37 C. W. N. 362 :
6 R. C. 136 : A. I. R. 1933 Cal. 553.

—S. 28—Members of Committee preparing electoral rolls whether liable to prosecution.

The members of the Committee for preparing an electoral roll as contemplated by S. 21 (1), are not Municipal Officers or servants within the meaning of Sub-S. 2, S. 28. A prosecution for offences under S. 28 is, therefore, not maintainable against them. The Local Government or some higher authority can remove the officer or by sanction permit his removal. *Nur Ahmad v. Jogesh Chandra Sen*.

36 Cr. L. J. 385 :
153 I. C. 657 : 39 C. W. N. 20 :
62 Cal. 275 : 7 R. C. 392 :
A. I. R. 1934 Cal. 838.

—S. 28—Persons dealing with electoral roll, whether within section.

The persons contemplated by the Sub-S. 1 to S. 28, are persons who fall outside the category of those who have to deal with the electoral roll in the course of their official duty. *Nur Ahmad v. Jogesh Chandra Sen*.

35 Cr. L. J. 385 :
153 I. C. 657 : 39 C. W. N. 20 :
62 Cal. 275 : 7 C. C. 392 :
A. I. R. 1934 Cal. 838.

—S. 44—Chairman's power to sanction prosecution under Food Adulteration Act.

S. 44 does not empower the Chairman to sanction prosecution under the Bengal Food Adulteration Act under S. 15 of which no prosecution can be instituted without the order or consent in writing of the Municipal Commissioners. *Raghunath Morly v. Kursong Municipality*.

25 Cr. L. J. 170 :
76 I. C. 394 : A. I. R. 1933 Cal. 561.

—Ss. 44, 45, 230, 271, 353—Sanction for prosecution by public authority, whether to be under seal—Report of out-door inspector recommending prosecution signed by Chairman, whether complaint—Notice against accused by Vice-Chairman, how validated.

In the absence of any legislative enactment a sanction for prosecution by a public authority does not require to be under seal.

Where a report of offences under Ss. 230 and 271 was made by the out-door inspector of a Municipality in a printed form, the columns of which were duly filled up and in the remarks column occurred the remark, "submitted to the District Magistrate with recommendation to prosecute the party under Ss. 230, 271 of the Bengal Municipal Act," and it bore a stamp of eight annas and was signed by the Chairman of the Municipality : *Held*, that the document was not a petition of complaint by the Chairman but was an order or consent by the Chairman as representing the Commissioners for or to the prosecution as required under S. 353 and was sufficient under the law for the purpose of the prosecution : *Held*, also, that the notice against the accused issued on the authority of the Vice-Chairman without any delegation of authority by the Chairman, by a written order, was not invalid as the consent of the Chairman was sub-

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sequently obtained to the act of the Vice-Chairman. *Kristo Lal v. Chairman of Hooghly-Chinsurah Municipality*.

13 Cr. L. J. 147 :
37 I. C. 515 : 20 C. W. N. 824 :
24 C. L. J. 57 : A. I. R. 1917 Cal. 260.

—S. 45—Delegation of powers to Vice-Chairman—Cessation of office of delegating officer, effect of, on functions delegated.

The delegation of powers by a Chairman to a Vice-Chairman under S. 45 does not terminate on the officer delegating ceasing to hold office, but continues until it is withdrawn by his successor. *Baldeo Lal v. Emperor*.

18 Cr. L. J. 273 :
38 I. C. 305 : A. I. R. 1916 Pat. 3.

—S. 60—Municipal servant, conviction of—District Magistrate's power to hear appeal.

Where a District Magistrate is not in any way concerned with a Municipality, the mere fact that he receives copies of the proceedings of the Municipality in his capacity as official head of the district, would not debar him from hearing an appeal against the conviction of a servant of the Municipality. *Tej Narain Singh v. Emperor*.

22 Cr. L. J. 387 :
61 I. C. 515 : 3 U. P. L. R. Pat. 54.

—Ss. 178, 224, 271—Notice to demolish—Objection against notice—Objection disallowed—Committee, duty of, to specify time for compliance—Time not specified—Effect.

Where under S. 178, an objection against a notice issued under S. 224 directing the removal, within a specified time, of a building constructed without permission, is disallowed, the Committee is bound to specify a time within which the requisition is to be carried out, the fact that a period of time was mentioned in the original notice does not absolve the Committee, after disallowing the objection from the obligation of again specifying the time within which the requisition should be complied with, and where a Committee omits to do this, a conviction under S. 271 of the Act is bad in law. *Rampartap Lal v. Barh Municipality*.

23 Cr. L. J. 273 :
66 I. C. 417 : 3 P. L. T. 301 :
A. I. R. 1922 Pat. 183.

—S. 202—Applicability of—Dispute as to title—Procedure.

Section 202 gives a summary power for the removal of an obstruction or encroachment on a road, sewer or aqueduct, and its provisions cannot be applied where there is a dispute between any person and the Municipality with regard to the title to any land. Such a dispute must be decided in the ordinary way by a Civil Court. *Aloke Mohan Saha v. Narayanganj Municipality*.

22 Cr. L. J. 25 :
54 I. C. 137.

—S. 202—Notice for removal of hut, validity of.

Notice directing hut to be removed and referring expressly to S. 202 is not bad simply because it describes the hut as having been put upon road side land and not as having been put upon road. *Indubhushan Mukerji v. Nilmani Ghosh*.

32 Cr. L. J. 1214 :
134 I. C. 753 (a) : 53 Cal. 1135 :
35 C. W. N. 659 : I. R. 1931 Cal. 865 (1) :
A. I. R. 1931 Cal. 808 (2).

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S. 202—Revision, Order under.

An order passed by a District Magistrate under S. 202 is an order passed in a judicial proceeding and the High Court has power to revise the order. *Nabadwip Municipality v. Purna Chandra Mukerji*. 26 Cr. L. J. 1246 :

88 I. C. 862 : 29 C. W. N. 817 :

41 C. L. J. 611 : 52 Cal. 670 :

A. I. R. 1925 Cal. 934.

S. 202—Parties' right to be heard—Order without such opportunity, legality of—Revision.

Before passing an order under S. 202 a Magistrate must give the parties concerned an opportunity of being heard, and an order passed under the section without such opportunity being given is liable to be set aside in revision. *Nabadwip Municipality v. Purna Chandra Mukerji*. 26 Cr. L. J. 1246 :

88 I. C. 862 : 29 C. W. N. 817 :

41 C. L. J. 611 : 52 Cal. 670 :

A. I. R. 1925 Cal. 934.

S. 202—Order based on report of subordinate Officer, legality of.

A Magistrate exercising his powers under S. 202 is not engaged in a criminal proceeding and can base his order upon a report made by a Subordinate Officer. *Nabadwip Municipality v. Purna Chandra Mukerji*. 26 Cr. L. J. 1246 :

88 I. C. 862 : 29 C. W. N. 817 :

41 C. L. J. 611 : 52 Cal. 670 :

A. I. R. 1925 Cal. 934.

S. 202—Order under—Nature of—Revision.

An order made by a Magistrate under S. 202 is a judicial proceeding, and the High Court has power to revise such order. *Aloke Mohan Saha v. Narayanganj Municipality*. 22 Cr. L. J. 25 : 54 I. C. 137.

S. 202, repeal of.

S. 202 was not-repealed in 1904—S. 202 does not correspond with Calcutta Municipal Act (1899), S. 342. *Rajendra Kumar Roy v. Bal Govinda*. 33 Cr. L. J. 371 :

136 I. C. 903 : 36 C. W. N. 51 :

59 Cal. 811 : I. R. 1932 Cal. 255 :

A. I. R. 1932 Cal. 65.

Ss. 202, 204, 353—Failure to comply with requisition of—Offence—Prosecution—Limitation.

Where a person fails to comply with a requisition under Ss. 202 and 204, the limitation of six months laid by S. 353 begins to run from the date of expiry of the period allowed for compliance with the requisition. *Gulam Rasul v. Emperor*. 22 Cr. L. J. 427 :

61 I. C. 715 : P. L. J. 174 :

A. I. R. 1921 Pat. 11.

Ss. 202, 218—Notice to remove—Service on person who has built—Failure to comply with requisition—Liability.

The notice contemplated by S. 202 for the removal of any wall or other obstruction erected on any road or drain should be served upon the person who may have erected the same, and on failure to comply with such requisition, he alone is liable to a prosecution under S. 218. *Shama Bibee v. Jadab Chunder Banerjee*. 2 Cr. L. J. 613 :

2 C. L. J. 226.

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Ss. 209, 353—Gift of land to Municipality on condition that it would erect necessary fencing—Requisition requiring erection of fencing, failure to obey—Offence.

Under S. 209 there is power in a Municipality to require a person to cause a fence to be erected by the side of a tank; but it does not follow that a Municipality cannot accept a condition or enter into a binding engagement that it would erect a certain fencing at its own cost. Where a Municipality has accepted a gift of certain land on condition that it would erect the fencing at its own cost, it is bound by the condition and has no power to issue a requisition calling upon the donor to erect it, and consequently, his failure to comply with the requisition is no offence. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Narayan Chandra Banerjee*. 24 Cr. L. J. 680 : 73 I. C. 776 : 30 C. L. J. 13 : A. I. R. 1924 Cal. 101.

S. 210—Objection petition not stamped—Municipality's duty to take notice of it.

A petition of objection to a notice purporting to be under S. 210, though not stamped, and, therefore, informal, should be taken notice of by the Municipality and dealt with according to law. *Harindra Nath Mukerjee v. Chairman, Birnagar Municipality*. 2 Cr. L. J. 144 : 1 C. L. J. 15.

S. 210—Notice by Vice-Chairman—Absence of delegation—Validity.

A notice issued by the Vice-Chairman of a Municipality under S. 210 in the absence of proof of delegation of powers under S. 45, is invalid. *Harindra Nath Mukerjee v. Birnagar Municipality*. 2 Cr. L. J. 144 : 1 C. L. J. 15.

S. 217—'Road' meaning of.

A road within the meaning of S. 217 should include a public right of way. *Nando Lal v. Bejoy Chandra Chatterjee*. 19 Cr. L. J. 742 : 46 I. C. 518 : 22 C. W. N. 599 : A. I. R. 1918 Lah. 384.

S. 218—Non-compliance with provisions of Ss. 175, 176, 178 and 179—Conviction under S. 218, legality of.

The conviction of, and sentence passed upon, an accused under S. 218 cannot be sustained, where the essential preliminary steps in compliance with the provisions of all the Ss. 175, 176, 178 and 179 of the Act had not been observed before an application was made to the Magistrate under S. 202 of the Act for his criminal prosecution. *Nabin Chandra Aich v. Noakhali Municipality*. 17 Cr. L. J. 265 : 34 I. C. 985 : 23 C. L. J. 598 : A. I. R. 1916 Cal. 455.

S. 219—Daily fine—Legality.

The law does not allow a daily fine to be imposed in anticipation of an offence being committed. *Harindranath Mukerjee v. Chairman, Birnagar Municipality*. 2 Cr. L. J. 144 : 1 C. L. J. 15.

S. 222—Absence of promulgation of application—Condition for selling meat without licence, legality of.

In the absence of proof as to due promulgation of order applying Act to the particular Municipa-

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lity, conviction for selling meat without licence is illegal. *Khurshid Chik v. Raniganj Municipality*. 139 I. C. 134 : 36 C. W. N. 823 : I. R. 1932 Cal. 558 : A. I. R. 1932 Cal. 833.

—S. 222—*Accused's right to show want of promulgation—Previous application for licence no bar.*

The fact that the accused applied for licence to sell meat within the limits of the Municipality in a previous year does not throw the onus upon him to show negatively that there was no promulgation as is required by law. *Khurshid Chik v. Raniganj Municipality*. 139 I. C. 134 : 36 C. W. N. 823 : I. R. 1932 Cal. 558 : A. I. R. 1932 Cal. 833.

—S. 222—*Promulgation—Presumption.*

There is no presumption under S. 114 (c), Evidence Act, that the order was published as required by S. 222. *Khurshid Chik v. Raniganj Municipality*. 139 I. C. 134 : 36 C. W. N. 823 : I. R. 1932 Cal. 558 : A. I. R. 1932 Cal. 833.

—S. 223-A—*Applicability of Calcutta Survey Act to Bihar.*

In or about the year 1914, the Gaya Municipality was surveyed under the Calcutta Survey Act, which by S. 223-A of the Bengal Municipal Act had been extended to all the Municipalities in the Bihar Province. In that survey a plot was recorded as belonging to the Municipality, and no suit was brought to challenge that entry within one year as required by S. 22, of the Bengal Survey Act : *Held*, a subsequent suit to challenge the title of the Municipality would be barred. *Brindaban Prasad v. Gaya Municipality*. 39 Cr. L. J. 136 : 172 I. C. 215 : 10 R. P. 331 : 4 B. R. 154 : A. I. R. 1937 Pat. 640.

—Ss. 238, 240—*Building, meaning.*

The word "building," in the absence of any specific definition in the Act, should be construed in its ordinary sense and as including erections, structures, or buildings such as masonry walls. *Mohabir Das v. Gaya Municipality*. 16 Cr. L. J. 59 : 26 I. C. 651 : A. I. R. 1915 Cal. 806.

—Ss. 238, 240—*Building of new masonry wall, it erection of house.*

The building of a new additional masonry wall which materially enlarges a courtyard constitutes the erecting of a house within the meaning of Ss. 238 and 240. *Mohabir Das v. Gaya Municipality*. 16 Cr. L. J. 59 : 26 I. C. 651.

—S. 240—*'Re-erect,' meaning of.*

The construction of portions of a house which had been entirely destroyed is a 're-erection' within the meaning of S. 240 and does not merely amount to repairs. *Baldeo Lall v. Emperor*. 18 Cr. L. J. 273 : 38 I. C. 305 : A. I. R. 1916 Pat. 3.

—Ss. 241, 273—*Building Regulations of Giridih Municipality, r. 13 (2)—Building still below plinth level—Conviction for contravention of rule, legality of.*

Where accused was convicted under S. 273 for having infringed rule 13 of the Building Regulations of the Giridih Municipality made under S. 241 of the Act and the evidence showed that the accused had only laid the

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foundation a few feet below the ground level, the brickwork of which had not even reached the plinth level: *Held*, that the conviction could not be maintained, because there was in fact no building in existence and it was not known whether and where the building would be erected. *Shiv Dutt Ray v. Satish Chandra Ghosh*.

20 Cr. L. J. 626 : 52 I. C. 386 : A. I. R. 1919 Pat. 490.

—Ss. 243, 244—*Erection of hut without notice to Commissioners—Failing to remove hut when required to do so—Offence.*

Section 243 forbids the erection of huts without a month's notice, to the Commissioners, and if any one erects a hut without such notice, he is liable to punishment under the first portion of S. 267. The Commissioners may take action under S. 244 instead, but they are not bound to do so. *Chairman, Howrah Municipality v. Golapi Baccu*. 10 Cr. L. J. 191 : 2 I. C. 939 : 10 C. L. J. 16.

—S. 250—*Article not offered for sale; if can be seized.*

A Magistrate has no jurisdiction to seize an article under S. 250 when it has not been offered for sale as fit for human consumption. *Ram Chandra v. Ram Perlal*. 19 Cr. L. J. 220 : 43 I. C. 796 : 4 P. L. W. 62.

—S. 261—*"Kiln" meaning of—Panja for firing bricks.*

The word "kiln" in S. 261 refers to a structure which is of a permanent nature and does not include a panja for firing bricks. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Trailokhya Nath*. 24 Cr. L. J. 356 : 72 I. C. 330 : 30 C. L. J. 108 : 26 C. W. N. 926 : 49 Cal. 1014 : A. I. R. 1922 Cal. 194.

—S. 261—*Scope of—Powers of Commissioners.*

Quaere.—It is doubtful whether the penultimate clause of S. 261 empowers the Commissioners to do more than withhold the licence in individual cases, each case being considered on its own merits. *Mookram Ali v. Cuttack Municipality*. 14 Cr. L. J. 91 : 18 I. C. 651 : 17 C. W. N. 531.

—S. 261—*"Wood," whether include timber.*

The word "wood" in S. 261 is used in its ordinary and natural meaning and includes timber. A timber-yard, therefore, is a yard or depot for trade in wood within the meaning of that section and requires a licence. *Emperor v. Tar Muhammad Jan*. 22 Cr. L. J. 631 : 63 I. C. 327 : P. L. J. 363 : 2 P. L. T. 722 : A. I. R. 1931 Pat. 178.

—Ss. 261, 273 (2)—*"Such local limits as may be fixed," meaning of—Commissioners' powers of applying section.*

Section 261 is wide enough to enable the Commissioners to apply the section to all places within Municipal limits or the entire area within the Municipal boundaries. The words "such local limits as may be fixed" may be applied to the whole and not only to a part of the Municipal area. *Mookram Ali v. Cuttack Municipality*. 14 Cr. L. J. 91 : 18 I. C. 651 : 17 C. W. N. 531.

—S. 267—*Erecting hut without notice and*

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failure to remove it when required—Distinct offences—Liability to pay daily fine.

Erecting a hut without notice to the Commissioners and failing to remove huts when required to do so, are two distinct offences. The liability to pay the daily fine as provided for in the last portion of S. 267 attaches only to the second offence. *Chairman, Howrah Municipality v. Golapi Bawa.* 10 Cr. L. J. 191 :

2 I. C. 939 : 10 C. L. J. 16.

—Ss. 270, 350—Bye-law No. 64 made under S. 350—'Road' or 'drain,' meaning of.

The 'road' or 'drain' referred to in S. 270 and Bye-law No. 64 made under S. 350 must be a road or drain belonging to the Municipality or a public road or drain. It would be *ultra vires* for a Municipality to interfere with a private road or drain. *In re: Mahesh Chandra Pandey v. Basanta Kumar Das.* 3 Cr. L. J. 450 :

10 C. W. N. 667.

—S. 273.

Making tiles without licence—Municipality not proving publication of prohibition—Offence is not committed. *Hooghly-Chinsura Municipality v. Keshab Chandra Pal.* 34 Cr. L. J. 549 :

143 I. C. 285 : 56 C. L. J. 583 :

I. R. 1933 Cal. 395 : A. I. R. 1933 Cal. 347.

—Ss. 273, 261—Storing hides without licence—Resolution fixing local limits lost—No secondary evidence—Presumption under S. 114, Evidence Act—Accused, if can be convicted.

Where the resolution of a Municipality to show what local limits were duly fixed for the purposes of S. 261 had been lost or destroyed, and no secondary evidence of its terms was given under S. 65 of the Evidence Act : *Held*, that the presumption, under S. 114 of the Evidence Act, III (c), could not supply the deficiency in the proof, and that in the absence of proof that any local limits had been fixed by the Commissioners under S. 261, no one could be convicted of using without a licence certain premises within the Municipality for the purpose of storing hides, in contravention of the provisions of S. 261. *Mookram Ali v. Cuttack Municipality.* 14 Cr. L. J. 91 :

18 I. C. 651 : 17 C. W. N. 531.

—Ss. 273, 352—Construction without permission—Prosecution while objection to requisition is pending—Legality.

It is open to a Municipality to prosecute the owner of a house for 'erecting' or 're-erecting' it without the former's permission along with a requisition for the removal or destruction of the portion constructed. The construction without sanction is an offence distinct from the failure to remove in obedience to the notice, and the fact that objections to the latter are pending is no bar to the initiation of a prosecution for the former. *Baldeo Lall v. Emperor.*

18 Cr. L. J. 273 :

38 I. C. 305 : A. I. R. 1916 Pat. 3.

—S. 273 (1)—Building of new masonry wall, whether erection of house—Erection without sanction, whether offence.

The building of a new and additional masonry wall which materially enlarges a courtyard constitutes the erecting of a house within the mean-

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ing of Ss. 238 and 240 and its erection without the sanction of the Municipal Commissioners is an offence under S. 273, sub-section (1) of the Act. *Mohabir Das v. Gaya Municipality.*

16 Cr. L. J. 59 :

26 I. C. 651 : A. I. R. 1915 Cal. 806.

—S. 335—Municipality to which Part X of Municipal Act not extended—Right to levy rent from stall-holders on road—Common Law right.

A Municipality to which Part X of the Act has not been extended has no right, under S. 335 to realise rent from persons putting up stalls and exposing their goods for sale by the side of a road which may have vested in the Municipality ; nor does such a right arise by analogy of the Common Law on account of the Municipality being the owner of the road in question. *Dhunmon Chowdhury v. Emperor.*

25 Cr. L. J. 114 :

76 I. C. 178 : 3 P. L. T. 339 :

A. I. R. 1922 Pat. 286.

—Ss. 335, 30—Road vested in Municipality—Lease contract, necessity of—No payment of tax without contract.

Where property in a road has become vested in a Municipality under S. 30, it can use the road as an owner for the purposes set forth in the Act. If the Municipality thinks that any road or a portion thereof can be leased to any person for any purpose, there must be a contract to that effect between the Municipality and that person, and without such a contract, the Municipality is not entitled to force the payment of any tax by any person. *Dhunmon Chowdhury v. Emperor.*

25 Cr. L. J. 114 :

76 I. C. 178 : 3 P. L. T. 339 :

A. I. R. 1922 Pat. 286.

—S. 345—Conviction under, essentials for.

For a conviction under S. 345, the prosecution have to prove that the Magistrate on an application of the Commissioners has ordered the land to be closed as a market place and has taken order to prevent such land being so used. *Putikaharini v. Vice-Chairman, Vishnupur Municipality.* 18 Cr. L. J. 304 :

38 I. C. 336 : 20 C. W. N. 1015 :

A. I. R. 1917 Cal. 206.

—S. 353—Failure to comply with requisition under Ss. 202, 204—Limitation; starting point of.

Where a person fails to comply with a requisition under Ss. 202 and 204 the limitation laid by S. 353 begins to run from the date of the expiry of the period allowed for compliance with the requisition. *Gulam Rasul v. Emperor.*

22 Cr. L. J. 427 :

61 I. C. 715 : 6 A. L. J. 174 :

2 P. L. T. 390.

—S. 353—Vice-Chairman can only convey sanction.

The authority which the Vice-Chairman has, is to convey the sanction of the Commissioners, and not to pass any order of any kind, and he must convey that sanction under his own seal and signature to the Magistrate. *Rasul Bakhsh v. Municipal Board of Chapra.*

13 Cr. L. J. 524 :

15 I. C. 796 : 16 C. W. N. 934.

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—Ss. 353, 273—*Prosecution—Offence under Act.*

The only evidence of sanction of prosecution by a public authority, is a writing under the seal and signature of that authority. *Rasul Baksh v. Municipal Board of Chapra.*

13 Cr. L. J. 524 :
15 I. C. 796 : 16 C. W. N. 934.

—S. 356—*Distress Warrant—Sufficient service, where personal service not possible.*

Where service of a Distress Warrant, issued under the Act, cannot be effected personally on the addressee, the leaving of warrant at his house and presentation to an adult male member of his family constitutes regular service under S. 356 of the Act. *Government Advocate, Behar and Orissa v. Ganga Prasad.*

25 Cr. L. J. 31 :
75 I. C. 719 : 3 P. L. T. 559 : 1 Pat. 423 :
A. I. R. 1922 Pat. 532.

—S. 356—*Distress warrant—Omission to specify date of return—Effect.*

The mere omission to specify the date of return in a Distress Warrant issued in the proper form provided by Sch. V of the Act does not render the warrant illegal. *Government Advocate, Behar and Orissa v. Ganga Prasad.*

25 Cr. L. J. 31 :
75 I. C. 719 : 3 P. L. T. 559 :
1 Pat. 423 : A. I. R. 1922 Pat. 532.

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—S. 2—*Sanction lapsing before new Act—No preservation.*

If sanction has lapsed before the new Bengal Municipal Act has come into force, there is nothing which can be preserved under S. 2. *Amulya Charan Paul v. Chairman, Kanchrapara Municipality.*

41 Cr. L. J. 801 :
189 I. C. 773 : 71 C. L. J. 588 :
13 R. C. 129 : A. I. R. 1940 Cal. 336.

—S. 28—*Member of revising authority, status of.*

A member of the Revising Authority is neither a Municipal Officer nor servant. *Hem Chandra Das v. Subodh Chandra Das.*

35 Cr. L. J. 1399 :
151 I. C. 718 : 38 C. W. N. 360 :
61 Cal. 361 : 59 C. L. J. 379 :
7 R. C. 171 (2) : A. I. R. 1934 Cal. 498.

—S. 28 (1)—*Application of, to revising authority.*

Cl. (1) of S. 28, cannot apply to persons who constitute the Revising Authority. *Hem Chandra Das v. Subodh Chandra Das.*

35 Cr. L. J. 1399 :
151 I. C. 718 : 38 C. W. N. 360 :
61 Cal. 361 : 59 C. L. J. 379 :
7 R. C. 171 (2) : A. I. R. 1934 Cal. 498.

—S. 34—*Entertainment of complaint—condition precedent.*

Deposit of Rs. 50 is condition precedent to entertainment of complaint. Complaint can be revived on deposit of amount. *Hem Chandra Das v. Subodh Chandra Das.*

35 Cr. L. J. 1399 :
151 I. C. 718 : 38 C. W. N. 360 :
61 Cal. 361 : 59 C. L. J. 379 : 7 R. C. 171 (2) :
A. I. R. 1934 Cal. 498.

—S. 34—*“Electoral roll” refers to whole of Municipality.*

The “electoral roll” refers to the whole Municipality and any person whose name is on it, is

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entitled to make a complaint under S. 21. It does not refer to voters’ list of a particular ward in which election has taken place. *Nara Narayan Mondal v. Aghore Chandra Ganguly* (1), distinguished.

31 Cr. L. J. 17 (b) :
184 I. C. 451 (2) : 43 C. W. N. 1063 :
I. L. R. 1939 (2) Cal. 442 : 12 R. C. 234 :
A. I. R. 1939 Cal. 662.

—S. 34—*Period of 14 days relates to election offences.*

The period of 14 days relates to offences committed in connection with an election and the shorter period of 7 days to other offences. *Ali Haidar v. Upendra Nath Kundu.*

41 Cr. L. J. 17 (b) :
184 I. C. 451 (2) : 43 C. W. N. 1063 :
I. L. R. 1939 (2) Cal. 442 : 12 R. C. 234 :
A. I. R. 1939 Cal. 662.

—S. 71—*Offence, nature of.*

Offence under S. 71 is not a continuing offence. *Bhagia v. Chittagong Municipality.*

41 Cr. L. J. 47 :
184 I. C. 585 (1) : 44 C. W. N. 481 :
12 R. C. 246 (1) : A. I. R. 1939 Cal. 608.

—S. 71 (2)—*Date of offence, necessity proving.*

It is the business of the prosecution to establish on what date the alleged offence under S. 71 was committed. *Bhagia v. Chittagong Municipality.*

41 Cr. L. J. 47 :
184 I. C. 585 (1) : 44 C. W. N. 481 :
12 R. C. 246 (1) : A. I. R. 1939 Cal. 608.

—S. 241.

Encroachment by entire shop on Municipal road—Section applicable is 241 and not S. 240. *Puran Chandra v. Satis Chandra Modak.*

36 Cr. L. J. 512 :
154 I. C. 417 : 38 C. W. N. 1099 :
7 R. C. 450 : A. I. R. 1935 Cal. 116 (2).

—S. 317.—*Scope and application of.*

S. 317 applies to persons who intend to erect a building. It has nothing to do with persons who start to erect surreptitious buildings, and are caught red-handed and then stopped. *Amulya Charan Paul v. Chairman, Kanchrapara Municipality.*

41 Cr. L. J. 801 :
189 I. C. 773 : 71 C. L. J. 588 : 13 R. C. 129 :
A. I. R. 1940 Cal. 336.

—S. 326—*Application of—Removal of partition wall—Increase of cubical capacity.*

S. 326 (2) only refers to increase in cubical capacity of a building or any part thereof. Mere removing of the partition wall and thus increasing the area of the room, does not necessarily result in the increase of the cubical capacity of the building. *Ram Ratan Lall v. Chairman of the Asansole Municipality.*

39 Cr. L. J. 258 :
73 I. C. 63 : 41 C. W. N. 1316 : 10 R. C. 484 :
A. I. R. 1937 Cal. 556.

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—*Society for the Prevention of Cruelty to Animals, officers of—Public servants.*

Officers of the Society for the Prevention of Cruelty to Animals, appointed under the Act are public servants within the meaning of the Penal Code. The mere fact that the certificates

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of appointment given to such officers are not strictly in conformity with the form prescribed for public servants does not invalidate their appointment or take them out of the category of public servants. *Upendra Kumar Ghose v. Emperor*. 3 Cr. L. J. 420 :

3 C. L. J. 475 : 10 C. W. N. 727.

—Ss. 7, 29—*Suspension and confinement for unlimited period—Cumulative punishment, if legal—Police officer.*

An order for suspension and confinement of a Police officer for an unlimited period of time exceeding the limits laid down in Cl. (b) of S. 7, is illegal and is not such an order which a District Superintendent of Police can legally pass at all, nor one which he can pass in the alternative under S. 7, and no conviction under S. 29 for disobeying such an order, is maintainable. *Ram Gopal Ghosh v. Emperor*.

3 Cr. L. J. 110 :
2 C. L. J. 616.

**BENGAL POLICE REGULATIONS
RULE NO. 1067**

—*Ultra vires.*

Rule No. 1067 of the Bengal Police Regulations is *ultra vires*. *Rangopal Adhikari v. Emperor*. 134 I. C. 891 : 58 Cal. 1132 :

35 C. W. N. 547 : I. R. 1931 Cal. 891 :
A. I. R. 1932 Cal. 285.

**BENGAL PRISONS AMENDMENT
ACT (VI OF 1930)**

—*Whether ultra vires.*

Bengal Prisons Amendment Act is legal and not *ultra vires*. *Pratul Chandra Mitra v. Commandant, Higli Detention Camp*.

35 Cr. L. J. 1466 :
151 I. C. 1028 : 38 C. W. N. 299 :
59 C. L. J. 185 : 61 Cal. 197 : 7 R. C. 201 (2) :
A. I. R. 1934 Cal. 259.

—*Persons to be dealt with, determination of.*

Executive is invested with the final power to determine which members of a class are to be dealt with under the Statute. *Pratul Chandra Mitra v. Commandant, Higli Detention Camp*.

35 Cr. L. J. 1466 :
151 I. C. 1028 : 38 C. W. N. 299 :
59 C. L. J. 185 : 61 Cal. 197 : 7 R. C. 201 (2) :
A. I. R. 1934 Cal. 259.

—*Detention, legality of—Authority competent to determine.*

The question whether the Government was right in detaining a particular person is not one for the High Court to determine as the Statute leaves the decision entirely to the Local Government. *Pratul Chandra Mitra v. Commandant, Higli Detention Camp*.

35 Cr. L. J. 1466 :
151 I. C. 1028 : 38 C. W. N. 299 :
59 C. L. J. 185 : 61 Cal. 197 : 7 R. C. 201 (2) :
A. I. R. 1934 Cal. 259.

**BENGAL PUBLIC GAMBLING ACT
(II OF 1867 AS AMENDED BY ACT
VI OF 1913), Ss. 1, 10, 10-A.**

—*'Gaming,' meaning of—Amendment, effect of—'Gaming' and playing 'game,' distinguished.*

BENGAL PUBLIC GAMBLING ACT, 1867.

Under the Act, as amended by Act IV of 1913, the questions as to whether a game is one of pure chance or one in which the element of skill preponderates are no longer pertinent. The Courts have to see whether the game is covered by what is meant by 'gaming'; if it is, it is hit by the Act unless it is a game of mere skill within S. 11-A of the Act. The definition in the Act does not really define "gaming", but merely indicates what it is like and excludes wagering or betting on some particular occasion, and in particular circumstances and also excludes a "lottery". 'Gaming' means playing at any game for money, which is staked on the result of the game, i.e., which is to be lost or won according to the success or failure of the person who has staked. The question of chance or skill does not enter into the connotation of the word. *Emperor v. Arjoon Singh*. 31 Cr. L. J. 901 :

125 I. C. 643 : 33 C. W. N. 910 : 57 Cal. 520 :
A. I. R. 1929 Cal. 769.

—Ss. 5, 8—*Money on person of gambler—Forfeiture.*

The private property of an individual such as money or jewellery on his person who is found gaming in a gaming house cannot be seized and forfeited under S. 8 unless it is quite clear that there was attached to such private property the taint that it was reasonably suspected to have been used or intended for the purposes of gaming. *Lachmi Narain Marwari v. Emperor*.

25 Cr. L. J. 321 :
77 I. C. 177 : 1923 Pat. 220 : 4 P. L. T. 622 :
1 Pat. L. R. 229 Cr : A. I. R. 1924 Pat. 42.

—S. 11—*Common gaming house—Presumption as to persons present—Persons found in public gambling place—Presumption—Person found running away from public gambling place—Whether supports presumption that he was actually gambling.*

All the persons present in such an enclosed place as a common gaming house, may naturally be supposed to be members of the gaming party. But in dealing with a public place where the gravamen of the offence may be said to be the danger of corrupting the morals of the innocent passer-by, the presumption regarding anyone found present (unless something further is proved against him) is that he is such an innocent passer-by. The mere fact of running away is not sufficient to support the presumption that the persons who ran away were actually gambling. *Ramjank Patwa v. Emperor*.

38 Cr. L. J. 608 :
168 I. C. 840 : 18 P. L. T. 352 : 3 B. R. 499 :
9 R. P. 518 : A. I. R. 1937 Pat. 276.

—S. 11—*Persons on their way to race-course—Possessing racing guides and notes on horses—Inference.*

Having racing guides and notes on horses does not necessarily justify the inference that the persons possessing them were taking unauthorized bets. It is not unlawful for men to possess racing guides and notes on horses specially when they are on their way to the race-course to attend the races. *Prafulla Kumar Mukerjee v. Emperor*.

40 Cr. L. J. 60 :
178 I. C. 412 : 11 R. C. 357 :
A. I. R. 1938 Cal. 713.

BENGAL SUPPRESSION OF TERRORIST OUTRAGES ACT, 1932.

—S. 11—*Public place, gambling, what is.*

A public place of gambling need not be public property but if it is private property, the public must have access to it; nor is it sufficient that the place should be accessible to the public: it must be a place to which the public do in fact resort. Where the public has no access, the place is not a public place. *Ramjank Patwa v. Emperor.* 38 Cr. L. J. 608 : 168 I. C. 840 : 18 P. L. T. 352 : 3 B. R. 499 : 9 R. P. 518 : A. I. R. 1937 Pat. 276.

—Ss. 11, 11 (a)—“Ring game,” whether game of skill or chance—*Finding of fact—Revision.*

A finding on the question whether the ‘Ring game’ is a game of skill or a game of chance is a finding of fact and unless the Magistrate has committed any grave error in arriving at the finding, the High Court will not interfere. *Damri Mian v. Emperor.* 22 Cr. L. J. 390 : 61 I. C. 518 : 3 U. P. L. R. Pat. 55.

BENGAL REGULATION (VI OF 1825)

—S. 2—*Imposition of fine—Magistrate or Collector—Jurisdiction.*

Under S. 2 a fine can be imposed only by a Collector or other officer acting in that capacity. The proceedings under the section cannot be taken by a Magistrate as such. *Muhammad Alam v. Emperor.* 11 Cr. L. J. 476 : 7 I. C. 389.

BENGAL SUPPRESSION OF IMMORAL TRAFFIC ACT (VI OF 1933), S. 9.

—*Intention—Nature of.*

The intention specified in S. 9 need not be an intention that the girl should become an inmate of an existing brothel. *Ekkari Das v. Emperor.* 40 Cr. L. J. 660 : 182 I. C. 447 : 43 C. W. N. 668 : 12 R. C. 65 : A. I. R. 1939 Cal. 290.

—S. 9—*Trial by jury—Misdirection to jury—Trial illegal.*

In a trial under S. 9, the Judge omitted to point out to the jury that the prosecution must prove that the girl was taken to the house for the purpose of prostitution, but told them that the offence would be committed even if the house was not already a brothel within the definition of S. 3 of the Act: *Held*, that there was a serious misdirection. *Ekkari Das v. Emperor.* 40 Cr. L. J. 660 : 182 I. C. 447 : 43 C. W. N. 668 : 12 R. C. 65 : A. I. R. 1939 Cal. 290.

BENGAL SUPPRESSION OF TERRORIST OUTRAGES ACT (XII OF 1932), SS. 24, 25.

—*Power of Special Magistrate to tender pardon under S. 337, Criminal Procedure Code.*

Per Mukerji, J.—The Special Magistrate has no power to tender pardon under S. 337, Cr. P. C. The words used in the section are that “such person shall be tried”. Tendering pardon is not trial of such person. S. 337 of the Criminal Procedure Code cannot be taken in compartments, and it cannot be held that

BENGAL SUPPRESSION OF TERRORIST OUTRAGES ACT, 1932.

all the compartments with the exception of that which ensures the right to have the case committed to the Court of Sessions may be availed of by the Special Magistrate.

Per Panckridge, J.—The various powers and directions given to Magistrates by S. 337 are so distinct and independent that each is a provision within the meaning of the Bengal Suppression of Terrorist Outrages Act. The suggestion that the Special Magistrate is only clothed with power to “try” the accused under S. 25, Local Act and not with the power to “pardon” is to construe “try” and “trial” in an artificial and unnecessarily narrow fashion. S. 337, Criminal Procedure Code, is part of Chap. XXIV, which contains “General Provisions as to Inquiries and Trials,” and the power to tender a pardon can be exercised “at any stage of the investigation or inquiry into, or the trial of the offence.” The Special Magistrate authorized under S. 25 (1) has all the powers which the Code confers on Magistrates trying such cases save such powers as are clearly inconsistent with the Local Act. *Harihar Sinha v. Emperor.* 37 Cr. L. J. 758 : 163 I. C. 9 : 40 C. W. N. 876 : 1936 Cr. C. 583 : 63 C. L. J. 307 : 8 R. C. 698 (F. B) : A. I. R. 1936 Cal. 356.

—S. 25—*Application of provisions of Cr. P. C. to proceeding under.*

The provisions of the Criminal Procedure Code, in so far as they are inconsistent with Bengal Act, XII of 1932, do not apply to trials by Special Magistrates. *Mohammad Saleuddin v. Emperor.* 36 Cr. L. J. 884 : 156 I. C. 238 : 39 C. W. N. 698 : 7 R. C. 695 : A. I. R. 1935 Cal. 281.

—S. 25—*Appointment of Special Magistrate.*

Per Henderson, J.—An opinion of the Local Government merely that an accused person had committed an offence not punishable with death would not give jurisdiction to appoint a Special Magistrate to try him. The Local Government do not have it in their power to decide finally that a particular accused person has not committed an offence punishable with death. *Netai Chandra Jana v. Emperor.* 37 Cr. L. J. 1092 : 165 I. C. 162 : 40 C. W. N. 959 : 9 R. C. 351 : 64 C. L. J. 421 : A. I. R. 1936 Cal. 529.

—Ss. 25, 3—*Scope of—Prima facie case of murder disclosed—Local Government, if can direct trial by Special Magistrate.*

Section 25 does not empower the Local Government to order a trial before a Special Magistrate where a case of murder is *prima facie* disclosed by the prosecution evidence. *Netai Chandra Jana v. Emperor.* 37 Cr. L. J. 1092 : 165 I. C. 162 : 40 C. W. N. 959 : 9 R. C. 351 : 64 C. L. J. 421 : A. I. R. 1936 Cal. 529.

—S. 35—*Act must be read with supplementary Act—Appeal from conviction by Special Magistrate, if lies—Revision.*

BENGAL SUPPRESSION OF TERRORIST OUTRAGES ACT, 1932.

The Bengal Suppression of Terrorist Outrages Act, 1932, must be read with the supplementary Act, which contains various definitions and directions with regard to appeals and so on, and no appeal lies from a conviction and sentence passed by a Special Magistrate under the Local Act, nor can the High Court interfere with such conviction and sentence under the power of superintendence given by S. 107, Government of India Act. *Madan Mohan Roy v. Emperor*. 37 Cr. L. J. 1025 : 164 I. C. 798 : 40 C. W. N. 735 : 9 R. C. 282 : 63 Cal. 1086.

———S. 35—Court, if can go behind the sanction.

Whether the sanctioning authority would authorize a prosecution for an alleged offence punishable under S. 35 (a) or not is a matter for that authority to decide. Once the prosecution is authorised, the trying Court cannot go behind the sanction or question the propriety of the judgment of the sanctioning authority. *Haripada Sen Gupta v. Emperor*. 38 Cr. L. J. 691 : 169 I. C. 60 : 9 R. C. 889 : I. L. R. 1937 (1) Cal. 774. A. I. R. 1937 Cal. 49.

———S. 35—Possession, nature of—Knowingly, significance of.

The word "knowingly" in S. 35, qualifies the word "possession". Constructive possession on the part of the person charged is not enough. If a book is in a room occupied by the person charged, he is no doubt in the eye of law in possession of the book, because he has possession of the room, but to sustain a conviction under the section, the Crown must prove that he knew that the book was in his room. It is immaterial whether the person had knowledge of the notification or not. *Haripada Sen Gupta v. Emperor*. 38 Cr. L. J. 691 : 169 I. C. 60 : 9 R. C. 889 : I. L. R. 1937 (1) Cal. 774 : A. I. R. 1937 Cal. 49.

———S. 35—Sentence, considerations governing.

For the purpose of deciding what sentence ought to be passed under S. 35, it is the duty of the Court to take into account the character of the book. If the book in question is a violent one advocating terrorism or terrorist crimes, the sentence ought to be substantial. If it is an innocent one in the sense that it does not encourage terrorism, it may be unfortunate that authority to file a complaint has been given by the District Magistrate, but the Court must take the character of the book into consideration in passing sentence. *Haripada Sen Gupta v. Emperor*. 38 Cr. L. J. 691 : 169 I. C. 60 : 9 R. C. 889 : I. L. R. 1937 (1) Cal. 774 : A. I. R. 1937 Cal. 49.

———S. 35 (a)—Offence—Test.

An offence under S. 35 (a), in respect of a book is committed if it could have been rightfully seized by the Chief Customs Officer at the time

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of its importation under the Sea Customs Act, 1878. *Haripada Sen Gupta v. Emperor*. 38 Cr. L. J. 691 : 169 I. C. 60 : 9 R. C. 889 : I. L. R. 1937 (1) Cal. 774 : A. I. R. 1937 Cal. 49.

———Ss. 35 (b), 38—Possession of proscribed book—Presumption of guilt.

In a prosecution under S. 35 (b), for possessing a proscribed book, it may safely be said that the trying Magistrate, before he comes to the judicial consideration of a case, is well aware that responsible persons have made up their minds that there is a *prima facie* presumption of guilt against the person who has been prosecuted. *Rabindra Nath Chandra v. Emperor*. 39 Cr. L. J. 61 : 172 I. C. 133 : 64 C. L. J. 417 : 10 R. C. 341 : A. I. R. 1937 Cal. 652.

———Ss. 45, 4, 5, 6—Assault on amin deputed by Collector to relay boundaries under S. 45—Offence.

S. 45 of the Survey Act is couched in the widest terms and all that it requires is that the Collector should be satisfied that a dispute exists in regard to a boundary settled in a previous public survey, and if so satisfied, he can legally delegate his powers of relaying boundaries to an *amin* and if the latter is resisted and assaulted, the resisters are guilty of offences under Ss. 147, 149 and 353, I. P. C. *Judagi Raut v. Emperor*. 18 Cr. L. J. 360 : 88 I. C. 744 : 2 P. L. J. 18 : 3 P. L. W. 429 : A. I. R. 1916 Pat. 35.

———Ss. 45, 6—Proclamation required by S. 6, necessity of.

Section 45 does not require that an *amin* in making a demarcation of boundaries should previously make a proclamation as required by S. 6. The proclamation required by that section refers only to a survey carried on under Ss. 4 and 5. *Judagi Raut v. Emperor*. 18 Cr. L. J. 360 : 38 I. C. 744 : 2 P. L. J. 18 : 3 P. L. W. 429 : A. I. R. 1916 Pat. 35.

BENGAL TENANCY ACT, S. 23.

———Occupancy raiyat—Right to cut trees.

Occupancy *raiya*t is entitled to cut down trees standing on his holding unless the landlord can establish a custom prohibiting the cutting down of such trees. *Ram Brich Lal v. Emperor*. 37 Cr. L. J. 91 (1) : 159 I. C. 346 : 16 P. L. T. 645 : 2 B. R. 77 : 8 R. P. 272 : A. I. R. 1935 Pat. 472.

———S. 23.

Question of tenant's right to trees—Criminal law is not to be applied. *Ram Brich Lal v. Emperor*. 37 Cr. L. J. 91 (1) : 159 I. C. 346 : 16 P. L. T. 645 : 2 B. R. 77 : 8 R. P. 272 : A. I. R. 1935 Pat. 472.

BENGAL VILLAGE SELF-GOVERNMENT ACT, 1919.

—S. 58 (3)—*Inquiry by Collector into case of withholding receipt by landlord—Transfer of inquiry to Sub-Divisional Officer—Validity—Jurisdiction of Sub-Divisional Officer to file complaint under S. 476, Cr. P. C.*

A Collector has jurisdiction to transfer an inquiry under S. 58 (3), into a case of withholding receipt by a landlord, to a Sub-Divisional Officer who is authorized by the Government to discharge the functions of a Collector under that section. Consequently, the Sub-Divisional Officer is within his powers if in that inquiry he records a proceeding under S. 476 of the Cr. P. C. *Phanindar Singh v. Emperor.*

14 Cr. L. J. 139 :
18 I. C. 891 : 17 C. W. N. 571 :
40 Cal. 465.

—S. 58 (3)—*Jurisdiction of Magistrate with respect to acts specified.*

A Magistrate has jurisdiction to try a landlord for an act specified in S. 58 (3) in the same way as he would try a summons case. *Emperor v. Mohunt Ram Das.*

2 Cr. L. J. 532 :
9 C. W. N. 816.

—S. 69 (3)—*Disobedience of order of Collector—Collector, whether competent to direct prosecution.*

Where a Collector, acting under S. 69 (3), makes an order prohibiting the removal of certain crops and the order is disobeyed, it is competent to him, to act under S. 195 or S. 476 of the Criminal Procedure Code, and to direct a prosecution under S. 188 of the Penal Code in respect of the disobedience to his order. *Lakshan Bor v. Naranarain Hazrah.*

23 Cr. L. J. 231 :
66 I. C. 71 : 25 C. W. N. 617 :
48 Cal. 1086.

—S. 121—*Distrain order, legality of—Disobedience of order of attachment made in pursuance of distrain order—Penal Code, Ss. 143, 424.*

An order of distrain under S. 121 made on the 2nd December in respect of rent payable by a *raiya* on the 1st December, is not an illegal order. Where, therefore, in pursuance of such order, the *raiya*'s crops are attached, and notwithstanding such attachment and the protest of the attaching officer, he goes upon the land and cuts the crops, he renders himself liable to prosecution under Ss. 143 and 424, Penal Code, for acting in contravention of the attachment made in pursuance of the distrain order. *Superintendent and Remembrancer of Legal Affairs v. Kajal Hoaladar.*

22 Cr. L. J. 491 :
62 I. C. 187 : 33 C. L. 21 :
25 C. W. N. 209 :
A. I. R. 1921 Cal. 361.

BENGAL VILLAGE SELF-GOVERNMENT ACT (V OF 1919), Ss. 65, 71, 93.

—*Order passed by Union Bench—Right to challenge—Procedure—Revision.*

The right to challenge decision by a Union Bench is not taken away by Ss. 71 and 93, but

BERAR MUNICIPAL LAW, 1886.

it must be exercised in the manner provided in the Act itself. There cannot be any challenge by way of invocation of the revisional jurisdiction of the High Court, the jurisdiction invoked in all such cases being a jurisdiction derived from the Code of Criminal Procedure, and outside Chap. XXXIII of that Code. *Hari Sadhan Roy v. Probhakar Ray.*

40 Cr. L. J. 359 :
180 I. C. 408 : I. L. R. 1938 (2) Cal. 523 :
11 R. C. 684 : A. I. R. 1939 Cal. 259.

—S. 71.

Conviction under Act—High Court's powers under S. 439, Cr. P. C. appear to be restricted. Interference might be justified under S. 107, Government of India Act. *Yasin Moral v. Isaf Khan.*

34 Cr. L. J. 111 :
140 I. C. 873 : 59 Cal. 1080 :
I. R. 1933 Cal. 66 :
A. I. R. 1932 Cal. 867 (1).

BERAR MUNICIPAL LAW, 1886

—Ss. 79, 116—*Bye-law depriving public of right, legality of—Approval by Local Government, effect of.*

Section 116 (1) (j) does not, even by implication, authorise a Committee to make a bye-law depriving the public of a right long enjoyed by it. The mere fact of the Local Government having signified its approval to a bye-law would not render the bye-law valid, in the absence of clear and unmistakable language in the Act empowering a Committee to make such a bye-law. *Mahammad Sarwar v. Secretary, Camp Municipalities, Amraoti.*

20 Cr. L. J. 453 :
51 I. C. 341 : 15 N. L. R. 105 :
A. I. R. 1919 Nag. 111.

—Ss. 85, 86, 130—*Application for permission to build—No order passed—Effect.*

The mere fact that a permission to build was applied for and no order prohibiting the erection was passed within one month does not place the applicant in the same position as if written permission was accorded to him by the Committee as required by S. 86. So far as the encroachments dealt with by S. 86 are concerned, they are not in themselves punishable though declared unlawful by that section, but it is the disobedience to the order of the Committee for their removal under S. 130 which has been made punishable. *Radha Kisan v. Municipal Committee, Amraoti.*

19 Cr. L. J. 392 :
44 I. C. 744 : 14 N. L. R. 157 :
A. I. R. 1917 Nag. 65.

—S. 86 (2)—*Notice.*

Section 86 (2) contemplates a notice issued personally to an individual. *Radha Kisan v. Municipal Committee, Amraoti.*

19 Cr. L. J. 392 :
44 I. C. 744 : 14 N. L. R. 157 :
A. I. R. 1917 Nag. 65.

—S. 86—*Notice to show cause, whether notice of removal.*

The notice to show cause is not a notice to remove the obstruction as required by S. 86

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(2). *Radha Kisan v. Municipal Committee, Amraoti.* 19 Cr. L. J. 392 :

44 I. C. 744 : 14 N. L. R. 157 :
A. I. R. 1917 Nag. 65.

———Ss. 98, 116, 178—*Bye-laws requiring permission for building, whether ultra vires—Test.*

Before a rule framed by a rule-making authority is declared *ultra vires* the Court must be satisfied not only that the authority had no power to act under the power under which it purported to act, but also that it had no power at all under any law to so act. The bye-laws framed under S. 116 (1), requiring a person to obtain permission of the Municipality before commencing to build or re-build or enlarge any structure, and imposing a penalty for failure to obtain such permission, are not *ultra vires*. *Emperor v. Sriballabh.* 26 Cr. L. J. 1084 :

88 I. C. 28 : A. I. R. 1925 Nag. 393.

———S. 116—*Rules under R. 10—If ultra vires.*

The rules framed under S. 116 must be consistent with the Act. The effect of rule 10 framed under S. 116 is to do away with the notice required by S. 138, and the rule is, therefore, *ultra vires*. *Radha Kisan v. Municipal Committee, Amraoti.* 19 Cr. L. J. 392 :

44 I. C. 744 : 14 N. L. R. 157 :
A. I. R. 1917 Nag. 65.

———S. 132—*Encroachment—Balcony.*

A balcony eleven feet above the level of a street is not an encroachment within the meaning of S. 132. *Radha Kisan v. Municipal Committee, Amraoti.* 19 Cr. L. J. 392 :

44 I. C. 744 : 14 N. L. R. 157 :
A. I. R. 1917 Nag. 65.

———S. 133—*Notice to remove obstruction—Daily fine.*

S. 133 makes an encroachment punishable without a notice of removal being issued to the offender. That section does not, however, justify a daily fine. *Radha Kisan v. Municipal Committee, Amraoti.* 19 Cr. L. J. 392 :

44 I. C. 744 : 14 N. L. R. 157 :
A. I. R. 1917 Nag. 65.

———Ss. 146, 151—*Municipal member interested in contract with the Municipal Committee—Offence—Penal Code (Act XLV of 1860), S. 168.*

A member of a Municipal Committee who becomes directly or indirectly interested in a contract with the Committee, in violation of S. 146 commits an offence not punishable under the Municipal Law, but punishable under S. 168 of the Penal Code, and S. 151 of Municipal Law has no application to his case. *Narayan v. Emperor.* 11 Cr. L. J. 613 :

8 I. C. 274 : 6 N. L. R. 114.

———S. 146 (1)—*Penal Code, S. 168—“Pecuniary interest,” Member of Board giving private loan to contractor for carrying on contract with Board—Offence.*

A member of a Municipal Board who lends money to a contractor, upon the personal credit of such contractor, for the purpose of a contract with the Municipal Board violates S. 146 (1) and is liable to punishment under S. 168 of the Penal Code. *A. B. v. Emperor.* 12 Cr. L. J. 281 :

7 N. L. R. 53 : 10 I. C. 577.

BIHAR AND ORISSA ADULTERATION ACT—1919.

———S. 151—*Applicability.*

S. 151 applies only to what are generally known as Municipal offences, that is to say, offences against the power, rules and bye-law of a Municipal Committee, in respect of which the Committee is given a discretion to complain or not to complain, and the Criminal Courts are restrained from taking cognizance unless and until the Committee has complained. *Narayan v. Emperor.* 11 Cr. L. J. 613 :

8 I. C. 274 : 6 N. L. R. 114.

———S. 151—*Complaint, requirements of.*

The complaint of the Committee or of some person authorised by the Committee in their behalf need not specify the section or rule of the Berar Municipal Law which has been broken. It need only state the facts and it is for the Court to decide under what section or rule an offence has been committed. *Radha Kisan v. Municipal Committee, Amraoti.* 19 Cr. L. J. 392 :

44 I. C. 744 : 14 N. L. R. 157 :
A. I. R. 1917 Nag. 65.

BERAR PENAL CODE [ACT XLV OF 1860 APPLIED TO BERAR], S. 75

———*Berar Criminal Procedure Code, S. 565—Previously convicted offender—Previous conviction under Indian Penal Code—Subsequent conviction under Berar Penal Code—Sentence of enhanced punishment and notification of address, whether legal.*

The previous conviction of an offender in British India under Chapter XII or Chapter XVII of the Indian Penal Code cannot be used for the purpose of applying S. 75 of that Code or of S. 565 of the Criminal Procedure Code as applied to Berar. An accused was convicted by a Court of Session in Berar under S. 379 of the Berar Penal Code. Some previous convictions by British Indian Courts in the Presidency of Bombay under Chapter XVII of the Indian Penal Code were proved against the accused. On the strength of these convictions the accused was sentenced to seven years' rigorous imprisonment, and was directed, under S. 565 of the Berar Criminal Procedure Code, to notify his residence for five years after the expiry of the said sentence : *Held*, that the sentence for enhanced punishment and the order to notify residence, in so far as they were based on S. 75 of the Berar Penal Code and S. 565 of the Berar Criminal Procedure Code, were *ultra vires* and must be set aside. *Ganga Ram v. Emperor.* 9 Cr. L. J. 97 :

4 N. L. R. 177.

BETTING

See Gambling Acts (Local and Imperial).

BIGAMY

See P. C., Ss. 494, 495. 6 Cr. L. J. 338.

BIHAR AND ORISSA ADULTERATION ACT (II OF 1919).

———S. 3 (2)—*Adulteration—Offence, essence of.*

Prosecution need not prove that the adulterated food stuff would be injurious to public health. It is sufficient to show that the article is not what it purports to be or that it is

BIHAR AND ORISSA EXCISE ACT, 1915.

not of the standard required by rule. *Rameswar Chowdhury v. Public Municipality*.

34 Cr. L. J. 572 :

143 I. C. 65 (2) : 14 P. L. T. 146 :

I. R. 1933 Pat. 190 : A. I. R. 1933 Pat. 193.

BIHAR AND ORISSA EXCISE ACT (II OF 1915) S. 47.

—Pass to possess and import excisable articles in one province—Possession of Articles while en route to destination in an another province.

Accused had obtained a pass to import excisable articles from one place to another in one Province. In travelling that Province they were obliged to make a short halt at a place in a neighbouring Province of Bihar : *Held*, that the possession was not illegal and accused could not be convicted under S. 47. *Mulchand v. Emperor*.

21 Cr. L. J. 579 :

57 I. C. 99 : 1 P. L. T. 82 :

2 U. P. L. R. Pat. 37 : 1920 Pat. 135 :

A. I. R. 1920 Pat. 248.

—S. 47.

Possession of *ganja* in excess of quantity allowed—Packets weighed along with paper—Actual weight of *ganja* alone not known—Conviction is not proper. *Ramnawas Ram v. Emperor*.

36 Cr. L. J. 458 :

153 I. C. 1028 : 16 P. L. J. 358 : 7 R. P. 394 :

A. I. R. 1935 Pat. 128.

—S. 47—Offence, essence of—Presumption.

Prosecution should prove that articles had been kept where they were found, by accused or with his knowledge. S. 48 does not say that possession is to be presumed. *Babuchand Teli v. Emperor*.

35 Cr. L. J. 572 :

147 I. C. 1207 : 6 R. P. 409 : 14 P. L. T. 620 :

A. I. R. 1933 Pat. 689.

—Ss. 47, 48, 55—Report under S. 47 (h)—Cognizance of offences under S. 47 (a) or S. 55, Removal of liquor—Presumption under S. 48.

In the report of an Excise Sub-Inspector prosecution was asked for only under S. 47 (h), but the accused was in addition tried for and convicted of offences under Ss. 47 (a) and 55: *Held*, that such a proceeding was not illegal, especially as the report disclosed facts constituting offences under the other sections. S. 48 does not apply to a case of removal of liquor, and it is, therefore, illegal to make use of the presumption created by that section in the trial of an offence under S. 47 (h). *Mahabir Singh v. Emperor*.

20 Cr. L. J. 487 :

51 I. C. 471 : A. I. R. 1919 Pat. 305.

—Ss. 47, 87.

Offence under S. 47—Cognizance taken by First Class Magistrate not especially empowered by Local Government—Absence of report of Excise Officer—Proceedings under S. 47 are bad in law. *Sheonandan Ram v. Emperor*.

37 Cr. L. J. 150 (2) :

159 I. C. 719 : 2 B. R. 107 : 17 P. L. T. 105.

—S. 47 (A)—Illegal possession of cocaine—Place accessible to several persons, effect of.

To convict a person of being in illegal possession of contraband goods, it is necessary to fix him with knowledge of their existence in

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the place where they were found. If the place is one in which several persons have an equal right of access, the goods cannot be said to be in the possession of any one of them. *Ram Chandra v. Emperor*.

21 Cr. L. J. 172 :

54 I. C. 780 : A. I. R. 1920 Pat. 432.

—S. 48.

Search—Witnesses not signing immediately and on the spot—Conviction cannot be based on such search. *Ramnawas Ram v. Emperor*.

36 Cr. L. J. 458 :

153 I. C. 1028 : 16 P. L. T. 358 : 7 R. P. 394 :

A. I. R. 1935 Pat. 128.

—S. 59.

Charge under S. 59 read with S. 47—Previous sanction for prosecution, is not necessary—Conviction of licensee for smuggling by servants—Absence of proof of servants acting for benefit of master—Conviction cannot stand. *Abdul Ghafur v. Emperor*.

36 Cr. L. J. 290 :

153 I. C. 236 : 15 P. L. T. 676 : 7 R. P. 317 :

A. I. R. 1935 Pat. 17.

—S. 59—Conviction, essentials for.

To support a conviction under S. 59, it is necessary to show not only that the servant was in the employ of the master, but also that he was acting within the scope of his employment and for the benefit of the master. *Abdul Ghafur v. Emperor*.

36 Cr. L. J. 290 :

153 I. C. 236 : 15 P. L. T. 676 : 7 P. R. 317 :

A. I. R. 1935 Pat. 17.

—Ss. 70, 89—Excise Sub-Inspector, power of, to arrest without warrant.

A Sub-Inspector of Excise is entitled to arrest without a warrant a person found committing an offence punishable under S. 47. S. 78 has no application to such a case. *Bechu Mian v. Emperor*.

31 Cr. L. J. 465 :

123 I. C. 68 : A. I. R. 1939 Pat. 344.

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—S. 3—Cognizance where taken.

Cognizance on complaint of offence under Act, can be taken where offence is discovered. *Ramjas Marwari v. Purulia Municipality*.

37 Cr. L. J. 289 :

160 I. C. 343 : 2 B. R. 185 : 17 P. L. T. 258 :

8 R. P. 353 : A. I. R. 1936 Pat. 145.

—Ss. 3 (1), 14 (2)—Sale of sealed tins—Power of Inspector to demand smaller quantities out of open tins—Adulteration of article—Conviction of accused, legality of.

A Sanitary Inspector went to the accused's shop and found 15 tins of mustard oil exposed for sale. He demanded and got 24 *chhataks* of oil and found that the oil was highly adulterated. The accused was prosecuted for an offence under S. 3 (1). The accused pleaded that he had purchased the tins in a sealed condition and used to sell them in the same condition : *Held*, that the procedure adopted by the Inspector in not taking a full tin of oil in its unopened condition was illegal and seriously prejudicial to the accused in view of the provisions of Cl. (2) of S. 14 and that the accused

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could not under the circumstances be convicted under S. 3 (1). *Emperor v. Shib Das Marwari*.

29 Cr. L. J. 75 :

106 I. C. 587 : 9 A. Cr. R. 352 : 9 P. L. T. 213 :
A. I. R. 1928 Pat. 213.

———S. 3, cl. (2)—*Offence—Sentence.*

Accused under impression that it was lawful to manufacture mixed oil—Sentence should not be maximum. *Karnidan Sarda v. Emperor*.

36 Cr. L. J. 1439 :

158 I. C. 728 : 16 P. L. T. 655 : 2 B. R. 8 :
8 R. P. 205 : A. I. R. 1935 Pat. 521.

———S. 3 (2)—*scope of.*

Where there are in the description of the article the words "mustard oil" as the concluding and substantive portion of the description with some adjectival description preceeding the substantive name although the preliminary adjectival description may give the intending purchaser notice that what he is getting is not pure mustard oil yet this is not a compliance with the law. *Karnidan Sarda v. Emperor*.

36 Cr. L. J. 1439 :

158 I. C. 728 : 10 P. L. T. 655 : 2 B. R. 8 :
8 R. P. 205 : A. I. R. 1935 Pat. 521.

———Ss. 7 (2) 8, 9—*Portion once analysed—Second prosecution—Application for examination of sample again.*

The fact that an analysis had been made of a portion of the bulk of the same article on the previous occasion does not prevent the accused from making an application under S. 9 (2) of the Act for analysis of the sample which is in the custody of the local authority in the second case. *Gopinath Sahu v. Arrah Municipality*.

30 Cr. L. J. 895 :

118 I. C. 328 : I. R. 1929 Pat. 510 :
11 P. L. T. 204 : A. I. R. 1929 Pat. 510.

———S. 14—*Inspector's right to purchase defined.*

Inspector authorised to effect compulsory purchase has right of purchase as ordinary member of public. He can compel sale to him of small quantity as sample. *Karnidan Sarda v. Emperor*.

36 Cr. L. J. 1439 :

158 I. C. 728 : 16 P. L. T. 655 : 2 B. R. 8 :
8 R. P. 205 : A. I. R. 1935 Pat. 521.

———S. 14 (2)—*'Labelled' and 'sealed,' meanings of.*

The word 'labelled' in S. 14 (2) denotes a written slip of paper or a metal or any other thing fixed or attached to articles of manufacture for the purpose of describing them or specifying their quality, etc., or the name of the maker. Neither the word 'labelled' nor the word 'sealed' necessarily means that the article should contain the name of the manufacturer. All that is required is that it must be distinctive from which the maker or manufacturer or the firm could be easily traced. *Emperor v. Shib Das Marwari*.

106 I. C. 587 : 9 A. I. Cr. R. 352 :
9 P. L. T. 434 : A. I. R. 1928 Pat. 213.

BIHAR AND ORISSA HIGH-WAYS ACT (III OF 1926).

———S. 4—*Government road, what is.*

A 'Government road' includes (among many

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other things) the side-drains on any such road. *Bal Kishun Das v. Emperor*.

36 Cr. L. J. 1048 (2) :

156 I. C. 1001 : 16 P. L. T. 154 : 14 Pat. 455 :
8 R. P. 53 : A. I. R. 1935 Pat. 208.

———S. 4—*Rule under, construction of.*

A rule under the section cannot be construed as a rule providing for the punishment of the existing constructions. *Prabhu Charan Ram v. Emperor*.

36 Cr. L. J. 1094 (1) :

157 I. C. 91 : 16 P. L. T. 153 : 1 B. R. 712 (1) :
8 R. P. 89 (1) : A. I. R. 1935 Pat. 218 (1).

———S. 4—*Scope of.*

Any obstruction or encroachment on Government road caused prior to the Act cannot be penalized. *Bal Kishun Das v. Emperor*.

36 Cr. L. J. 1048 (2) :

156 I. C. 1001 : 16 P. L. T. 154 : 14 Pat. 455 :
8 R. P. 53 : A. I. R. 1935 Pat. 208.

———S. 4—*Encroachment, what is.*

Where the encroachment has been in existence for the last 40 or 50 years, it is not an encroachment to which the Act applies. *Ram Ratan Sao v. Emperor*.

36 Cr. L. J. 1095 (1) :

157 I. C. 78 (a) : 1 B. R. 707 : 8 R. P. 85 (1) :
A. I. R. 1935 Pat. 229.

BIHAR AND ORISSA MICA ACT (1 OF 1930).

———S. 17 (2)—*Prosecution under S. 17 (2) (a), for possessing mica not shown in account books—Confiscation under Criminal Procedure Code, S. 517.*

An offence under S. 17 (2) (a) when committed is in respect to the account book and not in respect to the excess amount of mica found, where an accused is prosecuted under S. 17 (2) (a) for possessing mica not shown in account books and is not charged in respect of an offence of possessing illicit mica, the mica cannot be confiscated under S. 517, Criminal Procedure Code. *Mani Ram v. Emperor*.

38 Cr. L. J. 602 (b) :

168 I. C. 795 : 18 P. L. T. 146 : 3 B. R. 486 :
9 R. P. 505 (2) : 16 Pat. 323 :

A. I. R. 1937 Pat. 257.

———Ss. 23, 24—*Applicability to offence under S. 17 (2) (a).*

Ss. 23 and 24 do not apply to an offence under S. 17 (2) (a). *Mani Ram v. Emperor*.

38 Cr. L. J. 602 (b) :

168 I. C. 795 : 18 P. L. T. 146 :
3 B. R. 486 : 9 R. P. 505 (2) : 16 Pat. 323 :

A. I. R. 1937 Pat. 257.

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———S. 19 (2)—*Construction of.*

Sub-S. 2 of S. 19, is *ejusdem generis* with the first sub-section and the words "take such orders" clearly refer to positive acts of construction or destruction. *Abdul Rauf v. Benarsi Lal*.

33 Cr. L. J. 775 (2) :

139 I. C. 493 : 13 P. L. T. 461 :
I. R. 1932 Pat. 233 : A. I. R. 1932 Pat. 281 :

———S. 19 (2)—*"Take certain order", "prevent or abate nuisance" construction of.*

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The phrase 'take certain order' in S. 19 (2) refers to a positive act which the Board has directed and the words "prevent or abate a nuisance" refer to a specific nuisance which the act required will prevent or abate. *Abdul Rauf v. Benarsi Lal*.

33 Cr. L. J. 775 (2) :
139 I. C. 493 : 13 P. L. T. 461 :
I. R. 1932 Pat. 233 : A. I. R. 1932 Pat. 281 :

—S. 26.

By-law 25 (1)—*Held*, on facts that the order of the Mines Board of Health, calling upon the petitioner to supply water was not *ultra vires* and the petitioner was guilty of non-compliance with the order. *Keshav Lal v. Jharia*.

36 Cr. L. J. 1088 :
157 I. C. 72 : 1 B. R. 706 : 8 R. P. 87.

—S. 26 (3).

Board cannot issue notice to individual not to erect building without its consent and to treat erection of building as offence. Bye-laws in respect of the matter should first be framed. *Abdul Rauf v. Benarsi Lal*.

33 Cr. L. J. 775 (2) :
139 I. C. 493 : 13 P. L. T. 461 :
I. R. 1932 Pat. 233 : A. I. R. 1932 Pat. 281.

—S. 26 (3)—Offence.

Where there has been no requisition under S. 19, no offence under S. 26 (3) is committed. *Abdul Rauf v. Benarsi Lal*.

33 Cr. L. J. 775 (2) :
139 I. C. 493 : 13 P. L. T. 461 :
I. R. 1932 Pat. 233 : A. I. R. 1932 Pat. 281.

BIHAR AND ORISSA MUNICIPAL ACT (VII OF 1922), S. 180 (2).

—Compelling platform owners to take licences.

Resolution of Commissioners is sufficient authority to compel platform owners to take licences. *Ghadsiram v. Vice-Chairman, Sambalpur Municipality*.

37 Cr. L. J. 374 :
160 I. C. 1076 : 17 P. L. T. 148 :
2 B. R. 280 : 8 R. P. 415 :
A. I. R. 1936 Pat. 101.

—S. 180 (2)—Platform owners to take licences.

While old platforms will be allowed to be retained, their owners must take out licences. *Ghadsiram v. Vice-Chairman, Sambalpur Municipality*.

37 Cr. L. J. 374 :
160 I. C. 1076 : 17 P. L. T. 148 : 2 B. R. 280 :
8 R. P. 415 : A. I. R. 1936 Pat. 101.

—S. 186—New door, opening of—Offence

Opening new door to building without notice to Municipality is no offence when there is no alteration. *Ram Kripal v. Chairman, Jamalpur Municipality*.

34 Cr. L. J. 925 :
145 I. C. 262 (1) : 6 R. P. 149 :
A. I. R. 1933 Pat. 585.

—S. 194 (2).

Notice under S. 194 (2), to demolish—Defence that requisition to demolish was unnecessary, cannot be taken—Decision of Municipality as to condition of building and as to whether demolition or repairing was to be made, cannot

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be questioned by Court—Non-compliance with notice—Objection under S. 360, taken late—Objection enquired into—Prosecution for original non-compliance is illegal. *Dwarka Mahlon v. Patna City Municipality*.

37 Cr. L. J. 634 (2) :
162 I. C. 550 : 2 B. R. 466 : 15 Pat. 36 :
17 P. L. T. 123 : 8 R. P. 541 :
A. I. R. 1936 Pat. 282.

—Ss. 196, 197—Suit for removal of structure built by person on land claimed by Municipality—Person claiming land to be his—Title, how can be acquired, stated.

Title can only be acquired by a person to a plot of land against a Municipality under a proper title-deed or by adverse possession. The fact that on a previous occasion the Municipal Commissioners had failed in their responsibilities in the matter is no bar to the action taken subsequently by the Municipality to remove any structure on the land.

Brindaban Prasad v. Gaya Municipality.

39 Cr. L. J. 136 :
172 I. C. 215 : 10 R. P. 331 : 4 B. R. 154 :
A. I. R. 1937 Pat. 640.

—Ss. 196, 203 (2)—Encroachment—Conviction under S. 203 (2)—Requisition under S. 196, necessity of—Proof of—Vesting of property in Commissioners.

Failure to comply with a requisition issued under S. 196 is a condition precedent to the liability of a person to be fined under S. 203 (2). Further, in order that S. 196 may come into operation, there must be proof that the property in respect to which the offence is alleged to have been committed has vested in the Commissioner. *Radha Kishun Marwari v. Emperor*.

27 Cr. L. J. 1111 :
97 I. C. 423 : A. I. R. 1927 Pat. 52.

—Ss. 238, 359 (2), 217—Notice under S. 238—Provisions of S. 259 (2) not complied with—Prosecution, if legal—Specification not supplied—Notice is defective.

Where notice under S. 238 was served upon a person asking him to improve drains within a month but the alternative that if he did not do it, the Municipal Commissioners would get it done themselves was not mentioned in the notice : *Held*, that the notice was illegal due to non-compliance with the imperative provisions of S. 359 (2) and hence no prosecution could be based on it. Further as nothing was expressed therein as to what was the proper type of drains to be constructed the notice was vague and it was also defective from the point of view of S. 217 as no specification had been supplied. *Manager, Dhalbhum Estate v. Overseer, Jugsalai Notified Area Committee*.

38 Cr. L. J. 685 :
169 I. C. 38 : 3 B. R. 511 : 9 R. P. 538 :
18 P. L. T. 559 : A. I. R. 1937 Pat. 224.

—S. 259—Licence, refusal of on religious or sentimental grounds—Omission to mention reason, effect.

A licence cannot be refused under S. 259 on merely religious or sentimental grounds. The provisions of Sub-S. (2) of S. 259 supply the only reason for which a licence can be refused. Where it does not appear that the Municipality has refused a licence on any ground other than

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1922.

that mentioned in Sub-S. (2) of the section, the mere omission to mention the reason specified in the Sub-S. cannot be regarded as rendering the refusal illegal. *Madaran Kassab v. Emperor*.

26 Cr. L. J. 900 :
86 I. C. 964 : 4 Pat. 311 : 6 P. L. J. 528 :
3 Pat. L. R. 150 Cr. : 1926 Pat. 44 :
A. I. R. 1929 Pat. 540.

—S. 259—Local limits.

Under S. 259 a Municipality is entitled to declare the local limits contemplated in the section to be the whole area of the Municipality. *Madaran Kassab v. Emperor*.

26 Cr. L. J. 900 :
86 I. C. 964 : 4 Pat. 311 : 6 P. L. J. 528 :
3 Pat. L. R. 150 Cr. : 1926 Pat. 44 :
A. I. R. 1925 Pat. 540.

—S. 259—Prosecution for offensive trade—Prosecution, duty of.

Under S. 259, Cl. (14) in a prosecution for carrying on an offensive trade without taking out a licence, the prosecution is bound to prove that the trade is offensive or unwholesome where it has not been declared by the Local Government to be such. *Chairman, Purulia Municipality v. Bishun Sao*. 29 Cr. L. J. 1017 :
112 I. C. 345 : A. I. R. 1928 Pat. 193.

—S. 259 (1) (xiv)—Use of oil engine for flour mill—Liability—Oil engine, whether “manufacture or process”—Resolution under S. 259—Publication, necessity of—Prosecution before publication of resolution, legality of.

The words “manufacture, process or business” in Sub-cl. (xiv) of Cl. (1) of S. 259, do not contemplate the mere use of an oil engine. It is necessary for the Municipal Authorities, when they come to a resolution under S. 259, to notify it to the public in some manner. If an offence is to be created by a bye-law or order or notice, then it is necessary for those who have power under the Act, to create such offence to publish the fact so that the public at large may know that such an offence has been created, and no one can be prosecuted for contravening such bye-law, order or notice, if it has not been notified to the public in some manner. *Lal Singh v. Arrah Municipality*.

29 Cr. L. J. 756 :
110 I. C. 788 : 11 A. I. Cr. R. 25 :
A. I. R. 1928 Pat. 506.

—Ss. 259 (1), (3), 264, 354—Resolutions by Municipality under power conferred by S. 259 (1) and (3) requiring licences and fixing its fee, for working surkhi mill—Whether rules or bye-laws—If require confirmation under S. 354.

Resolutions passed by a Municipality under powers conferred by S. 259 (1) and (3), fixing local limits and requiring licences to be taken out in respect of working a surkhi mill are not matters of the same nature as the matters to be provided for bye-laws under S. 264, and can neither be regarded as bye-laws nor as rules, but are of the nature of an order applying a section of the Act. Hence these orders do not require under S. 354 to be confirmed by the Local Govt. as a condition precedent to their taking effect.

41 Cr. L. J. 217 :
185 I. C. 630 : 6 B. R. 226 : 12 R. P. 433 :
A. I. R. 1940 Pat. 313.

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1922.

—S. 263—Pounding leaf for hooka tobacco—Offence.

A person cannot be prosecuted under S. 263 of the Act for pounding tobacco leaf for the manufacture of hooka tobacco, where the evidence does not show that the manufacture is offensive or unwholesome. *Chairman, Purulia Municipality v. Bishun Sao*.

112 I. C. 345 : A. I. R. 1928 Pat. 193.

—S. 263—Sanction to prosecute, form of.

A report was submitted to the Vice-Chairman of a Municipality for sanction to prosecute the accused under S. 263 and the whole circumstances of the case were set out in detail in the report. The Vice-Chairman sanctioned the prosecution but his order did not definitely state the offences of which the accused was alleged to be guilty : *Held*, that the report must be read along with the order of the Vice-Chairman and that there was no irregularity in the form of the sanction. *Madaran Kassab v. Emperor*.

26 Cr. L. J. 900 :
86 I. C. 964 : 4 Pat. 311 : 6 P. L. J. 528 :
3 Pat. L. R. 150 Cr. : 1926 Pat. 44 :
A. I. R. 1925 Pat. 540.

—S. 285—Contraband articles—Seizure—Complaint—Procedure.

Articles of the kind described in S. 285, intended for sale within the Municipality, which are in course of transit, can be seized by the Commissioners. But if these articles were not intended for sale within the Municipality, they cannot be legally seized. But when they are seized and it is found that their condition warranted a complaint under S. 3 of the Food Adulteration Act, there is nothing to prevent the Commissioners from making a complaint before a Magistrate. The complainant ought to be examined under S. 200, Criminal Procedure Code, before issuing process, although the omission to examine will be disregarded by virtue of the provisions of S. 537 (a) of the Code. *Ramjas Marwari v. Purulia Municipality*.

37 Cr. L. J. 289 :
160 I. C. 343 : 2 B. R. 185 :
17 P. L. T. 258 : 8 R. P. 353 :
A. I. R. 1936 Pat. 145.

—S. 287.

Action under Ss. 287 and 288 cannot affect liability of person selling noxious food to be proceeded against under S. 273, Penal Code. Merely because the action was taken before conviction does not make his conviction illegal. *Madan Lal v. Emperor*.

35 Cr. L. J. 431 :
147 I. C. 457 : 14 P. L. T. 669 :
6 R. P. 354.

—S. 287—Object of—Proceedings, nature of—Bar to prosecution under S. 273, Penal Code.

S. 287 does not contemplate judicial proceedings, but merely executive action, and its object is not the punishment of the person in possession of the noxious food but prevention of its sale to the public. Destruction of the food is no bar to prosecution under S. 273, Penal Code. *Madan Lal-Brij Lal v. Emperor*.

36 Cr. L. J. 496 :
154 I. C. 367 : 7 R. P. 457 :
A. I. R. 1934 Pat. 113.

BIHAR AND ORISSA PREVENTION OF ADULTERATION ACT, 1919.

—S. 288.

Exposure of food unfit for human consumption—Liability for punishment under S. 288 arises. *Madan Lal Brij Lal v. Emperor*.

36 Cr. L. J. 496 :
154 I. C. 367 : 7 R. P. 457 :
A. I. R. 1934 Pat. 113.

—Ss. 373, 259 (2)—Licence refused—Applicability of S. 373.

S. 259 (2) is not included within the purview of S. 373, and the provisions of the latter section are not, therefore, applicable to a case where a Municipality refuses a licence for the carrying on of a particular trade within Municipal limits. *Madaran Kassab v. Emperor*,

26 Cr. L. J. 900 :
86 I. C. 964 : 4 Pat. 311 :
6 P. L. T. 528 : 3 Pat. L. R. 150 Cr. :
1926 Pat. 44 : A. I. R. 1929 Pat. 540.

BIHAR AND ORISSA OPIUM SMOKING ACT (11 OF 1928),

—S. 12—Rules framed under—Rule 11 is ultra vires.

Rule 11 made under S. 12 is *ultra vires* inasmuch as an authority on whom the rule-making power has been conferred is not authorized to create an offence and impose a penalty for breach of the rules. *Emperor v. Nemu Singh*.

38 Cr. L. J. 540 :
168 I. C. 332 : 18 P. L. T. 118 :
3 B. R. 418 : 9 R. P. 479 : 16 Pat. 244 :
A. I. R. 1937 Pat. 226.

BIHAR AND ORISSA PREVENTION OF ADULTERATION ACT (11 OF 1919), S. 3.

—Order under—Revision—Factum of notification whether may be agitated.

In proceedings under Bihar and Orissa Prevention of Adulteration Act, the question that it has not been shown that the Act has been brought in force in the particular local area by a notification of the Local Government, is a question which ought to be raised and determined before the Court of facts and not in revision. *Sarup Lal v. Emperor*.

38 Cr. L. J. 192 :
166 I. C. 206 : 17 P. L. T. 953 : 3 B. R. 137 :
9 R. P. 264 : A. I. R. 1936 Pat. 636.

—S. 3 (2)—Sale of goods in unopened and duly labelled tins obtained from reputed wholesale dealer—Conviction, legality of.

Where a person obtains goods from a reputed wholesale dealer and sells them in unopened tins duly labelled in the condition in which they are received, he is not liable to be punished under the Act unless there is reason to believe that he did not believe goods to be genuine. *Branjivan v. Emperor*.

32 Cr. L. J. 741 :
131 I. C. 541 : 12 P. L. T. 470 :
1931 Cr. Cas. 785 (1) : I. R. 1931 Pat. 221 :
A. I. R. 1931 Pat. 337 (1).

—S. 4 (b)—Offence, essence of.

The Court has to determine before applying S. 4 (b) that some matter or ingredient has been added fraudulently. The mere presence

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of some foreign matter in small quantity is not necessarily an offence. The Court has to apply its mind to the question of whether the admixture of foreign starch grain was so large that it could not be explained otherwise than by fraud. *Sarup Lal v. Emperor*.

38 Cr. L. J. 192 :
166 I. C. 206 : 17 P. L. T. 953 : 3 B. R. 137 :
9 R. P. 264 : A. I. R. 1936 Pat. 636.

—S. 10—Proceedings without sanction—Irregularity, cured by S. 537, Criminal Procedure Code.

An irregularity created by an absence of a complaint by local authority under S. 10, in proceedings under the Act, is cured by S. 537 of the Criminal Procedure Code. *Sarup Lal v. Emperor*.

38 Cr. L. J. 192 :
166 I. C. 206 : 17 P. L. T. 953 :
3 B. R. 137 : 9 R. P. 264 :
A. I. R. 1936 Pat. 636.

BIHAR AND ORISSA SUGARCANE RULES

See also Sugarcane Act, 1934, S. 7.

—R. 15 (e) and (f)—Object of.

Rule 15 (e) and (f) have been made with the object of protecting the cultivators who are not always educated, from the wiles of persons dealing with them on behalf of the purchasing agent. Such cases are not likely to be detected, easily, and when once a case is detected, it should not be dealt with leniently. *Bala Bux v. Emperor*.

39 Cr. L. J. 732 :
176 I. C. 558 : 19 P. L. T. 395 :
4 B. R. 734 : 11 R. P. 85 :
A. I. R. 1938 Pat. 366.

—R. 18—Jamadar weighing sugarcane on behalf of factory and taking illegal gratification—Factory purchasing sugarcane at minimum price fixed by Government—Growers prevented from getting full minimum price—Jamadar held guilty under R. 18.

The opening word of r. 18, 'Whoever' is not restricted in any way to the purchaser of cane. A *Jamadar* used to weigh sugarcane at the weigh-bridge on behalf of the factory. Taking advantage of this position he was in the habit of demanding payments for himself before making out and delivering the *purjis* to the persons entitled to them. This resulted in the growers of sugarcane receiving about 5 per cent. less than the minimum price fixed by the Government : *Held*, that what had to be seen was whether by demanding gratification or other payment the accused prevented the cane growers from receiving the full benefit of the minimum price fixed for their produce. The cane growers dealing with the factory were unable to receive the full minimum rate for their produce. The *Jamadar* was, therefore, guilty under r. 18. *Ram Saran Jha v. Emperor*.

38 Cr. L. J. 750 (b) :
169 I. C. 312 : 18 P. L. T. 182 :
16 Pat. 251 : 3 B. R. 538 : 10 R. P. 1 :
A. I. R. 1937 Pat. 242.

—R. 20—Compliance with provisions, what is.

Where upon a report of the Sugarcane Inspector the District Magistrate sanctions the prosecution as required by r. 20 of the Bihar and Orissa Sugarcane Rule (1934), and at the same time takes cognizance of the offence under

BOILERS ACT, 1923.

S. 190 (1) and directs an examination of the Inspector under S. 200 (aa), Criminal Procedure Code, the provisions of R. 20 are properly complied with. *Bala Bux v. Emperor*.

39 Cr. L. J. 732 :
176 I. C. 558 : 19 P. L. T. 395 :
4 B. R. 734 : 11 R. P. 85 :
A. I. R. 1938 Pat. 366.

BIHAR SUGAR FACTORIES CONTROL ACT (VII OF 1937)

—Rules under—Statement under—Person, if should be forced to sign it.

The law does not contemplate forcing a person to sign a statement which he is required to make under the rules of the Act. *Mukti Narayan Gir v. Emperor*.

41 Cr. L. J. 349 :
186 I. C. 627 : 20 P. L. T. 947 :
6 B. R. 377 : 12 R. P. 534 :
A. I. R. 1940 Pat. 97.

BIHAR AND ORISSA VILLAGE ADMINISTRATION ACT (III OF 1922), S. 53.

—Case triable by panchayat—Complaint before Magistrate—Trial by Magistrate—Validity—Procedure.

Where a *panchayat* is competent under the Bihar and Orissa Village Administration Act, to take cognizance of an offence, a Magistrate before whom a complaint for such offence is made is bound to transfer the complaint to the *panchayat* or to record a reason for his not doing so under the proviso to S. 53 of the Act. A trial held by a Magistrate without complying with the requirements of that proviso is bad. *Sheonath Ojha v. Emperor*.

29 Cr. L. J. 726 :
110 I. C. 532 : 10 A. I. Cr. R. 380.

—Ss. 68, 53 (2)—Complaint filed before Magistrate transferred by him to Union Board—Its transfer to proper Court—Procedure.

Where the complaint had already been filed before the Magistrate and transferred by him to the Union Board under S. 53 (2), the procedure to be followed by the accused if he wishes to get it transferred to the proper Court, is to move the District Magistrate or the Sub-Divisional Magistrate under S. 53 (2) (b) of the Act. *Ram Chandra Singh v. Baldeo Singh*.

41 Cr. L. J. 232 :
185 I. C. 748 : 6 B. R. 247 :
12 R. P. 446 : A. I. R. 1940 Pat. 184.

BOILERS ACT (V OF 1923).

—Ss. 22, 23—Application of—"Owner," definition of agent or persons mentioned in S. 2—Absentee owner of boiler, liability of.

In S. 23, the word "owner" includes an agent or other persons mentioned in S. 2. The question whether an owner who is absent should be prosecuted, and if prosecuted, how he should be dealt with is one which depends upon the facts and circumstances of each case. As a pure proposition of law an absentee owner of a boiler, which is being used for his work comes within the purview of S. 23. *Emperor v. Jugal Kishore Teberawalla*.

38 Cr. L. J. 1054 :
171 I. C. 143 : 18 P. L. T. 734 : 16 Pat. 495 :
10 R. P. 189 : 4 B. R. 10 :
A. I. R. 1937 Pat. 500.

BOMBAY ABKARI ACT, 1878.

—Ss. 23, 2 (b)—Boiler—Tin canister with capacity of more than 7 gallons kept on brick furnace and generating steam under pressure whether boiler, its use without certificate.

Under S. 2 (b) in order to be a boiler, the definite and clear object of a contrivance should be to generate steam under pressure. A contrivance used at a dairy to clean and sterilize utensils used for keeping milk and other products, consisting of a closed tin canister with a capacity of more than 7 gallons with two stopcocks, one on the top and the other at the bottom placed upon a brick furnace and generating steam under pressure, falls within the purview of the definition of boiler. The use to which the steam is ultimately put is quite irrelevant to the issue. A person using such a contrivance without the necessary certificate can be convicted under S. 23. *A. S. Agarwal v. Emperor*.

41 Cr. L. J. 26 :
184 I. C. 488 (2) : 1939 A. L. J. 806 :
I. L. R. 1939 All. 883 : 12 R. A. 240 :
A. I. R. 1939 All. 697.

BOMBAY ACT (XI OF 1846).

—S. 3—Rule 44 of rules made under S. 3, not ultra vires—Conviction by Mewas Agent's Court, High Court's jurisdiction—Appeal—Revision.

Rule 44 of the rules under S. 3 of Act XI of 1846 is not *ultra vires* and the High Court of Bombay has power—it being immaterial whether the power is called appellate or revisional—to take cognizance of any case on the petition of a convict and, if it thinks fit, send for the proceedings and pass a fresh decision. The High Court is therefore competent to entertain an appeal by a convict who has been sentenced by a Court of the Mewas Agent to a term not exceeding five years' imprisonment. *Nazar Mahommed v. Emperor*.

18 Cr. L. J. 817 :
41 I. C. 64 : 9 Bom. L. R. 537 : 41 B. 657 :
A. I. R. 1917 Bom. 224.

BOMBAY ACT (VI OF 1863), Ss. 22, 35.

—Application of S. 22 outside local limits—Conviction ultra vires—Revision by High Court.

"The more general terms of S. 22 (Bombay Act, VI of 1863) must be read in the light of the restriction contained in the preamble. The journey to which S. 22 refers must therefore be a journey within the limits to which the Act applies." The Act having been extended only to the Municipal limits of the town of Rohri, a hackney driver cannot be convicted under this section for refusing to carry passengers or for insisting on payment of his hire in advance, when he is asked to go outside limits. The order of the Magistrate convicting such a person being *ultra vires*, S. 35 is no bar to its being set aside in revision. *Imperator v. Khamiso*.

10 Cr. L. J. 233 :
2 S. L. R. 20.

BOMBAY ABKARI ACT (V OF 1878)

—Application of "Chandul"—What is.

Chandul is a preparation of opium and the provisions of the Bombay Abkari Act cannot be applied to a person found in possession of it. But he may be dealt with under the Opium Act. *Imperator v. Jan Mahomed*.

9 Cr. L. J. 254 :
1 S. L. R. 8.

BOMBAY ABKARI ACT, (V OF 1878).

—Ss. 9, 13, 43,—Cocaine—forwarding of from—Lucknow to Bombay through rail without transshipment—Crossing the frontier—application of Act.

Where the accused forwards a large consignment of cocaine from Lucknow to Bombay through railway, and the consignment reaches Bombay direct without transshipment and traverses British territory, the whole way, neither the mere fact that cocaine is consigned from Lucknow to Bombay and is conveyed thereto without transshipment at the frontier of the Bombay Presidency, nor the mere fact that the journey from Lucknow to Bombay is throughout through British territory, prevents cocaine from coming within the provisions of the Bombay Abkari Act as soon as it crosses the frontier. *Emperor v. Tyabally*.

4 Cr. L. J. 183 :
8 Bom. L. R. 601.

—Ss. 9, 43—Sea Customs Act, S. 19—Importation of Cocaine, what is—Prohibition, nature of.

S. 9 does not prohibit importing of cocaine generally : it merely prohibits its importation. The intention and requirement of the section in the case of articles liable to duty under the Tariff Act are that the duty shall be paid. That intention and requirement can only be contravened when reasonable opportunity to pay the duty has been afforded and has been evaded. The mere entry into the harbour or tying up against the dock wall is not importing goods in contravention of the obligation to pay duty. Therefore, such an import is not an import within the meaning of S. 43. The word "import" as used in the Abkari Act includes by implication the conveying into any part of the Presidency of Bombay by sea. *Emperor v. De Silva*.

9 Cr. L. J. 291 :
11 Bom. L. R. 221 : 1 I. C. 343 :
33 Bom. 380.

—S. 14-B (2)—Prohibition, nature of—Extension to general public, legality of.

There is nothing in the Bombay Abkari Act to suggest that the Legislature contemplated the introduction of total prohibition of intoxicants as a measure of social reform. The natural meaning of the expression "any person or class of persons" is a person designated by name or description or a class of persons designated. The Legislature did not intend that the power of prohibition might be extended to the public generally. *Chinubhai Lalbhai v. Emperor*.

39 Cr. L. J. 834 :
190 I. C. 170 : 42 Bom. L. R. 669 :
I. L. R. 1940 Bom. 587 : 13 R. B. 99 :
A. I. R. 1940 Bom. 273.

—S. 14-B (1) (2)—Prohibition of foreign liquor—Power of Government.

The proviso to S. 14-B (1) is clearly a part of Sub-S. (1), and it is competent to Govt. under Sub-S. (2) to prohibit the possession by any person or class of persons of foreign liquor as fully as they can prohibit the possession of country liquor.

41 Cr. L. J. 834 :
190 I. C. 170 : 42 Bom. L. R. 669 :
I. L. R. 1940 Bom. 587 : 13 R. B. 99 :
A. I. R. 1940 Bom. 273.

BOMBAY ABKARI ACT. (V OF 1878).

—S. 43—*Mhowra flowers*—Consignment of, by Railway—Interception at an intermediate station—Possession—Consignor, guilt of.

The accused consigned certain *mhowra* flowers for conveyance. The Railway Company took possession of these goods, and in the course of the conveyance, they were found at place where they naturally would be in the course of this transport. The place being one in a prescribed area within which even the possession of *mhowra* flowers without a permit was unlawful; the accused was convicted under S. 43 : *Held*, that the accused was not guilty of the possession of the flowers, and in the absence of any evidence that he conspired with the Railway Company that these goods should be conveyed without a permit, he was not guilty of even abetting the offence. *Chunilal Manilal v. Emperor*.

16 Cr. L. J. 212 :
27 I. C. 836 : 17 Bom. L. R. 72.

—S. 43.

Offence under—Sentence of imprisonment, propriety of—High Court shall only interfere if it is grossly inadequate. *Emperor v. Mubarak Mian Pakhio*.

36 Cr. L. J. 218 :
152 I. C. 872 : 7 R. S. 106 (1) :
A. I. R. 1934 Sind 157.

—S. 43—Search—Bottle containing illicit liquor produced by son—Father absent—Presumption as to joint possession.

Where on a search, the son produces the key of the box in which a bottle containing illicit liquor is found, but at the time of the search the father is not present, no presumption can be raised that this bottle is in the joint possession of both the son and the father, unless the Crown establishes that both of them have either physical or constructive possession of the cotraband liquor, or if the son has such possession, that he has it on behalf of himself and the father to the knowledge of the father. *Dado Racho v. Emperor*.

38 Cr. L. J. 796 (a) :
169 I. C. 561 : 10 R. S. 16 :
A. I. R. 1937 Sind 154.

—S. 43—Police, power of, to search or arrest.

There is no provision in the Act empowering police officers to effect searches or arrests or to send up cases for trial for offences falling under this Act. *Emperor v. Muhomed Usman*.

35 Cr. L. J. 129 :
146 I. C. 419 : 6 R. S. 65 (F. B.) :
A. I. R. 1933 Sind 325.

—S. 43 (1)—Excisable article, cultivation of—Sentence.

A sentence of a fine of Rs. 25 in a case of a conviction under S. 43 (i) for cultivating an excisable article is entirely inadequate. Such offences are difficult to detect, and when discovered, should be dealt with in such a manner as to deter other persons from committing similar breaches of the law. *Emperor v. Budhu*.

28 Cr. L. J. 162 :
I. C. 594 : 7 A. I. Cr. R. 290 :
A. I. R. 1927 Sind 112.

—S. 43 (1).

Sub-Ss. (a) and (b) create distinct offences—

BOMBAY ABKARI ACT, (V OF 1878).

Connection between two offences—Consideration of for sentence. *Emperor v. Deorao Bhivaji*.

36 Cr. L. J. 924 (1) :
156 I. C. 399 : 37 Bom. L. R. 191 :
7 R. B. 510 : A. I. R. 1935 Bom. 202.

———S. 43 (1) (a).—*Requirements of*.

For purposes of S. 43 (1) (a) possession of any excisable article is sufficient without anything more. It need not be exclusive. *Emperor v. Appa Rama Mali*.

35 Cr. L. J. 523 :
147 I. C. 1003 : 35 Bom. L. R. 1065 :
6 R. B. 929 : A. I. R. 1934 Bom. 16.

———S. 43 (1) (a).—*Importation of foreign liquor—Sentence*.

On conviction under S. 43 (1) (a), the more appropriate form of punishment is imprisonment and not fine. *Emperor v. Gulab*.

27 Cr. L. J. 300 :
92 I. C. 588 : 20 S. L. R. 1 :
A. I. R. 1926 Sind 176.

———S. 43 (1) (a).—“Transport,” meaning—*Mere passing through place in course of journey*.

When the Act talks about transport from one place to another, it means transport from the starting point to the ultimate destination. It is a question of fact for the Court to determine what the destination may be. If a man comes to a place and stays there for an appreciable time, the Court may hold that that place is the destination although it appears that the journey is to be resumed subsequently. But merely passing through a place in the course of a journey does not amount to transporting to that place. *Emperor v. Dagadu Shetiba*.

39 Cr. L. J. 197 :
172 I. C. 764 : 39 Bom. L. R. 1062 :
10 R. B. 295 : I. L. R. (1938) Bom. 49 :
A. I. R. 1938 Bom. 43.

———S. 43 (1) (h).

Possession of illicit liquor and articles for manufacturing it, suggested in huts where accused and his brothers live. Liquor bottles found in fields adjoining. All held to be jointly in possession, and accused held rightly convicted. *Emperor v. Appa Rama Mudali*.

35 Cr. L. J. 523 :
147 I. C. 1003 : 35 Bom. L. R. 1065 :
6 R. B. 929 : A. I. R. 1934 Bom. 16.

———Ss. 43 (b), 47.—*Scope of—Cocaine—Possession unlawful from inception—Removal—Transporting—Offence*.

S. 43 (b) does not apply where the accused's possession of cocaine is illegal from its inception. It contemplates the case of a person who is in lawful possession of cocaine at one place but is by law forbidden to remove it either partly or wholly to another place. Therefore where the offence consists not in moving the cocaine from one place to another, but in the unauthorized possession of it at a place in contravention of the Act, the case falls under S. 47 and not S. 43 (b). *Emperor v. Balvantrao*.

11 Cr. L. J. 269 :
4 I. C. 860 : 12 Bom. L. R. 124.

———Ss. 43 (g).—*Licence providing that licensee shall carry on business personally—Right to sell through servants—Offence*.

BOMBAY ABKARI ACT, (V OF 1878).

Where a licence requires the licensee to personally carry on the business of the shop, the licensee's servant cannot sell the liquor without a permit. Such a sale is an offence punishable under S. 43 (g). *Balla Sakharam Koregaonkar v. Emperor*.

10 Cr. L. J. 382.
3 I. C. 778 : 11 Bom. L. R. 746.

———S. 43 (h).—*Burden of proof. Shifting of*.

The burden of proof in Proceedings under the Act does not shift from the prosecution until the factum of possession is proved. *Emperor v. Gulab Shah Kadir Shah*.

39 Cr. L. J. 504 :
174 I. C. 835 : 10 R. S. 269 : 32 S. L. R. 689 :
A. I. R. 1938 Sind 80.

———S. 43 (g).—*Cocaine—Illicit possession and sale without licence—Sentence*.

Cases of secret possession and sale without licence of cocaine should be dealt with so as to produce a deterrent effect. It is necessary in such cases to pass sentences of imprisonment. *Emperor v. Rodger De Silva*.

12 Cr. L. J. 604 :
12 I. C. 980 : 13 Bom. L. R. 1185.

———S. 45.

Charge under S. 45 can be joined with charge under S. 43 (1) (i) read with S. 47. *Jethanand Muriymal v. Emperor*.

35 Cr. L. J. 256 :
147 I. C. 55 : 6 R. S. 116.
A. I. R. 1933 Sind 255.

———S. 45 (c).—*Abkari licence—Condition prohibiting ‘sale’—‘To sell’ meaning of,—Keeping for sale—Offence*.

The word “sell” obviously means more than keeping for sale. Therefore keeping for sale ordinary denatured spirit in bottles which are not fully corked quart or pint bottles is not a violation of a condition in an *Abkari* licence that the licensee shall not sell ordinary denatured spirit except in full corked quart or pint bottles. *B. S. V. Marathe v. Emperor*.

28 Cr. L. J. 754 :
103 I. C. 834 : 29 Bom. L. R. 1012 :
8 A. I. Cr. R. 442 : A. I. R. 1927 Bom. 518.

———S. 45 (c).—*Failure to keep accounts—Offence*.

The omission to keep true accounts in accordance with the conditions of a licence is an offence under S. 45 (c). *Emperor v. J. B. Mascarenas*.

1 Cr. L. J. 261 :
S. C. 6 Bom. L. R. 253.

———S. 45 (c).—*Breach of conditions of licence—Licence Rule 20—Sale—Sub-letting of contract, effect of*.

Though by supplying the necessary funds a person, other than the licensee named in the licence, might acquire a beneficial interest in the proceeds or profits of sales, he could not, by so supplying funds acquire the right of sale through the licensee named—such right being conferred by virtue of the Act only upon the person named and that the person named in the licence could not set up as a defence that another person had acquired the right of sale through him as an agent or *Benamidar*—instead of from him as the person who had that right in himself. *Emperor v. Mahadevappa*.

5 Cr. L. J. 10 :
8 Bom. L. R. 990.

BOMBAY BOILER INSPECTION ACT (II OF 1891).

—S. 47—"All due and reasonable precautions," meaning of—*Test*.

The phrase "all due and reasonable precautions" in S. 47, does not imply "all precautions". The phrase implies precautions that are reasonable or practical and due or necessary and which a prudent and sensible person would take in endeavouring to prevent transgressions of the kind in question in carrying out the object of the licence. That is the test laid down by S. 47. The licensee's liability must, therefore, be decided according to the circumstances of each case. *Emperor v. Ganpat Lauman Kalgutkar*.

39 Cr. L. J. 933 :
177 I. C. 665 : 40 Bom. L. R. 820 :
11 R. B. 112 : A. I. R. 1938 Bom. 427.

—Ss. 47, 9, 11—*Kaju liquor, possession of—Offence*.

The mere possession of Kaju liquor on which no duty has been paid, but which is under the quantity fixed by S. 17, is not punishable under S. 47. *Emperor v. Datta Khetar Dasai*.

7 Cr. L. J. 307 :
10 Bom. L. R. 284.

—S. 53—*Contraband liquor—Illegal possession—Joint Hindu family—Joint possession*.

In order to convict a person of illegal possession of contraband liquor, it is necessary for the Crown to prove that he had knowledge of his possession. The mere fact that three brothers belong to a joint Hindu family, and as such, own the godown in which the bottles containing the liquor are found concealed does not prove that any one of them is in conscious possession of the bottles. *Narumal Dayaldas v. Emperor*.

37 Cr. L. J. 546 :
162 I. C. 263 : 8 R. S. 165 :
A. I. R. 1936 Sind 44.

—S. 53—*Mens rea—Master's liability for servant's default*.

Mens rea is not required where the acts prohibited by a statute are not criminal in any sense, but are prohibited in the public interest under penalty. This principle is substantially adopted in S. 53 with this exception that licensee-holder, may prove facts to show that he is not liable for his servant's defaults or acts. *Emperor v. Waman Dhanraj*.

7 Cr. L. J. 191 :
10 Bom. L. R. 171.

—S. 53—*Principle applicable—Delegation of control and management why not desirable*.

The principle with regard to the Abkari Act is that licences to keep shops are only granted to persons of good personal character, and the object would be defeated if the licensed persons could, by delegating the control and management of the house to another person who was altogether unfit to keep it, free himself from responsibility for the manner in which the shop was conducted. *Emperor v. Waman Dhanraj*.

7 Cr. L. J. 151 :
10 Bom. L. R. 171.

BOMBAY BOILER INSPECTION ACT (II of 1891) S. 29.

—"In direct and immediate management and charge," meaning of.

BOMBAY BORSTAL SCHOOL ACT (XVIII OF 1929).

The words "in direct and immediate management and charge," in Sub-Section (1) (b) of S. 29, (as applied to Berar), explained.

It is a question to be decided from the circumstances of each case whether the Engineer can be said to have been in direct and immediate charge of the boiler, and the words do not necessarily mean that the Engineer is to have his eyes fixed on the boiler all day.

Emperor v. Ramu Biharilal. 8 Cr. L. J. 13 :
4 N. L. R. 95.

BOMBAY BORSTAL SCHOOL ACT (XVIII OF 1929), S. 6.

—*Rigorous imprisonment and sending to Borstal jail, propriety of*.

It is wrong to sentence the accused to rigorous imprisonment and then direct him to undergo it in the Borstal School. *Emperor v. Mathuradas Purshottam*.

33 Cr. L. J. 395 :
137 I. C. 132 : 34 B. L. R. 299 :
I. R. 1932 Bom. 489 :
A. I. R. 1932 Bom. 489.

—S. 6, as amended by Act (XVII of 1935)—*Youthful offender—Duty of Magistrate*.

The Act is designed not only to reform the offender but to save him from the stigma of conviction. Therefore, Magistrates should find the youthful offender guilty of an offence but should not convict him of an offence and should pass in lieu of a sentence of imprisonment an order for detention within the provisions of S. 6. *Emperor v. Kishno Chopo*.

37 Cr. L. J. 855 (b) :
163 I. C. 373 : 30 S. L. R. 98 :
9 R. S. 1 : A. I. R. 1936 Sind 78.

—S. 6.

Accused not first offender—Accused can be sent to Borstal School—Accused above 16 but below 21 years of age—Sentence for imprisonment in jail—Setting aside of sentence before passing order of detention in Borstal School is necessary. *Emperor v. Nuro Chappar*.

35 Cr. L. J. 253 :
146 I. C. 1076 : 27 S. L. R. 476 : 6 R. S. 114 :
A. I. R. 1933 Sind 391 :

—S. 6—*Sentence contemplated by section—Proper order*.

Section 6 does not contemplate a sentence of imprisonment passed under any particular section or sections of the Penal Code, either concurrent or consecutive but an order of detention for the period prescribed. Where the accused who is found to be under 18 is sentenced to two years' rigorous imprisonment for one offence and for one year's rigorous imprisonment for another, the sentences to run consecutively and directed in lieu of the sentences to be detained in a Borstal School for three years, the sentence is contrary to the provision of S. 6. *Emperor v. Kundan*.

38 Cr. L. J. 320 :
166 I. C. 831 : 9 R. S. 155 :
A. I. R. 1937 Sind 2.

BOMBAY BORSTAL SCHOOL ACT (XVIII OF 1929).

—S. 6—Sentence, nature of.

Under S. 6, the Court can pass, in lieu of any sentence of transportation or imprisonment, an order for the detention of the accused in a Borstal School. *Issa v. Emperor*.

34 Cr. L. J. 11 :
140 I. C. 417 : 26 S. L. R. 295 :
I. R. 1932 Sind 188 : A. I. R. 1932 Sind 175.

—S. 6—Proper order.

The proper order under S. 6 is to convict the accused, and then, in lieu of sentence of imprisonment, sentence him to be detained for a period of not less than two years and not more than five years. *Emperor v. Lakshman Shivram*.

146 I. C. 1 : 35 Bom. L. R. 1018 :
58 Bom. 37 : 6 R. B. 134 (F. B.) :
A. I. R. 1933 Bom. 451.

—Ss. 6, 8—Previous convictions as evidence of criminal habits—Proof.

Where the evidence of criminal habits or tendencies from which it is to appear to the Court that it should take action under S. 6 is that of previous convictions, the Court should require these previous convictions to be properly proved before it can hold that there is evidence from which it can appear to the Court that the accused is of criminal habits or tendencies within the meaning of cl. (b) of S. 6. There is no difference in the standard of proof required for previous convictions, for the purpose of S. 75, Penal Code, or for the purpose of S. 6, Bombay Borstal School Act. Where the only evidence of previous convictions is merely the extracts from the records of Central Bureau of Finger Prints and no certificate from Jail Officer or warrant of commitment is produced to prove it, the Court cannot take account of the previous convictions and cannot, consequently, take action under S. 6. *Emperor v. Abdullah Karim*.

41 Cr. L. J. 143 :
185 I. C. 268 : 1940 Kar. 83 : 12 R. S. 161 :
A. I. R. 1939 Sind 335.

—Ss. 6, 11—Reference to High Court—Condition precedent.

Before a reference to the High Court is competent under S. 6, a reference should be first made to the Inspector-General, and only when he is of the opinion that he cannot, by reason of the particular circumstances of the case or the provisions of S. 11, transfer a young offender to the Borstal School by his own order or with the previous sanction of Government, should any reference in such matters be made to the High Court. *Emperor v. Abdullah Karim*.

41 Cr. L. J. 143 :
185 I. C. 268 : 1940 Kar. 83 : 12 R. S. 161 :
A. I. R. 1939 Sind 335.

—S. 21—Order regarding age or detention—Appeal—Revision—Interference.

An order in respect of age of the offender or an order for his detention in Borstal School cannot be altered or reversed in appeal or revision. *Issa v. Emperor*.

34 Cr. L. J. 11 :
140 I. C. 417 : 26 S. L. R. 295 :
I. R. 1932 Sind 188 :
A. I. R. 1932 Sind 175.

BOMBAY CHILDREN ACT (XIII of 1924), S. 7.

—Proceedings under—Putative father's right to start.

Under S. 7 the only persons who can move the Court are a Police Officer or other person authorised in this behalf in accordance with rules made by the Governor in Council. Those persons include Probation Officers and certain other persons, but not an alleged putative father. *In re Anandi Mahar*.

38 Cr. L. J. 1053 :
171 I. C. 274 : 39 Bom. L. R. 468 :
10 R. B. 187 : A. I. R. 1937 Bom. 385.

—Ss. 22, 3 (a), (c)—Accused, child and youthful offender—Imprisonment when competent.

Where the accused is a child within the provisions of S. 3 (a) and is a youthful offender within the meaning of Cl. (c), the Court can only lawfully commit the accused to prison under the provisions of S. 22 of the Act after it certifies that the boy is so unruly or of so depraved character that he is not a fit person to be sent to a certified school and that none of the other methods by which a case may be legally dealt with is suitable. *Emperor v. Kauro Mizari*.

39 Cr. L. J. 996 :
178 I. C. 126 (1) : 11 R. S. 79 :
A. I. R. 1938 Sind 224.

—Ss. 23, 32, 51 (3)—Power of High Court, to extend period of detention.

An application for revision can be made under S. 51, at any time before the expiration of the term of detention limited in the order. High Court has, therefore, jurisdiction at any time before the expiration of the term of detention limited in the order under S. 23 to extend the period of detention, provided the extended period does not exceed the limit specified in S. 32. *Emperor v. Mahomed Islam Abdul Sakur*.

40 Cr. L. J. 900 :
184 I. C. 205 : 41 Bom. L. R. 554 :
12 R. B. 153 : A. I. R. 1939 Bom. 371.

—S. 27 (1)—Proviso, scope of.

The proviso to S. 27 (1) is applicable only to Sub-cl. (1) which enables the Magistrate to deal with the case "in any other manner in which it may legally be dealt with." The sub-clause does not confer any fresh power on the Magistrate. *Linganna Elanna v. Emperor*.

36 Cr. L. J. 283 (1) :
153 I. C. 33 (1) : 35 Bom. L. R. 962 :
7 R. B. 212 (1) : A. I. R. 1934 Bom. 461.

—S. 51 (3), 7—Order under S. 7—Appeal to District Magistrate—Application of S. 51 (3) to appellate order—Revision by High Court.

S. 51 (3) is an enabling section and purports to restrict the High Court's powers of revision, only by implication. As powers of revision are conferred by statute, it would be wrong to hold that they have been limited by implication when they have not been limited by any express words. Sub-S. (3) does not, strictly speaking, apply to an order passed by a District Magistrate on appeal against the order made under S. 7 of the

BOMBAY CITY MUNICIPAL ACT (III OF 1888).

Act. The High Court can revise such order in revision. *In re : Anandi Mahar.*

38 Cr. L. J. 1053 :
171 I. C. 274 : 39 Bom. L. R. 468 :
10 R. B. 187 : A. I. R. 1937 Bom. 388.

BOMBAY CITY MUNICIPAL ACT (III OF 1888), Ss. 3, 305.

—“*Sewer*,” “*public and private streets*” meaning of—*Pipe laid for carrying of mere liquid filth—Responsibility of Corporation.*

The word “*sewer*,” in S. 3 means a drain or passage to convey off water and filth underground and refers to the carrying of other water besides liquid filth. A street cannot be said to be *sewered* by the Corporation merely because there runs under it a pipe laid by the Corporation, which, though carrying off sullage water from certain houses, has no direct connection with the surface of the street. Such a street is a private and not a public street and a notice under S. 305 can validly issue in respect thereof. The Corporation cannot be said to have undertaken the responsibility of maintaining a street as a public street, when their action has been limited to the mere provision of a pipe disconnected from the street and designed only to remove excrementitious and other filthy matter from the houses which happen to adjoin the line of the street. *Emperor v. Edulji K. Patel.* 14 Cr. L. J. 43 : 18 I. C. 267 : 14 Bom. L. R. 1169.

—S. 231—*Notice to connect drain without particulars of rain, legality of.*

A notice requiring the owner or occupier to connect his drain with the Municipal drain without giving him any particulars at all as to the character of the drain which the Commissioner thinks necessary, is not a sufficient notice under S. 231. *Eugene Miranda v. Emperor.*

39 Cr. L. J. 684 (b) :
175 I. C. 1001 : 40 Bom. L. R. 320 :
11 R. B. 1 (1) : A. I. R. 1938 Bom. 315.

—S. 231—*Notice to construct drain so as to adjoin any part or wall of premises—Legality.*

S. 231 does not authorise the Commissioner to direct that the drain shall be made so as to adjoin any particular part or wall of the premises. *Emperor v. Nadir Shah H. E. Sukhia.*

1 Cr. L. J. 768 :
6 Bom. L. R. 667 : 1 L. R. 29 Bom. 35:

—Ss. 231, 239—*Effect of negotiation after issue and receipt of first notice—Abeyance—Second notice—Limitation—Negotiation leading party to suppose that contract will not be enforced—Right of other party to enforce contract—Estoppel.*

If parties who have entered into definite and distinct terms involving certain legal results—certain penalties or legal forfeiture—afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced or will be kept in suspense or held in abeyance, the person who might have otherwise enforced

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those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties. The effect of entering upon a course of negotiation after the first notice is to keep that notice in abeyance, and the parties must be regarded as having waived the notice and treated it as non-existent and unenforceable. The second notice, if any, will be the only valid notice and as the period of limitation for prosecuting the petitioner is to be reckoned from the date of that notice. *Emperor v. Nadirshah H. E. Sukhia.*

1 Cr. L. J. 768 :
6 Bom. L. R. 667 : 1 L. R. 29 Bom. 35.

—S. 305—*Owner of property, meaning of.*
The mere owner of the land who has let it out for building purposes is not the owner of the property, within the meaning of S. 305, because the property contemplated by the section necessarily embraces buildings, whether erected or to be erected; and the legislature regards him as the owner of the premises who has the right to receive rent in respect of that property. *Emperor v. Ramchandra.* 11 Cr. L. J. 544 : 7 I. C. 935 : 12 Bom. L. R. 669.

—S. 305—*Premises, legal meaning of.*
The word “*premises*” in the section is in its legal sense, as referring to the particular kind of property which forms the subject-matter of the group of immediately preceding sections of the Act. That group, consisting of Ss. 302 to 307, has reference to streets made for the use of buildings or building sites. The dominant idea running through Ss. 302 to 304 is that of buildings, either erected or projected, that is, the kind of property dealt with in what has gone before S. 305; and, therefore, that is its “*pramissa*.” The word “*premises*” has a technical meaning in law. Its strict legal meaning is that which comes before the “*pramissa*” of the document or deed which includes that word. *Emperor v. Ramchandra.*

11 Cr. L. J. 544 :
7 I. C. 935 : 12 Bom. L. R. 669.

—Ss. 337 (2), 342, 349 (c)—*To erect a building—“Re-erection,” what is.*

The term “*re-erection*” applies to all buildings which are not included in S. 337 (2). A building with a ground-floor to which, after it has been in existence for some years, the owner wants to add one or more storeys would fall within “*re-erection*,” provided it is not of the description mentioned in the definition of erection. *Emperor v. Nanabhey.*

6 Cr. L. J. 236 :
9 Bom. L. R. 932.

—S. 349-B—*House destroyed by fire—Owner pulling down remaining wall—Re-construction—Permissible height—Abutting on street, what is.*

Where the owner of a house, destroyed by fire, pulls down its remaining walls to six feet above the plinth, and the house abuts on a street, the height to which he can raise his new building is governed by the provisions of S. 349-B. Where in reconstructing a house, the owner set it back five inches from the street on which it originally abutted: *Held*, that the house should

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be taken as abutting on the street notwithstanding the set-back. *In re : Ali Mahomed.*

6 Cr. L. J. 80 :
9 Bom. L. R. 737.

———S. 377—Nuisance—Filthy premises—Requisition to remove nuisance—Condition precedent—Municipal Commissioner's opinion and not Magistrate's opinion material—Non-compliance with notice, offence.

S. 377 enacts that only condition precedent to the valid issue of a requisition is that it shall appear, not to the Magistrate, but the Commissioner, that the premises are in the condition specified in the section. Where the premises appear to the Commissioner to be in the condition specified, the notice is validly issued under S. 377. Non-compliance with such a notice constitutes a complete offence. The Magistrate cannot acquit the accused on the sole ground that the premises did not appear to the Magistrate in such a condition, as to justify the issue of notice under the section. *Emperor v. Shivlal.*

11 Cr. L. J. 270 :
6 I. C. 860 : 12 Bom. L. R. 126.

———S. 379-A—Building let to various tenants—Overcrowding—Notice to abate overcrowding to whom to be addressed.

When the owner of a building has let his rooms separately to individual tenants and these cause overcrowding, the notice to abate the overcrowding, under S. 379-A (1), must be given to the owner and not to the tenants. *Municipal Commissioners v. Mathuradas.*

12 Cr. L. J. 459 :
I. C. 995 : 13 Bom. L. R. 640 : 36 Bom. 81.

———S. 390—Factory—Municipal Commissioner's permission to establish handloom—Establishing flour mill in addition worked by same engine—Offences.

The accused obtained the Municipal Commissioner's permission to establish a handloom factory worked by an oil engine but by means of this oil engine he also established a flour mill without any permission : *Held*, that the accused was guilty of a technical offence under S. 390. Although the accused had power to establish the handloom factory, he had no leave to establish the flour mill factory, which was nonetheless another and a separate factory because it happened to be worked by the same power as was proposed to be employed in the permitted factory. *Emperor v. Mulji Damodardas.*

11 Cr. L. J. 269 :
5 I. C. 859 : 12 Bom. L. R. 122.

———S. 394—Place let to tenants—Tenants keeping bullocks for hire—Absence of licence—Liability of joint owner.

A was the joint owner of a place, part of which was let out to several tenants. The tenants kept bullocks on the place, some in huts and some in the open. The bullocks were plied for hire but the place was not licensed by the Municipal Commissioner under S. 394. A knew that the bullocks were kept on the land and allowed it : *Held*, that A was guilty of an offence under S. 394, whether the bullocks were kept upon leased land or on waste land not leased out. *Imperator v. Tyebali Curimji.*

13 Cr. L. J. 735 :
17 I. C. 529 : 14 Bom. L. R. 885.

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———S. 394—Keeping bullocks for hire by tenant with owner's knowledge—Liability of owner.

A let out certain premises to B for several years. To the knowledge of A, the premises were used by B, or his sub-tenants for the purpose of stabling bullocks used for hire in contravention of S. 394. In the lease given by A to B, there was a clause restraining B. from putting the land to any use not sanctioned by Municipal Regulations : *Held*, that A. was guilty under S. 394. *Emperor v. Dadabhai.*

13 Cr. L. J. 788 :
14 Bom. L. R. 882 : 17 I. C. 532.

———S. 394—Storing of oil without licence—Meaning of "Keeping for use not storing."

Where oil is kept on the premises not for the purpose of storing it but merely to meet the varying exigencies of consumption, it cannot reasonably be said that the premises are used for purpose of storing. The actual use is insufficient in the absence of proof as to the object aimed at. The purpose to store must be the dominant motive. The question is one of degree and intention to be decided on the facts of each particular case. *Emperor v. Wallace Flour Mills Co.*

1 Cr. L. J. 835 :
6 Bom. L. R. 735 : I. L. R. 29 Bom. 193.

———Sch. M., Part. III—"Timber," whether includes ply-wood.

The word "timber" in Part III, Sch. M. of the Act, does not include ply-wood. The timber in ply-wood has reached a stage in its development at which it has acquired a distinctive name of its own, so that it can no longer be properly described as timber. *Ahmedalli Esufalli v. Emperor.*

39 Cr. L. J. 575 :
175 I. C. 358 : 40 Bom. L. R. 322 :
10 R. B. 537 : A. I. R. 1938 Bom. 282.

———Ss. 118 (4), 123 (7)—Failure to demolish building constructed without sanction, 'continuing offence'—Limitation—Starting point.

Allowing a building which has been constructed in contravention of provision of the Act, to remain undemolished, is not a 'continuing contravention' of the provisions of the Act within the meaning of S. 123 (7) or S. 118 (4). The period of six months within which prosecution should be brought for contravention of any provisions of the Act applies to all contraventions continuing as well as not continuing, and in the case of a continuing offence, the period has to be computed from the commencement of the offence when it came to the notice of the Municipality and does not begin to run from day to day so long as the offence continues. *Becharadas Narotamdas v. Emperor.*

31 Cr. L. J. 1159 :
127 I. C. 181 : 32 Bom. L. R. 768 :
A. I. R. 1930 Bom. 340.

———S. 123—Construction of wall on old foundation—Notice to Municipality, failure to give—offence.

Construction of walls on old foundations amounts to re-construction of a building within the meaning of S. 123 and failure to give notice to the Municipality under S. 123 (1), before such construction, is punishable under

BOMBAY CITY POLICE ACT (IV OF 1902).

Sub-S. (7) of the said section. *Emperor v. Chhotatal Mansukhran*. 29 Cr. L. J. 1060 : 112 I. C. 564 : 30 Bom. L. R. 1082 : A. I. R. 1928 Bom. 389.

BOMBAY CITY MUNICIPALITIES ACT (1 OF 1925).

—S. 137—Notice under S. 137 signed by Chief Officer, validity of.

A notice under S. 137 which is issued in pursuance of a resolution of the Standing Committee is not invalid merely because it is not signed by the Chairman of the Standing Committee but by the Chief Officer of the Municipality. *Emperor v. Heptulla Alibhai*.

31 Cr. L. J. 1177 : 127 I. C. 193 : 32 Bom. L. R. 757 : A. I. R. 1930 Bom. 352.

BOMBAY CITY POLICE ACT (IV OF 1902), S. 12.

—Commissioner of Police—Orders that may be issued under head of discipline and general government.

The order which the Bombay Commissioner of Police can issue under S. 12 under the head of discipline and general government, must be one which has reference to the conduct of the Police Officers in their capacity as such officers. Over their conduct in other relations of life, his disciplinary power does not extend, so long as no element or question of their police duty enters into those relations. If it does enter, the controlling authority of the Commissioner comes into play and it becomes a matter of police discipline. *Emperor v. Atmaram*.

6 Cr. L. J. 47 : 9 Bom. L. R. 681 : I. L. R. 31 Bom. 480.

—S. 16—Scope of—Police officer not actually at his post whether to be deemed at that post.

The meaning of S. 16 of the Act is that even when a Police Officer is not actually at his post discharging the duty assigned to him, he is for the purposes of the Act to be regarded as being at that post, with all the rights and obligations of his office attaching to him. *Emperor v. Atmaram*.

6 Cr. L. J. 47 : 9 Bom. L. R. 681 : I. L. R. 31 Bom. 480.

—S. 22 (b), (c)—Rules under—Keeping car standing in street—Offence.

Where the accused did not drive the car in any part of the public street and obstruct the traffic by such driving, but kept the car standing near the kerb and thereby obstructed the traffic, the case falls under the specific words of S. 22, cl. (c), and the rules framed thereunder rather than under any rule under S. 22 (b) of the Act. *Bhana Makan v. Emperor*.

37 Cr. L. J. 883 : 163 I. C. 847 : 38 Bom. L. R. 432 : 9 R. B. 50 : A. I. R. 1936 Bom. 256.

—Ss. 27, 123—Foundation of order under—Powers of Commissioner—Breach of order—Penalty—Validity of order, if can be impeached by Court.

BOMBAY CITY POLICE ACT (IV OF 1902).

The foundation for any order under S. 27 is the movement or encampment of any gang or body of persons. The Commissioner of Police has no power under the section to deport anyone whom he regards as a dangerous or undesirable character apart from his action as a member of a gang or body of persons moving or encamping in the city. Therefore, although an order made under S. 27 is an order made by an executive officer, and is not subject to appeal or revision in any Court yet, when an attempt is made to impose a penalty for breach of an order made under the section, the validity of the order can be impeached by the Court. *Yarmahomed Ahmedkhan v. Emperor*.

39 Cr. L. J. 792 (F. B.) : 176 I. C. 839 : 40 Bom. L. R. 483 1938 Bom. 403 : 11 R. B. 53 (F. B.) : A. I. R. 1938 Bom. 338.

—S. 28—Notice—Persons who may be served.

Under S. 28 the Commissioner of Police can only serve the notice upon any person who comes within the ambit of the section, and not upon any person whom he merely suspects to be guilty of the conduct therein referred to. The misconduct or immoral conduct must be a matter of fact and not a mere matter of suspicion. *In re : Tarabai Ibrahimpurkar*.

2 Cr. L. J. 95 : 7 Bom. L. R. 161.

—Ss. 28, 129—Conviction under S. 29, requirements.

A Magistrate is not justified in convicting a person under S. 129 unless and until he is satisfied that the notice under S. 28 is duly served, and also that the woman really has conducted herself in the manner imputed to her under S. 28. *In re : Tarabai Ibrahimpurkar*.

7 Bom. L. R. 161.

—Ss. 28, 129—Police Commissioner—Notice to vacate—Specific Relief Act, S. 45—Enforcement of public duties—Public servant—High Court.

The Commissioner of Police at Bombay, acting under S. 28 of the Act issued a notice upon the accused requiring them to vacate the premises occupied by them, and intimating that failure to comply with the notice would render them liable to punishment. The accused applied to the High Court under S. 45 of the Specific Relief Act, for a rule against the Commissioner of Police to show cause why the notice should not be cancelled and why he should not be restrained from carrying the same into effect : *Held*, that the cancellation of the notice or the non-enforcing of it is an act clearly incumbent by law upon the Commissioner of Police, so as to bring it within S. 45 (b) of the Specific Relief Act. *In re : Tarabai Ibrahimpurkar*.

2 Cr. L. J. 95 : 7 Bom. L. R. 161.

—S. 40 (1)—Magistrate ordering unlawful assembly to disperse in presence of police officers—Legality.

It is not a compliance with the provisions of S. 40 (1) for a Magistrate to give the command

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under the directions of a competent Police Officer who is himself present. *Emperor v. Keshav Govind*.

22 Cr. L. J. 320 :
60 I. C. 1008 ; 23 Bom. L. R. 350 :
A. I. R. 1921 Bom. 322.

—S. 45—*Powers of Chief Presidency Magistrate, nature of—Dismissal of claim for compensation—Revision, competency of.*

The special power conferred under S. 45 of the City of Bombay Police Act on the Chief Presidency Magistrate of Bombay is not as a criminal Court, but as a *persona designata*, and no application for revision, therefore, lies to the High Court from an order of the Chief Presidency Magistrate dismissing a claim for compensation under the said section for absence and refusing to take the matter on his file. *In re : Usman Haji Mahomed*.

32 Cr. L. J. 397 :
129 I. C. 590 : 32 Bom. L. R. 1138 :
54 Bom. 664 : I. R. 1931 Bom. 190 :
A. I. R. 1930 Bom. 486.

—S. 120—"Or otherwise" meaning of—*Soliciting for purpose of prostitution, what is.*

The words "or otherwise" in S. 120, Cl. (a), must be construed as having a limited signification following as they do words of a limited description. They mean "in a manner similar to that of words of gestures." Therefore, merely sitting at the window without any act done of the nature indicated in the section, is not an offence. *Emperor v. Nashmirbai*.

7 Cr. L. J. 118 :
10 Bom. L. R. 92.

—S. 128—*Duty of Magistrate.*

In all charges before a Magistrate under S. 128, the Magistrate must be satisfied, first that the accused was informed by the Commissioner of the charge against him with sufficient particularity to enable him to answer the charge, and that he was given an opportunity of so answering; and secondly, that there was material before the Commissioner of Police on which he could properly hold that the conditions of S. 27 had come into operation. *Yarmahomed Ahmedkhan v. Emperor*.

39 Cr. L. J. 792 (F. B.) :
176 I. C. 839 : 40 Bom. L. R. 483 :
I. L. R. 1938 Bom. 403 : 11 R. B. 53 (F. B.) :
A. I. R. 1938 Bom. 338.

—S. 128—*Onus probandi.*

The burden is upon the prosecution to satisfy the Court that the order alleged to have been disobeyed was a valid one. *Yarmahomed Ahmedkhan v. Emperor*.

39 Cr. L. J. 792 (F. B.) :
176 I. C. 839 : 40 Bom. L. R. 483 :
I. L. R. 1938 Bom. 403 : 11 R. B. 53 (F. B.) :
A. I. R. 1938 Bom. 338.

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—S. 16—*Scope.*

Proceeding for dissolution of a marriage cannot be referred by District Judge to an Assistant Judge. *Clara Stella Eckey v. Raymond Eckey*.

148 I. C. 813 : 6 R. S. 206 (S. B.) :
A. I. R. 1934 Sind 17.

BOMBAY CIVIL MEDICAL CODE.

—R. 7—"Brought," meaning of.

The word 'brought' should not be unduly stressed and it does not really mean anything other than "is admitted." *S. D. Marathe v. Pandurang Narayan Joshi*.

39. Cr. L. J. 903 :
177 I. C. 589 : 40 Bom. L. R. 825 :
I. L. R. 1938 Bom. 770 : 11 R. B. 98 :
A. I. R. 1938 Bom. 419.

BOMBAY CO-OPERATIVE SOCIETIES ACT (III OF 1935), S. 60.

—S. 60—*Scope of.*

Section 60 refers only to offences under the Act and not to those under the Penal Code. *Shridhar Mahadco Pathak v. Emperor*.

36 Cr. L. J. 532 :
154 I. C. 600 : 7 R. B. 352 :
A. I. R. 1935 Bom. 36.

BOMBAY COURT OF WARDS ACT, (1 OF 1905).

—Ss. 44-A, 15, 16—*Power to call for documents, exercise of—Court of Wards party to civil suit—Effect on the power of Court of Wards.*

The Court of Wards is not rendered powerless and unable to act in protection of the ward's estate simply because a claimant to that estate chooses to file a suit in the Civil Court, nor is the Court of Wards empowered to call for documents only when on enquiry under S. 15 or S. 16 is pending. Under Section 44-A the power of the Court of Wards to call for the production of documents is not confined to the purposes of S. 15 or S. 16 of the Act. *Takhtaram Tulsidas Ambwani v. Emperor*.

40 Cr. L. J. 75 :
178 I. C. 381 : 11 R. S. 90 : 1939 Kar. 238 :
A. I. R. 1938 Sind 217.

BOMBAY DISTRICT MUNICIPAL ACT (III OF 1901).

—Notified area, rules for—*Application to erect new building—Refusal of permission by Committee, competency of.*

A applied to the Committee of a Notified Area to build on his own land. The Committee purporting to act under clause (3) of rule 7 of the rules framed under S. 88 of the Act, refused permission. A, however, erected the building, and was convicted under clause (5) of the above rule : *Held*, that the conviction was not justified, as all that a Committee could do under rule 27 (8) was to pass a provisional order directing that, for a period not exceeding one month, the intended work should not be proceeded with, and because neither such an order had been issued, nor was an order passed under sub-rule (2), A was entitled to build. *Ardeshar Jivanji v. Emperor*.

23 Cr. L. J. 267 :
66 I. C. 331 : 24 Bom. L. R. 102 :
A. I. R. 1922 Bom. 22.

BOMBAY DISTRICT MUNICIPAL ACT (III OF 1901).

—S. 3 (7)—‘Building,’ meaning of.

Although under S. 3 (7) word “building” includes any hut, shed or other enclosure, whether used as a human dwelling or not, it does not include a hut or a shed at every other place where it is used in the Act. *Mathubhai v. Emperor*. 23 Cr. L. J. 259 : 66 I. C. 323 : 24 Bom. L. R. 10 : 46 Bom. 657 : A. I. R. 1922 Bom. 97.

—S. 3 (7)—Building—Wire fence, whether building.

A wire fence being neither a ‘wall’ nor an ‘enclosure’ is not a building within the meaning of S. 3 (7). *Emperor v. Ranchodlal Amratlal*. 18 Cr. L. J. 832 : 41 I. C. 656, 19 Bom. L. R. 621 : 41 Bom. 563 : A. I. R. 1917 Bom. 233.

—S. 3 (7)—Building, whether includes foundations.

Word “building” in S. 3 (7) is not exhaustive and is quite wide enough to include the foundations which are an essential part of a permanent building. *Chhanganlal Motiram Mehtaji v. Emperor*. 28 Cr. L. J. 714 : 103 I. C. 602 : 29 Bom. L. R. 733 : 8 A. I. Cr. R. 418 : 51 Bom. 818 : A. I. R. 1927 Bom. 401.

—S. 3 (7)—“Enclosure,” interpretation of.

The word “enclosure” used in the definition of the word “building” in S. 3 (7) must be interpreted as *ejusdem generis* with the preceding words ‘hut’ and ‘shed,’ that is to say, must be taken to refer to some fabric or structure or thing built in the more popular acceptance of the word. *Emperor v. Ranchodlal Amratlal*. 18 Cr. L. J. 832 : 41 I. C. 656 : 19 Bom. L. R. 521 : 41 Bom. 563 : A. I. R. 1917 Bom. 233.

—Ss. 3 (7), 96 (5)—“Building,” what is “Compound wall” whether building.

A “compound wall” comes within the definition of “building.” *Emperor v. Ramrao Abaji Prabhu*. 22 Cr. L. J. 622 : 63 I. C. 158 : 23 Bom. L. R. 831 : 45 Bom. 1151 : A. I. R. 1931 Bom. 62.

—Ss. 3 (8), 107, 131, 154 (2), 155—Notices served on agent—Non-compliance with notice—Prosecution of agent, legality of.

Where notices are issued to a person under Ss. 107 and 131 by name and are served upon another person, the latter cannot be prosecuted or convicted for an offence under S. 155 merely because he falls within the definition of an owner as laid down in Cl. (8) of S. 3 of the Act or because he accepted service of the notices as agent of the person to whom the notices were addressed. *Hassomal M. Gurbuxani v. Emperor*. 26 Cr. L. J. 1099 : 88 I. C. 187 : 18 S. L. R. 90 : A. I. R. 1925 Sind 262.

—S. 3 (12)—Street, definition of—Open space between buildings, whether street.

While the owner of a large area of building land is erecting buildings thereon, the open spaces between the buildings cannot be considered as streets within the meaning of S. 3 (12)

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until the buildings are finished, as the owner has a right to prevent all other persons from using his private land. *Tyaballi v. Emperor*. 25 Cr. L. J. 1188 : 82 I. C. 52 : 26 Bom. L. R. 216 : A. I. R. 1924 Bom. 365.

—S. 3 (12)—“Street,” definition of—Vacant space surrounded by houses, whether “street” —“all other persons,” meaning of.

The words “all other persons” occurring in the definition of a street in the second paragraph of Cl. (12) of S. 3 mean persons other than the occupier of such building and does not mean all the occupiers of all the buildings within that space. A vacant space which is used by the occupiers of houses surrounding it as a means of access to and from public spaces and thoroughfares is a “street” within the meaning of the definition contained in S. 3 (12). *Dayabhai Lalubhai v. Ahmedabad Municipality*. 25 Cr. L. J. 990 : 81 I. C. 638 : 25 Bom. L. R. 1213 : A. I. R. 1924 Bom. 116.

—S. 16 as amended—Removal of M. Commissioner.

Even after amendment, Municipal Councillors are removable by Commissioner without sanction of Governor-in-Council. *Suganchand v. Naraindas*. 34 Cr. L. J. 171 : 141 I. C. 530 : I. R. (1933) Sind 60 : A. I. R. 1932 Sind 177.

—S. 16.

Delegation of powers merely provides for previous exercise of powers of Governor-in-Council by the Commissioner. *Suganchand v. Naraindas*. 34 Cr. L. J. 171 : 141 I. C. 530 : I. R. (1933) Sind 60 : A. I. R. 1932 Sind 177.

—S. 16—Commissioner, meaning of.

The word “Commissioner” in S. 16 means Commissioner-in-Sind and cannot be read as meaning Commissioners other than Commissioner-in-Sind. *Suganchand v. Seth Naraindas*. 34 Cr. L. J. 171 : 141 I. C. 530 : I. R. (1933) Sind 60 : A. I. R. 1932 Sind 177.

—S. 46—Rules by Surat Municipality, rule 44, if ultra vires.

Rule 44 of the Rules framed by Surat Municipality under S. 46 of the Bombay District Municipal Act is not *ultra vires*. *Emperor v. Heptulla Alibhai*. 31 Cr. L. J. 1177 : 127 I. C. 193 : 32 Bom. L. R. 757 : A. I. R. 1930 Bom. 352.

—Ss. 46, 48—Rules and bye-laws—Distinction between—Municipality’s power to enact bye-laws to penalise evading of tolls.

Rules and bye-laws differ from each other in two salient matters : (1) rules have effect when they are approved, whereas bye-laws require to be previously sanctioned ; when bye-laws are proposed, their drafts have to be published and objections and suggestions received and considered ; bye-laws can be made only after this procedure has been followed ; (2) there is no provision in respect of rules similar to the one in a case of bye-law permitting Municipi-

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pality to prescribe fine for infringement of bye-law. A Municipality cannot enact a bye-law under S. 48 imposing a penalty upon persons entering the limits of the Municipality with the intention of evading toll upon their conveyances as it imposes a penalty for the infringement of a rule. Matters relating to payment of tolls ought to be dealt with by rules under S. 46 and not bye-laws under S. 48. *Vishnushankar Vasantram v. Emperor*.

38 Cr. L. J. 538 :
168 I. C. 219 : 39 Bom. L. R. 89 :
I. L. R. 1937 Bom. 304 : 9 R. B. 365 :
A. I. R. 1937 Bom. 150.

—Ss. 48, 151—Bye-laws requiring licence for manufacturing oil by machinery not ultra vires—Discretion of Municipality—Interference by Court.

The bye-law framed by the Karachi Municipality under S. 48 (b), Sub-Cl. (3), requiring a licence for manufacturing oil by machinery is not *ultra vires*, inasmuch as Cl. (a) of S. 151, refers also to a manufactory or place of business which may involve risk of fire. The Legislature having vested a discretion in the Municipality to decide whether any manufactory involves a risk of fire, the exercise by a Municipality of such discretion cannot be interfered with by the Court unless the Court is satisfied that such discretionary powers have been manifestly abused. *Hussain Haji Umer v. Emperor*.

30 Cr. L. J. 442 :
115 I. C. 307 : I. R. 1929 Sind 67 :
23 S. L. R. 125 : A. I. R. 1929 Sind 50.

—Ss. 48 (1) (j), 77 (2)—Octroi—Goods in transit through Municipality, liability to pay octroi duty—Non-payment if offence—Master's liability for acts of servants—'Defraud,' meaning of.

Bye-law No. 1 of the bye-laws framed by the Kalyan Municipality under S. 48, Sub-S. (1) (j) of the Act, covers also goods in transit. Such goods are, therefore, liable to the payment of octroi duty within the meaning of S. 77 (2) of the Act though the duty is paid in such cases merely as a deposit to be refunded afterwards. Where an accused knows that his servants pass with his goods through the limits of a Municipality without giving the Municipal Officers a chance of inspecting the contents and systematically shutting his eyes to their conduct, it is open to the Courts to infer his connivance and consent to the conduct of his servants. The word 'defraud' is used in S. 77 (2) in its popular sense, and not in its ordinary legal sense. *Emperor v. Harjivan Valji*.

21 Cr. L. J. 1335 :
98 I. C. 407 : 28 Bom. L. R. 115 : 50 Bom. 174.

—Ss. 59—Octroi, definition of.

An octroi is a tax levied upon articles which are brought into the gates of a city, whether such articles are brought into the city for consumption or use therein or not. *Sajan v. Emperor*.

37 Cr. L. J. 148 :
159 I. C. 665 : 29 S. L. R. 54 : 8 R. S. 91 :
A. I. R. 1935 Sind 245.

—S. 68—Bombay Notified Areas Rules, r. 18—House-tax—Occupier who is not tenant, liability of.

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Under the proviso to r. 18 of Notified Areas Rules corresponding to S. 68 of the Bombay District Municipal Act, tax is not leviable from an occupier who is not a tenant of the premises in question. *In re : Nur Mahomed Karam Elahi*.

30 Cr. L. J. 992 :
119 I. C. 191 : 31 Bom. L. R. 541 :
I. R. 1929 Bom. 511 :
A. I. R. 1929 Bom. 273.

—S. 36—Octroi officer's power to inspect goods, extent of.

There is nothing in S. 76 to suggest that the octroi officer should ask for inspection only at the place where the goods enter the limits of the Municipality and not inside such limits or at the place of exit from such limits. *Sajan v. Emperor*.

37 Cr. L. J. 148 :
159 I. C. 665 : 29 S. L. R. 54 : 8 R. S. 91 :
A. I. R. 1935 Sind 245.

—S. 86—Appeal—Magistrate, nature of his jurisdiction—High Court's power of revision—Cr. P. C. (Act V of 1898), S. 435.

Under S. 86 a Magistrate hearing an appeal of the kind mentioned in the section is merely an appellate authority having jurisdiction given by the Act to deal with the question of a civil liability. He is, therefore, not an inferior Criminal Court, to which alone the revisional jurisdiction of the High Court applies under S. 435 of the Criminal Procedure Code. *In re : Dalsukhram*.

6 Cr. L. J. 425 :
9 Bom. L. R. 1347.

—S. 86—Cr. P. C., S. 435—Magistrate's order on appeal—Revision, competency of.

Where a Magistrate hears an appeal under the provisions of S. 86, he is merely an appellate authority having jurisdiction given by the Act to deal with questions of civil liability. He is not an inferior Criminal Court and, therefore, his order cannot be revised by a High Court under S. 435 of the Criminal Procedure Code. *Karachi Municipality v. Jafferji Tayabji*.

27 Cr. L. J. 1127 :
97 I. C. 647 : A. I. R. 1927 Sind 23.

—S. 90—Scope of—Test whether power under, is validly exercised.

Section 90 is not confined to new public street alone but applies to all public streets whether old or new. The test whether the power of stopping up a public street under S. 90 (1) has been reasonably and validly exercised is whether the deprivation of the right of the public to proceed along that street is accompanied by an equivalent advantage not to private individuals but to the public. *Hyderabad Municipality v. Fakhrudin*.

25 Cr. L. J. 646 :
81 I. C. 134 : 17 S. L. R. 273 :
A. I. R. 1925 Sind 90.

—S. 90 (3)—Notice requiring repair of street—Vague and indefinite notice—Validity.

Where a notice purporting to be issued under S. 90 (3) was in the following terms : "You are hereby informed by this notice that you get the *dehla* road in your Pole levelled and make way for passage of water and put up lights for the inhabitants of the *dehla*:" Held, that the notice

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was too vague and indefinite to be complied with, and did not satisfy the requirements of law. *Dayabhai Lalubhai v. Ahmedabad Municipality*.

25 Cr. L. J. 990 :
81 I. C. 638 : 25 Bom. L. R. 1218 :
A. I. R. 1924 Rang. 116.

—S. 96—"Any building," meaning of.

The words "any building" in S. 96 cover a building in a private Mahla and permission of the Municipality is necessary to build any building within the Mahla. *Emperor v. Janufakir*.

23 Cr. L. J. 343 :
66 I. C. 999 : 15 S. L. R. 171 :
A. I. R. 1922 Sind 22.

—S. 96.—Applicant if can be required to exclude area falling within alignment of street. It is a perfectly valid demand for a Municipality to require that an applicant, for sanction to erect a building should submit a modified plan excluding, from the area proposed to be built upon certain land which falls within the alignment of a street. *Chhanganlal Motiram Mehtaji v. Emperor*.

28 Cr. L. J. 714 :
103 I. C. 602 : 29 Bom. L. R. 733
51 B. 818 : 8 A. I. Cr. R. 418 :
A. I. R. 1927 Bom. 401.

—S. 96.—'Building' meaning of—Single wall, what is.

Per Heaton, J.—In case of a complex structure, such as a house, the "building" as contemplated by S. 96 is the whole house and a single wall of the house is not by itself a building but only a part of a building. It is a question of fact in each case whether the re-construction of any particular wall or portions of a building is substantially a re-construction of the building. *Emperor v. Braz H. Desouza*.

12 Cr. L. J. 426 :
11 I. C. 610 : 13 Bom. L. R. 494 : 35 Bom. 412.

—S. 96.—Bye-law 132 of Kurla Municipality, requirements of.

Bye-law 132 of the Bye-laws of the Kurla Municipality requires that no point of a building must be at a greater height from the ground than the distance from the farther edge of the street, on which the building abuts, to the end of the vertical line drawn from that point at the top of the building. *Tyaballi v. Emperor*.

25 Cr. L. J. 1188 :
82 I. C. 52 : 26 Bom. L. R. 216 :
A. I. R. 1924 Bom. 365 :

—S. 96—Charge—Offence charged not proved—Conviction for offence not charged, legality of.

Where a person is charged with having committed a specific offence, and the Magistrate finds that that offence has not been committed, he is not competent to alter the charge, and to convict the accused of an offence of which he has had no notice. *Mathubhai v. Emperor*.

23 Cr. L. J. 259 :
66 I. C. 323 : 24 Bom. L. R. 10 :
46 Bom. 657 : A. I. R. 1922 Bom. 97.

—S. 96—Construction of building without sanction—Continuing offence—Prosecution—Limitation.

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The words "or makes", in S. 96 (3) show that it is not only the mere beginning of a building that is punishable but its continuance even to completion without the requisite permission, or in defiance of legal orders. The continuation of the erection of a building without the requisite permission is a continuing offence and a fresh period of limitation for the institution of a prosecution in respect of such a construction begins to run on each day on which the construction is continued. *Chhanganlal Motiram Mehtaji v. Emperor*.

28 Cr. L. J. 714 :
103 I. C. 602 : 29 Bom. L. R. 733 :
51 Bom. 818 : 8 A. I. Cr. R. 418 :
A. I. R. 1927 Bom. 401.

—S. 96—Re-construction or erecting of building—Building of wall.

The re-building of a whole wall would be a material re-construction or an erection of a building within the meaning of S. 96. *Emperor v. Kalekhan Sardarkhan*.

12 Cr. L. J. 1 :
8 I. C. 1050 : 12 Bom. L. R. 1050 :
35 Bom. 236.

—S. 96.—'Further orders' application of.

The words "further orders" in S. 96 (4) (b) are not confined to orders of the kind referred to in Sub-S. (2) of the section and include an order demanding further particulars. *Chhanganlal Motiram Mehtaji v. Emperor*.

28 Cr. L. J. 714 :
103 I. C. 602 : 29 Bom. L. R. 733 :
51 Bom. 818 : 8 A. I. Cr. R. 418 :
A. I. R. 1927 Bom. 401.

—S. 96—Permission to build—Time-limit to finish, legality of.

Per Heaton, J.—A Municipality has power to say that a work to which it gives permission under S. 96 shall be begun within a certain time, but it is doubtful whether it has power to say that a work must be finished within a given time. *Per Hayward, J.*—A time-limit was not contemplated by the Legislature in enacting S. 96 and, therefore, such a limit contained in a permission to build is *ultra vires*. *Godhra Municipality v. Harilal Lallubhai*.

20 Cr. L. J. 438 :
51 I. C. 262 : 21 Bom. L. R. 265 :
A. I. R. 1919 Bom. 36.

—S. 96—Permission to erect building—Condition requiring certain land to be left open—Contravention of condition—Offence.

Permission to build a house was granted under S. 96 subject to the condition that certain land within the alignment of the street was to be left open and the accused erected the building in contravention of this condition and was prosecuted under S. 96 : *Held*, that the Municipality had power to impose the condition and the accused was, therefore, guilty under Sub-S. (5) of S. 96. *Emperor v. Thakordas Motiram*.

26 Cr. L. J. 1463 :
89 I. C. 1031 : 27 Bom. L. R. 1023 :
A. I. R. 1925 Bom. 505.

—S. 96—Re-construction of old building—Notice, necessity of—Offence.

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The reference to S. 92 in S. 96, clause (1), does not govern the whole of the clause, but is limited to the clause describing projecting portions of buildings in respect of which the Municipality are empowered by that section to enforce a removal or set-back, so that notice or permission is requisite in case of all buildings whether on a public road or in a private *mahala*. *Khusaldas Moolchand v. Emperor*.

19 Cr. L. J. 330 :
44 I. C. 346 : 11 S. L. R. 90 :
A. I. R. 1918 Sind 53.

———S. 96—Offence.

Regular line of street prescribed in 1920—Amendment of Act in 1924—Govt. notifying Municipality in 1927—No line prescribed after notification—Permission to build on condition to set-back in line prescribed—Building without set-back—Owner held not guilty under S. 96. *Onkardas Kishoredas Wanji v. Emperor*.

35 Cr. L. J. 834 :
148 I. C. 1008 : 36 Bom. L. R. 217 :
6 R. B. 323 : A. I. R. 1934 Bom. 154.

———S. 96—Scope and object.

Municipality cannot deprive owners of the legitimate use of their land or to refuse permission to build at all though it has a very wide power of regulating buildings. The object of the power is to secure the safety and sanitation of buildings to be newly erected. This power, though an encroachment on private rights, is not inconsistent with the Act. *Khusaldas Moolchand v. Emperor*.

19 Cr. L. J. 330 :
44 I. C. 346 : 11 S. L. R. 90 :
A. I. R. 1918 Sind 53.

———S. 96—Side wall of house, if building—
Re-construction—Notice.

Per *Chandavarkar, J.*—A side wall of a house expressly falls within the definition of a building. Its re-construction amounts to erecting a building of which notice must be given as required by the Act. *Emperor v. Braz H. De Souza*.

12 Cr. L. J. 426 :
11 I. C. 610 : 13 Bom. L. R. 494 :
35 Bom. 412.

———Ss. 96, 3 (7)—Constructing side wall on
old foundation, whether re-construction.

The re-construction of a small wall upon its old foundation is not necessarily "the erection of a building" within S. 96 of the District Municipal Act. *Emperor v. Braz H. De Souza*.

12 Cr. L. J. 426 :
11 I. C. 610 : 13 Bom. L. R. 494 : 35 Bom. 412.

———Ss. 96, 113—Power of Municipality to
prescribe height of caves abutting on private
streets.

A Municipal Committee has no power to regulate the height of caves abutting on private streets. Nor does S. 96 empower a Municipality to prescribe the height of caves and S. 113 of the Act applies only to projections over public streets. *Emperor v. Gafur Daud Bohra*.

31 Cr. L. J. 108 :
120 I. C. 360 : 31 Bom. L. R. 578 :
A. I. R. 1929 Bom. 286.

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———Ss. 96, 155—Notice to increase air-well
—Failure to comply—Simultaneous conviction
for breach and continuance of breach, liability of—
Proper procedure.

A simultaneous conviction and a sentence of fine under S. 155 for breach of orders under S. 96 and for continuing a breach from the date of the first conviction is not permissible. There must first be a conviction for the breach, and then a subsequent conviction in a separate trial for continuing the breach from the date of the first conviction, before an order can be passed inflicting a daily fine. *Jetha Nand v. Emperor*.

30 Cr. L. J. 443 :
115 I. C. 308 : I. R. 1929 Sind 68 :
23 S. L. R. 222 : A. I. R. 1929 Sind 52.

———Ss. 96, 161—Action in accordance with
law—Motive is irrelevant.

A Court of law is not entitled to go into the question of the exact motives with which the Municipality or an Officer of the Municipality has acted, when the action taken is in accordance with law. *Chhangannal Motiram Mehtaji v. Emperor*.

28 Cr. L. J. 714 :
103 I. C. 602 : 29 Bom. L. R. 733 :
51 Bom. 818 : 8 A. I. Cr. R. 418 :
A. I. R. 1927 Bom. 401.

———S. 96 (5)—Permission to erect new build-
ing—Revocation of.

An order once issued under S. 96 for the construction of a new building is not liable to rescission or variation from time to time where the accused on obtaining permission for building a house with a gallery began constructing it and subsequently received an order that previous permission was revoked but he continued the construction in conformity with the first order, he could not be convicted under S. 96 (5). *Kareem Ranjan Khoji v. Emperor*.

18 Cr. L. J. 458 :
39 I. C. 298 : 19 Bom. L. R. 65 :
A. I. R. 1917 Bom. 48.

———Ss. 101 (1), 107 (1)—Notice issued by
Health Officer requiring repair of sinks, validity of.

A notice, purporting to be under S. 107 (1), was served on the petitioner calling upon him to put up new sinks with reference to the ground floor of his building. It further required him to arrange to have the water in the sinks discharged into the drainage cess-pool, and to repair the sinks on the first floor so as to connect them with the gully trap. The notice was issued by the Health Officer of the Municipality: *Held*, that the notice fell under S. 101 (1) and not S. 107 (1) and having been issued by the Health Officer and not by the Chief Officer of the Municipality was bad in law. *Ramchandra Gangadhar v. Emperor*.

25 Cr. L. J. 1148 :
81 I. C. 972 : A. I. R. 1924 Bom. 70 :

———Ss. 107, 131—Non-compliance in the
notices under Offence—Prosecution for.

While Ss. 107 and 131 provide for issue of notices, their non-compliance is made punishable under S. 155 of the Act. Therefore a prosecution in respect of such non-compliance must be under the latter section and not under Ss. 107 and 131. *Hassomul Gurbuxani v. Emperor*.

26 Cr. L. J. 1099 :
88 I. C. 187 : 18 S. L. R. 90 :
A. I. R. 1925 Sind 262.

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—Ss. 107 (2), 155—*Direction to remove a cess-pool—Disobedience—Offence.*

A Municipality cannot lawfully direct an owner-occupier to do a certain thing himself. It may be written notice to do the thing itself. Therefore, the disobedience of a notice, directing an owner or occupier to remove a cess-pool within a week, is not an offence under S. 155 of the Act. *Laduram v. Emperor.*

11 Cr. L. J. 60 :

4 I. C. 835 : 11 Bom. L. R. 1349.

—Ss. 113, 122—*Power of Municipality to prescribe condition for projecting shop board on public street—Bye-laws of Surat City Municipality, Ch. XIV, Bye-law 10 (3), whether ultra vires.*

A Municipality is competent to prescribe the extent to which and the conditions under which shop-boards may be allowed to project over public streets. Therefore, Bye-law 10, sub-clause (3), of Chapter XIV of the bye-laws framed by the Surat City Municipality to the effect that projection over public streets may be permitted on payment of a prescribed fee, is not *ultra vires* of the Municipality. *Nagindas Chhabildas v. Emperor.*

19 Cr. L. J. 599 :

45 I. C. 503 : 20 Bom. L. R. 388 :

42 Bom. 454 : A. I. R. 1918 Bom. 207.

—Ss. 122, 155—*Notice to remove encroachment—Non-compliance—Offence—Proper procedure.*

Although a Municipality may, as a matter of courtesy, send a notice to a person alleged to have erected an encroachment to remove it, such notice is not authorised by S. 122. Therefore if a person to whom such notice is sent, fails to comply with it, he is not guilty of an offence under S. 155. The proper step, according to law, in such a case is for the Municipality to remove the encroachment, and charge accused with the cost of removal. *Atmaram Shamji v. Emperor.*

23 Cr. L. J. 321 :

66 I. C. 817 : 24 Bom. L. R. 384 :

A. I. R. 1923 Bom. 30.

—Ss. 122 and 161—*Scope of—Right of member of public to set law in motion—Power to prosecute by Municipality—Delegation to Secretary, legality of.*

S. 161 merely empowers a Municipality to expend Municipal funds on prosecutions for Municipal offences, but neither this section nor any other, either directly or indirectly, takes away the power of the members of the public, having knowledge of the commission of offence, to set the law in motion by a complaint. And though it may be desirable that a Municipality should not delegate to its Secretary, a general power to prosecute people, a conviction based on such a prosecution is not thereby rendered illegal. *Imperator v. Hasomal.*

8 Cr. L. J. 213 :

1 S. L. R. 88.

—S. 122 (1), (3)—*Offence falling under both clauses—Conviction.*

The offence of building a landhi on a public road without permission is within the ambit of both of clauses 1 and 3 of S. 122 of the Act. But the wording of Cl. 1 being more specific than

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that of Cl. 3, the accused should be convicted under Cl. 1 and not under Cl. 3. *Imperator v. Hasomal.*

8 Cr. L. J. 213 :

1 S. L. R. 88.

—S. 125—*Proprietor's liability for acts of his contractor.*

The accused had a permit for the deposit of building materials within a certain area, but the contractor employed by him stored things outside those limits: *Held*, that the accused could not be held responsible for the criminal act of his contractor. *Crovan v. Tyebji Mulla Mahomedbhoy.*

9 Cr. L. J. 257 :

1 S. L. R. 15.

—Ss. 131, 135, 155—*Notice by Municipality—Nuisance—What prosecution must prove.*

Under S. 131 the owner is liable not when the Municipality considers vegetation to be rank or noisome, but only when the vegetation is actually so. To sustain a conviction under the section for non-compliance with a notice, the prosecution must establish affirmatively the objectionable character of the vegetation. *Emperor v. Anandrao.*

5 Cr. L. J. 252 :

9 Bom. L. R. 247.

—Ss. 131, 150—*Notice to occupier to put land in sanitary condition—Disobedience—Defence of landlords responsibility.*

Where a notice served on the occupier of a plot of land under S. 131 calling upon him to put the plot in a sanitary condition, as provided by the rules of the Municipality is disobeyed, it is not open to the occupier to plead that as between himself and the landlord, it is the latter's duty to comply with the notice. *Haji Umer v. Emperor.*

26 Cr. L. J. 952.

87 I. C. 104 : 18 S. L. R. 104 :

A. I. R. 1925 Sind 264.

—S. 142—*Power of Secretary to institute prosecution.*

The Secretary of a Municipality, unless specially authorized, is not competent to prosecute any person for selling an article which is not what it is represented to be. A conviction based on such a prosecution is illegal and without jurisdiction. *Tikam v. Kundan Mal.*

9 Cr. L. J. 449 :

3 S. L. R. 13 : 1 I. C. 941.

—S. 142—*Protection, persons entitled to.*

Section 142 protects mere bailees and not agents who are not mere bailees of goods entrusted to them but may sell or otherwise dispose of the goods. *Harchandmal Dayaldas v. Emperor.*

32 Cr. L. J. 664 :

131 I. C. 134 : 25 S. L. R. 87 :

A. I. R. 1931 Sind 39.

—S. 142—*Unwholesome food—Disposal, proper mode of.*

It is for the Magistrate to decide whether the article of food should be destroyed or should be disposed of. He cannot delegate this function to the Health Officer of the Municipality. (*Ibid.*)

—S. 142 (1)—*Meat unfit for human consumption—Sale—Offence—Procedure.*

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No offence can be committed under S. 142 (1) with reference to meat which is a perishable article. The only power which the section gives to a Municipality is the power to destroy forthwith any article which is of a perishable nature, and which in its opinion is diseased, unwholesome or unfit for food, drink and medicine. *Emperor v. Haji Aboo*.

21 Cr. L. J. 733:
58 I. C. 157; 22 Bom. L. R. 889:
A. I. R. 1921 Bom. 155.

—S. 151—*Essential ingredients of offence—Mere disobedience of notice.*

In order to attract the application of section 151 it must be proved (i) that a notice has been given to the accused under sub-section (i) and (ii) that he uses the place in question or permits it to be used in such a manner as to be a nuisance to the neighbourhood or dangerous to life, health or property. The mere fact that notice in due form was given regarding the place on a particular date cannot be conclusive evidence of the fact that there has been user of the place in such a manner as to amount to a nuisance after that date. *Lurindaram v. Karachi Municipality*.

16 Cr. L. J. 255:
28 I. C. 111; 8 S. L. R. 238:
A. I. R. 1914 Sind 103.

—S. 151 (1), cl. (n)—*Storing wood, what is.*

Keeping wood for sale is 'storing' wood within the meaning of S. 151, Sub-S. (1), cl. (n) even if the wood is brought for the purpose of the day's business and is disposed of on that very day or the next day, if the wood is kept in the place for business purposes. *Emperor v. Nanubhai Haji Ahmed*.

27 Cr. L. J. 1179:
97 I. C. 811; 28 Bom. L. R. 1070:
50 Bom. 760; A. I. R. 1926 Bom. 546.

—Ss. 151, 48—*Simultaneous prosecution for failure to obtain licence and prospective carrying of business without licence—Legality.*

A simultaneous conviction and sentence for failure to obtain a licence and for the prospective offence of continuing to use the premises without a licence thereafter in one and the same trial is illegal. The latter offence ought to be the subject of a separate prosecution and a separate inquiry. *Hussain Haji Umer v. Emperor*.

30 Cr. L. J. 442:
115 I. C. 307; I. R. 1929 Sind 67:
23 S. L. R. 125; A. I. R. 1929 Sind 50.

—S. 155—*Complaint after delay, legality of.*

A complaint filed under S. 155 after undue delay, say after six months from the date of issue of notice is bad, even though it be due on account of time taken to consider the petitions of the accused to the Municipality. *Jethanand v. Emperor*.

30 Cr. L. J. 443:
115 I. C. 308; I. R. 1929 Sind 68:
23 S. L. R. 222; A. I. R. 1929 Sind 52.

—S. 155—*Daily fine for prospective disobedience—Previous conviction, necessity of.*

Under S. 155, a Magistrate is not competent to impose a continuing daily fine without there being a previous conviction. In the absence of

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a clear statutory enactment empowering a Magistrate to do so, he cannot sentence a person to pay a fine for a prospective offence, and can impose a daily fine only for failure or disobedience which is proved to have continued for a certain period after the date of the first conviction, or after the date of such notice or requisition as may be required by the enactment. *Emperor v. Dharala Mangal Jama*.

27 Cr. L. J. 1328:
98 I. C. 400; 28 Bom. L. R. 1040:
A. I. R. 1926 Bom. 526.

—Ss. 155, 159—*Disobedience to directions contained in notice—Entry by Municipality—Obstruction—Offence.*

Section 159 does not authorise a Municipality issuing a notice under that section to give any direction to the person to whom the notice is given to do anything that they may require. The notice has to be simply an intimation to occupier of the land that the Municipality will enter for the purpose mentioned in the section at a specified hour on a specified day and the power to enter carries with it by necessary implication an obligation on the part of the occupant to give every reasonable facility to the Municipality to enter and not to obstruct. But if the occupant does anything to prevent the entrance, it cannot be said that he has disobeyed the notice, though his act may amount to wrongful restraint or wilful obstruction. *Emperor v. Purshottam Gopalshet Gandhi*.

1 Cr. L. J. 601:
6 Bom. L. R. 538.

—Ss. 155, 161—*Prosecution by private individual, legality of.*

A prosecution in respect of an act which is an offence only under the Bombay Municipal Act and not under any other Act can be instituted by the Municipality alone and not by a private individual. *In re: Motilal Amratal Shah*.

32 Cr. L. J. 280:
129 I. C. 342; 32 Bom. L. R. 1502:
55 Mad. 89; I. R. 1931 Bom. 150.
A. I. R. 1931 Bom. 141.

—S. 161 (2)—*"Such Magistrate," meaning of—Order under Section—Revision by High Court.*

The Magistrate referred to as 'such Magistrate' in the latter part of Sub-S. (2) of S. 161 is an inferior Criminal Court, and his orders are liable to revision by the High Court. *In re: Dinbai Jijibhoy Khambata*.

20 Cr. L. J. 702:
52 I. C. 670; 21 Bom. L. R. 755; 43 Bom. 864:
A. I. R. 1919 All. 175 (1).

—S. 196—*"Conversion of any building," meaning of—Charge of user whether such conversion.*

The words "conversion of any building", in Explanation to S. 196, necessarily imply some change in the building itself and do not cover a case where the building remains absolutely unchanged and the only change is the use or occupation to which the building is put. *Eduurji v. Emperor*.

16 Cr. L. J. 293:
28 I. C. 517; 17 Bom. L. R. 212:
A. I. R. 1915 Bom. 53.

BOMBAY DISTRICT POLICE ACT (IV OF 1890), S. 3 (e).

———*Street, definition of*—"Accessible to the public", meaning of.

The definition of "street" in S. 3, Cl. (e) includes a place accessible to the public. The words "accessible to the public," mean that any member of the public as such has access to the land: and "by access to" would ordinarily be understood unimpeded entrance upon the land. *Emperor v. Manilal*.

13 Cr. L. J. 513 :
15 I. C. 785 : 14 Bom. L. R. 499.

BOMBAY DISTRICT POLICE ACT (VII OF 1867).

———S. 33—*Scope of—Temporary structures—Offence—Permanent structures—Offence—Criminal Procedure Code (Act V of 1878), S. 133.*

Per *Chandavarkar, J.*—S. 33 is intended to deal with structures of a temporary character. Where a person appropriates a public thoroughfare to his own purposes by building a *pacca* wall, the appropriation must be held to have been intended to be permanent and offence can more appropriately be dealt with under S. 133, Criminal Procedure Code or under the provisions of the Indian Penal Code. Per *Aston, J.*—The building of a wall on ground forming part of a public street constitutes an offence under S. 33 of the Act. *Emperor v. Dacrao Chapaji*.

1 Cr. L. J. 328 :
6 Bom. L. R. 358.

BOMBAY DISTRICT POLICE ACT (IV OF 1890).

———S. 36 (2) (c)—*Scope and application of.*

S. 36 (2) (c), is limited to offences committed by Police Officers as such. It cannot apply to a case where the offence committed or rather alleged to have been committed, does not relate to any breach of duty by a Police Officer as such but which is an offence which may be committed by a member of the public. *Mahomed Ramzan Khan Mahomed v. Emperor*.

41 Cr. L. J. 955 :
190 I. C. 447 : 1940 Kar. 443 : 13 R. S. 113 :
A. I. R. 1940 Sind 192.

———S. 39-A—*Rule 33—"Assisting in" significance of—Licence, necessity of by person not taking actual part.*

In Rule 33 framed under S. 39-A the words 'assisting in' refer only to persons taking an actual part in the acting or performing which is prohibited and hence a person who had paid money to a party of actors in consideration of a performance to be given by them and had the privilege of selling tickets and making profit out of it, cannot be said to have taken part in the performance and cannot be convicted for not having obtained a licence. *Gondhali v. Emperor*.

17 Cr. L. J. 162 :
33 I. C. 642 : 18 Bom. L. R. 188 :
A. I. R. 1916 Bom. 260.

———S. 39-A—*Rules under—Rule 17—Order of District Magistrate under—Interference by High Court in revision.*

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When the District Magistrate passes orders under r. 17 of the Rules for licensing and controlling places of public entertainment framed under S. 39-A, he is not acting as an inferior Court within the meaning of S. 435, Cr. P. C., and High Court cannot, in revision, interfere with this or cr. *Manghammal Gianchand v. Emperor*.

41 Cr. L. J. 179 :
185 I. C. 392 : 1940 Kar. 102 : 12 R. S. 170 :
A. I. R. 1939 Sind 340.

———S. 41—*Complaint regarding use of house as brothel—F frivolous complaint—Compensation—Magistrate's power to award—Cr. P. C. (Act V of 1878), S. 4, 250.*

A complaint under S. 41 of the Bombay District Police Act, is not the complaint of an offence within the meaning of S. 4 (o) of the Cr. P. C., consequently the Magistrate hearing such a complaint has no jurisdiction to order the complainant to pay compensation under S. 250, Cr. P. C. *Imperator v. Musammal Khairi*.

14 Cr. L. J. 320 :
19 I. C. 1008 : 6 S. L. R. 254.

———S. 41—*Offence, ingredients of—Brothel, what is.*

There are two ingredients of an offence under S. 41: (1) *The character of the house, i.e., the use of the house as a common brothel or lodging house or place of resort for prostitutes or disorderly persons of any description*; (2) *The nuisance, i.e., the annoyance of the respectable inhabitants of the vicinity.* Nuisance or no nuisance is not an element in the definition of brothel. A brothel is a place resorted to by persons of both sexes for the purpose of prostitution, who are strangers to the occupancy. If a woman plies the trade of a prostitute in her own house that does not make the house a brothel. *Emperor v. Versimal Bahagiomal*.

14 Cr. L. J. 282 :
19 I. C. 714 : 6 S. L. R. 224.

———S. 41—*Order—Revision—Jurisdiction—Judicial inquiry, effect of.*

An order under S. 41 by a District Magistrate is an executive order and not one of an inferior Court with which the High Court may interfere in revision and the mere fact that there is an inquiry of a judicial nature before the passing of the order cannot suffice to give jurisdiction to the High Court. *Satan v. Emperor*.

23 Cr. L. J. 39 :
64 I. C. 663 : 15 S. L. R. 126 :
A. I. R. 1922 Sind 21.

———Ss. 42, 68 (a)—*Prohibiting powers of the Magistrate, limits of—Powers to prohibit circulation throughout District—"Neighbourhood," "Having jurisdiction in any town or village," "Prohibit in such town or village" meanings of—Personal presence of Magistrate in town or village, necessity for promulgation.*

A District Magistrate is not empowered by an order, under S. 42 promulgated only in the Taluka headquarters and containing no reference to any area, to make punishable acts done in a village twelve miles away where the District Magistrate was not present at the

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time of the proclamation of the order. Per *Batchelor, J.*—A distance of twelve miles cannot be regarded as either neighbourhood or vicinity as these words include only suburbs or immediate surroundings. The words "having jurisdiction in any town or village" and "prohibit in such town or village" in S. 42 refer equally to the Magistrate of the first class and the Magistrate of the District. S. 42 limits the prohibiting powers of the Magistrate, whether it be the Magistrate of the District or the Magistrate of the first class; in either case all that he may do is to "prohibit in such town or village", that is to say, in any town or village which is within his jurisdiction and in which, or the neighbourhood of which, he is present. Per *Chandavarkar, J.*—The preliminary conditions essential for the exercise of the jurisdiction conferred by S. 42 are these: first, the jurisdiction is conferred on the Magistrate of the District or, in his absence and subject to his own order, the Magistrate of the first class; secondly, these must have jurisdiction in the town or village where the jurisdiction is intended to operate; thirdly, they must be present in such town or village or in the neighbourhood thereof at the time the jurisdiction is set in motion. The intention of the Legislature appears to have been that such a proclamation as is contemplated by the section should be issued in such a manner as to give full publicity to its terms on the responsibility of the District Magistrate or Magistrate of the first class who must be personally in the place to satisfy himself that there is necessity for the proclamation. *Emperor v. Dattatraya Laxman Sarpoldar.* 13 Cr. L. J. 430 : 14 Bom. L. R. 158 : 14 I. C. 974.

—Ss. 42, 71—Magistrate apprehending breach of peace by music in bell—Notice prohibiting music, legality of—Music, what is—Ring of bell, whether music.

Where apprehending that playing of music in temple during certain festival would inflame religious animosity and lead to breach of the public peace, a Magistrate issues a notice under S. 42 forbidding the playing of music, the notice is *prima facie* legal and the onus of showing that it is unlawful is on the persons challenging it. But a person who rings the temple bell once at the time of making *darshan*, does not play music for ever. Thus the mere ringing of bell not being an offence under S. 71, the existence of *mens rea*, is not enough for conviction. *Emperor v. Ramkrishna Gopal Bhide.* 39 Cr. L. J. 498 : 174 I. C. 478 : 40 Bom. L. R. 59 : 10 R. B. 454 : A. I. R. 1938 Bom. 179.

—S. 43—District Magistrate, order by, under S. 43—Revision—Remedy.

An order passed by a District Magistrate under S. 43 is an executive order and not the order of an inferior Criminal Court, and is not revisable by the High Court, even though it be *ultra vires*. The aggrieved party has in such a case a remedy under Ss. 13 (2) and 50 of the Bombay District Police Act by petition to the Commissioner. *Dharmibai v. Emperor.*

19 Cr. L. J. 588 : 45 I. C. 396 : 11 S. L. R. 113 : A. I. R. 1918 Sind 49.

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—S. 43—Order of ejection—Jurisdiction of District Magistrate.

A District Magistrate cannot eject any person from property under S. 43 without first taking temporary possession himself and his order of ejection or exclusion can only operate for the period of his temporary possession. *Dharmibai v. Emperor.* 19 Cr. L. J. 588 : 45 I. C. 396 : 11 S. L. R. 113 : A. I. R. 1918 Sind 49.

—S. 44—Order under, by District Magistrate—Revision—Proper remedy.

An order made or purporting to be made by a District Magistrate under S. 44 is not a judicial order. It is an executive order made by the District Magistrate as Head of the Police of the District, and as such, it is not open to revision by the High Court and the proper remedy, for any person, considering himself aggrieved by such an order, is to appeal to the Executive Government, or, if so advised, to establish his claim in a Civil Court. *In re : Pandurang Shidrao.* 11 Cr. L. J. 705 : 8 I. C. 747 : 12 Bom. L. R. 1029.

—S. 44—Form of order—Technical errors, effect of.

An order under S. 44 must relate to certain persons or parties and to an actual or intended occurrence. Where an order complies with this provision, an error of a technical nature in the form of it will not render it invalid. *Abdul Hamid Rajabali v. Emperor.*

19 Cr. L. J. 366 : 44 I. C. 590 : 20 Bom. L. R. 114 : A. I. R. 1917 Bom. 45.

—S. 44—Procession—Regulation of, by District Magistrate.

Section 44 empowers a District Magistrate to regulate a procession, that is to decide whether a procession should or should not be carried. If he decides in the affirmative, his decision is within the terms of the section. It is also competent to him to fix the time and route of the procession as well as to direct the presence of the police. *In re : Pandurang Shidrao.*

11 Cr. L. J. 705 : 8 I. C. 747 : 12 Bom. L. R. 1029.

—S. 51—Search of person in public place—Legality.

Bona fide search by Police officer of person for stolen property in public place is legal and the person searched is not entitled to damages for notification, if the search is legal and *bona fide*. *Asandas Hashmatrai v. Khan Chand.* 148 I. C. 178 : 6 R. S. 189 : A. I. R. 1933 Sind 240.

—S. 48 (1) (a)—Rules under, published on July 19, 1931, for Ahmedabad—R. 1, if *ultra vires*—Scope of rule—Processions—Nature of limitations.

The rules under S. 48 (1) (a), must be made before the processions are contemplated. Police must make the rules with reference to possible future events. But the rules as made can only regulate the conduct of persons as members of assemblies and processions. Rule 1 deals only with the conduct of persons constituting

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processions. Such persons cannot go in procession along a street within the Municipal limits of Ahmedabad without a pass. The actual prohibition under the rule is against some action by a person who is at the time a member of an assembly or procession. Therefore, there is no objection to the rule on the ground that it deals with those who have contemplated a procession and not with those who have formed a procession. There is no prohibition against the forming of an assembly and the starting of that assembly into motion which would constitute a procession, provided that the procession does not proceed along streets. *Krishnalal Mehta v. Emperor*.

40 Cr. L. J. 889 :

184 I. C. 203 : 41 Bom. L. R. 557 :

12 R. B. 154 : A. I. R. 1939 Bom. 364.

—Ss. 51 (e), 53—*Jurisdiction of Police Officer—Police Officer aiding another officer, outside area of jurisdiction, whether on duty—Assault—Offence—Penal Code, S. 333.*

For the purposes of the Act, Police Officers of every grade are appointed to an entire District in which they have to serve and are to be deemed to be on duty in all parts of that District. Although a Police Officer may be outside the area of his jurisdiction, he is bound within the limits of the said District to aid another Police Officer when called on by him to do so or to keep order in streets, etc., as required under Ss. 51 (e) and 53. Any person assaulting a Police Officer while he is engaged in discharging the duty laid on him as a member of the Police force is guilty of an offence under S. 333, Penal Code. *Khairo v. Emperor*.

26 Cr. L. J. 1071 :

88 I. C. 15 : 18 S. L. R. 221 :

A. I. R. 1925 Sind 280.

—Ss. 51 (1) (b), (f), 80—*Civil Procedure Code, S. 80—Police Officer intentionally taking down wrong statements—Assaulting summoned person during examination—Suit for damages—‘Acting under colour of duty’—‘Acting in the discharge of duty.’*

Where an Investigating Police Officer reduces the statement of a witness to writing, his act is one under colour or in excess of a duty imposed or an authority conferred on him by S. 51 (1), cl. (b), whether he acts *bona fide* or otherwise, and even deliberately takes down the statement of such witnesses incorrectly. Where a Police Sub-Inspector in the course of an investigation into a cognisable offence summoned a person and questioned him with regard to the offence, and in the course of his examination, committed various acts of battery and assault on him and, at the instance of the Sub-Inspector, another Police Officer also assaulted him : *Held*, that the defendants were acting in the discharge of the duty imposed and authority conferred on them by S. 51 (1), cl. (b), when they summoned the person and questioned him in regard to the offence ; but that the alleged assault and battery could not be said to have been committed by them under colour or in excess of such duty or authority ; consequently, that an action for damages against the Police Officers for damages for assault and battery was maintainable without notice under either S. 80 (4)

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of the Act or S. 80 of the Civil Procedure Code. *Narayan Hari v. Yeshtcant Raoji*.

30 Cr. L. J. 278 :

114 I. C. 246 : 30 Bom. L. R. 1018 :

52 Bom. 832 : I. R. 1929 Bom. 198 :

A. I. R. 1928 Bom. 352.

—S. 53 (1) (a), (b)—*Traffic regulation and control—‘Control,’ what is—Power of Police, ordering persons not to proceed along particular route—Disobedience—Riot—Offence—Penal Code, S. 153.*

Although under ordinary circumstances a Police Officer has no power to stop a person from proceeding along a particular street, he has power to give such an order where it is necessary for the control of traffic or for keeping order in the streets. The word ‘control’ conveys the idea of hindering or checking a person in doing something. Where the directions given by the Police Officers to a procession not to proceed straight due to fear of communal trouble but to take different route are in the circumstances of the case within the powers conferred on them by cls. (a) and (b), Sub-S. (1) of S. 53, the accused would be guilty of an offence under S. 153 of the Penal Code, if they fail to comply with those directions and there is consequently a fight resulting in injuries. *Gulam Kadar v. Emperor*. 29 Cr. L. J. 489 :

109 I. C. 217 : 30 Bom. L. R. 367 :

10 A. I. Cr. R. 204 : A. I. R. 1928 Bom. 156.

—Ss. 57, 58—*Finder, rights of—Production of property on police requisition—Rights, as finder not waived—Order to vest property in Government, propriety of.*

Where the finder of property though he hands it over to the Police on being so required does not waive his rights as finder, the Magistrate ought not, under S. 58 (2) order the property to vest in Government. *In re: Ali Mia*.

13 Cr. L. J. 503 :

14 Bom. L. R. 304 : 15 I. C. 647.

—S. 61-A—*Bombay Government Notification No. 781 of 1919, effect of—Street vesting in Municipality.*

The mere fact that lands used as streets vest for the time being in a Municipality as trustees under the Municipal Act, does not prevent the lands being included within the limits of a town ‘for the purposes of Land Revenue Administration’ within the meaning of Bombay Government Notification No. 781 of 1919.

By virtue of the said Notification, S. 61-A of the Bombay District Police Act has been extended to the streets of Borsad. *Chunilal Hargovan v. Emperor*. 27 Cr. L. J. 1148 :

97 I. C. 668 : 28 Bom. L. R. 1023 :

A. I. R. 1927 Bom. 67.

—S. 61-A—*Conviction under question of ownership, if material.*

Per *Madgavkar, J.*—The question whether the ownership of any lands within the limits of the Land Revenue Administration vest in any particular person or a corporation is irrelevant for the purposes of a conviction under S. 61-A. *Chunilal Hargovan v. Emperor*.

27 Cr. L. J. 1148 :

97 I. C. 668 : 28 Bom. L. R. 1023 :

A. I. R. 1927 Bom. 67.

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—S. 61, cl. (a)—*Driving vehicle without light*—“*Lawful excuse*” unexpected detention till dark, whether lawful excuse.

Per *Fawcett, J.*—The word ‘lawful’ as used with the word ‘excuse’ in cl. (a) of S. 61 of the Bombay District Police Act, conveys the idea that the excuse is (a) reasonable and (b) not opposed to any law or principle of law. The fact that a lamp or lantern can be carried on in a vehicle so as to be lit when required, is an important factor to be taken into consideration in considering whether an excuse is reasonable. The mere excuse, therefore, that the accused was unexpectedly kept out till dark is not in the absence of exceptional circumstances, a reasonable one. Per *Shah, J.*—What is a lawful excuse is a question which has to be determined on the facts and circumstance of of each case. *Emperor v. Bhangda Fakira.*

27 Cr. L. J. 1182 :
97 I. C. 814 : 28 Bom. L. R. 1061 :
A. I. R. 1926 Bom. 530.

—S. 61, cl. (a)—*Driving vehicle without lights after sunset*—Ignorance of law, whether ‘lawful excuse’.

The fact that having regard to the local conditions, many bullock carts come within the area of a town from villages, that the villagers are ignorant people who do not know the law and often bring no lights with them and that such a state of things has been going on for a long time without inconvenience to the public is no defence to a charge for having driven a vehicle without lights as required by S. 61, cl. (a). Mere ignorance of law is not a ‘lawful excuse’ within the meaning of the section. *Emperor v. Chhitia Dhuriya.*

27 Cr. L. J. 1216 :
97 I. C. 976 : 28 Bom. L. R. 1058.

—S. 61 (b)—*Vehicle, bicycle.*

A bicycle is a vehicle within the meaning of the words as used in clause (b) of S. 61 and it is a vehicle “driven” by the man who rides it. *Emperor v. Kikabhai Ranchhodas.*

18 Cr. L. J. 690 :
40 I. C. 289 : 19 Bom. L. R. 349 :
41 Bom. 464 : A. I. R. 1917 Pat. 339.

—S. 61 (f).

No encroachment on public highway for any length of time can be legalized.

32 Cr. L. J. 1163 :
134 I. C. 363 : 33 Bom. L. R. 663 :
I. R. 1931 Bom. 475 : A. I. R. 1931 Bom. 326.

—S. 61, cl. (f)—*Offence of causing obstruction to public street*—Licence of Municipality, whether good defence.

Authorisation by a Municipality to use a portion of a public street for the purpose of exposing logs of timber for sale does not exempt a person from liability to be prosecuted under S. 61, cl. (f) for causing obstruction in a public street. *Emperor v. Vishwanath Nana Karpe.*

27 Cr. L. J. 1160 :
97 I. C. 744 : 28 Bom. L. R. 1033 :
50 Bom. 674 : A. I. R. 1926 Bom. 535.

—S. 61 (o)—*Wilfully and indecently exposing person*—Offence.

A fakir frequenting public places in a town

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in a state of nudity is guilty of an offence under S. 61 (o). *Emperor v. Maula Baba Fakir.*

19 Cr. L. J. 108 :
43 I. C. 332 : 19 Bom. L. R. 907 :
A. I. R. 1918 Cal. 94.

—S. 62—*Extension of Prevention of Cruelty to Animals Act, 1890, S. 1 (2), to certain district, effect of.*

The mere extension of the Prevention of Cruelty to Animals Act, under S. 1 (2) of the Act by the Bombay Government to a certain district does not by itself operate to repeal S. 62, Police Act, within that district. *Emperor v. Bhagwan Krishna.*

22 Cr. L. J. 696 :
63 I. C. 824 : 22 Bom. L. R. 892 :
45 Bom. 203.

—Ss. 63 (b), 80 (3)—*Vexatiously seizing property*—“*Seizure*,” meaning of—*Limitation.*

Accused, a Police Officer, seized certain property belonging to the complainant and the property continued in the custody of the Police before it was restored to the complainant. The latter filed a complaint against the accused charging him under S. 63 (b) with vexatiously and unnecessarily seizing his property. The complaint was filed within six months of the restoration of the property to the complainant but more than six months after the date of seizure of the property: *Held*, that the act complained of was the whole act of seizure by the police, which must be taken to have been a continuous act so long as the seizure by the police was maintained, and that, therefore, the prosecution was not barred under S. 80 (3). *Madhav Ganpatprasad v. Majid Khan Alifkhan.*

18 Cr. L. J. 914 :
42 I. C. 146 : 19 Bom. L. R. 677 :
41 Bom. 737 : A. I. R. 1917 Bom. 219.

—S. 80 (3)—*Scope of.*

S. 80 (3), covers a prosecution instituted by the Crown. *Emperor v. Abdulla Khan.*

33 Cr. L. J. 298 :
136 I. C. 513 : 25 S. L. R. 395 :
I. R. 1932 Sind 33 : A. I. R. 1932 Sind 28.

—S. 80 (3)—*Protection, nature of.*

The act for which protection is given by S. 80 (3) must be an act which appears to be done in the lawful discharge of a duty. *Emperor v. Abdulla Khan.*

33 Cr. L. J. 298 :
136 I. C. 513 : 25 S. L. R. 395 :
I. R. 1932 Sind 33 : A. I. R. 1932 Sind 28.

—S. 80 (3)—*Act, meaning of.*

The word ‘act’ in S. 80 (3) should be taken as including omissions also. *Emperor v. Abdulla Khan.*

33 Cr. L. J. 298 :
136 I. C. 513 : 25 S. L. R. 395 :
I. R. 1932 Sind 33 : A. I. R. 1932 Sind 28.

—S. 51—*Search by Police Officer of person in public place of stolen property*—*Legality of—Search in a legal way—Mortification due to being searched—Damages, if can be awarded—Criminal Procedure Code (Act V of 1898), Ss. 4 (1), 165—Investigation, meaning of—Recording of reasons prior to search—Propriety of—Civil Procedure Code (Act V of 1908), S. 80 (4)—Notice—Requirements, substantial compliance—Limitation Act*

BOMBAY EXCISE ACT (V OF 1878).

(IX of 1908), S. 15—'Expressly excluded,' meaning and significance of.

Where in a street and in a place of public resort, a person has apparent possession of letters which a Police Officer honestly and in good faith suspects to be stolen property, the Police Officer is empowered by S. 51, Cl. 3, Bombay District Police Act, to search for the same. Although it is very mortifying for him to be searched in the public street and also very mortifying for him that the police approached his house, and rumour got about that his house is going to be searched, he cannot be held to have suffered any damage or loss which will be recognized by the law if the Police Officer has acted legally and with *bona fides*. An investigation includes all the proceedings under the Cr. P. C. for the collection of evidence, conducted *inter alia* by a Police Officer.

Where a Police Officer decides to make a search, the reasons in writing referred to in S. 165, Cr. P. C., can be recorded at any time or in any place prior to the actual search.

S. 80 (4), Civil Procedure Code, does not specifically require that the notice should bear any particular heading or refer to any particular act. Even if it is assumed that this is intended, where all the express requirements of the law so far as the ingredients of the notices are concerned were complied with, there is a substantial compliance with the requirements of the law and that substantial compliance which consists of a compliance with all the express requirements of the law is a sufficient compliance.

Under S. 15, Limitation Act, "expressly excluded" means excluded by express words. *Ravachand Fatchchand v. Karachi Municipality* (2), followed. [*ibid.*] *Asandas Hashmatrai v. Khan Chand*.

148 I. C. 178 : 6 R. S. 189 :
A. I. R. 1933 Sind 240.

BOMBAY (DISTRICT) TOBACCO ACT (II OF 1933), S. 17.

—Licence for wholesale sale of tobacco—Sale either personally or through agents.

A grantee of a licence for the privilege of selling tobacco wholesale, within particular area, can sell tobacco wholesale personally or through agents and servants at any place within that area and can conduct his business by means of travelling agents. It is not necessary for the agent to have a license for hawking though his procedure would come within the definition of 'hawking,' since the licence for wholesale sale is wide enough to cover wholesale hawking. *Emperor v. Baburao Appa Lingayat*.

39 Cr. L. J. 88 :
172 I. C. 160 : 39 Bom. L. R. 832 :
10 R. B. 251 : I. L. R. (1937) Bom. 931 :
A. I. R. 1937 Bom. 480.

BOMBAY EXCISE ACT (V OF 1878), S. 43, Cls. (a) (f).

—Possession of illicit liquor and apparatus for manufacturing liquor, whether distinct offences.

The offence of possessing illicit liquor and the

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offence of possessing apparatus for manufacturing such liquor, are quite distinct offences for which separate sentences can be passed. *Emperor v. Pandu Arachit Bhil*.

29 Cr. L. J. 412 :
108 I. C. 512 : 30 Bom. L. R. 378 :
52 Bom. 277 : 10 A. I. Cr. R. 114 :
A. I. R. 1928 Bom. 141.

BOMBAY GAMBLING ACT (IV OF 1887).

—S. 4—Scope of.

Conviction under S. 4—Owner or keeper must in some way derive profit from use of instruments of gaming or of the house. *Ismail Varyo v. Emperor*.

36 Cr. L. J. 204 :
152 I. C. 400 : 28 S. L. R. 81 : 7 R. S. 95 :
A. I. R. 1934 Sind 129.

—Ss. 4, 5, 7—Common gaming house—Place 'kept' or 'used,' as.

In order to establish an offence of "keeping" a common gaming house, it is necessary to show that the person charged with that offence is the owner, or occupier or a person "having the use" of the place alleged to be kept as a common gaming house. It is not sufficient to show merely that he used it for the purpose of gaming there. *Emperor v. Walia Musaji*.

2 Cr. L. J. 26 :
7 Bom. L. R. 16 : I. L. R. 29 Bom. 262.

—Ss. "4, 5," 7—Common gaming house—Place "kept" or "used" as—Presumption—Proof.

A building was ordinarily used as a *Jamat-khana*. It was accessible to all such members of a certain community as had no place to live in and were too poor to afford the rent of a room elsewhere. It was frequented by gamblers and others and instruments of gaming were found there at the time of search : *Held*, that it could be presumed, unless the contrary was shown, that this place was "used" as a common gaming house. But there was no presumption that it was "kept" by any person as a common gaming house. *Emperor v. Jasubally*.

2 Cr. L. J. 252 :
7 Bom. L. R. 333 : I. L. R. 1929 Bom. 386.

—S. 6—Complaint under—Nature of—Right of accused to call for it at trial—Evidence Act, S. 125.

Per *Pratt, J. C.* (*Faccett, A. J. C.* dissenting)—A complaint under S. 6 stands on the same footing as a first information of a cognizable offence recorded under S. 154, Cr. P. C., or complaint of a non-cognizable offence under S. 200, Cr. P. C., and although it is not a necessary part of the evidence for the prosecution, yet it is evidence and the accused have a right to call for it, and if the warrants are challenged, their production would be necessary. S. 125 rests upon public policy and it protects the name of a spy or secret informant, not the nature of the information and it has no application whatever to an informant who lays a sworn information and thereby initiates criminal proceedings. Per *Faccett, A. J. C.*—The Bombay Act requires the complaint to be on oath merely as an additional guarantee of the truth of the complaint. It is not intended to imply that the complaint is a

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document on which proceedings against any persons that may be arrested under the warrant are based. These proceedings are based on the fact of the arrest of the accused and their production before the Magistrate and not on the complaint which is merely the basis of the warrant which leads to their arrest. The rule stated in S. 125, Evidence Act, is clearly applicable and appropriate in regard to gambling cases and, therefore, a Magistrate is perfectly right in refusing to order the production of the complaint under S. 6 of the Bombay Act (IV of 1887). *Liladhar Umerse v. Emperor*.

16 Cr. L. J. 447 :
29 I. C. 79 : 8 S. L. R. 309 :
A. I. R. 1914 Sind 45.

—Ss. 6, 7—Validity of warrant disputed—Proof.

Before any presumptions of guilt can be drawn against the accused under S. 7, it is incumbent on the trying Magistrate to be satisfied that the warrant issued by the Police Officer under S. 6 was a valid one. Where the Magistrate had merely referred to an uncertified copy of the statement made by the informer without calling for further proof : *Held*, that he had no sufficient materials to hold that the warrant was a valid one. *Crown v. Seju*.

9 Cr. L. J. 267 :
1 S. L. R. 27.

—Ss. 6, 7, 10—Power of Magistrate to examine as witness persons challaned by Police as accused persons under Gambling Act—Special procedure.

A Magistrate has power to examine as witnesses persons arrested and brought before him under S. 6 (b). The whole procedure of the Gambling Act being a special procedure overrides the general law of procedure enacted in section 342, Criminal Procedure Code, and whenever it is inconsistent with it. *Liladhar Umerse v. Emperor*.

16 Cr. L. J. 447 :
29 I. C. 79 : 8 S. L. R. 309 :
A. I. R. 1914 Sind 45.

—S. 7.

Hindu gambling on *satam* day—Local custom—Non-admission of non-Hindus—Presumption under S. 7 held rebutted. *Babulal v. Emperor*.

34 Cr. L. J. 356 :
142 I. C. 522 (1) : 27 S. L. R. 32 :
I. R. (1933) Sind 102 (2) :
A. I. R. 1933 Sind 42.

—S. 7.

Warrant issued to Head Constable as "Officiating Sub-Inspector," is defective. No presumption under S. 7 arises. *Ismail Varyo v. Emperor*.

36 Cr. L. J. 204 :
152 I. C. 400 : 28 S. L. R. 81 :
3 R. S. 95 : A. I. R. 1934 Sind 129.

—Ss. 12, 4—Machwa—Gambling in a machwa hired by accused in the harbour.

Gambling in a *machwa* (boat) which is chartered by the accused and used by them for the purpose, in the Bombay harbour, cannot be said to be gambling in a public place, street, or thoroughfare, within the meaning of S. 12 of the Bombay Gambling Act. *Emperor v. Jusubally*.

2 Cr. L. J. 252 :
7 Bom. L. R. 333 : I. L. R. 29 Bom. 386.

BOMBAY HIGH COURT RULES.**—S. 6—Enquiry by the Magistrate—Money found on the person of accused, confiscation of.**

S. 6 does not make it obligatory on the Magistrate to make any enquiry before issuing a warrant. The section does not require that the informant should have personal knowledge about the gambling. It is sufficient if he testifies to a reasonable suspicion that a house, room or place is used as a common gaming house. Where the accused are convicted, the Magistrate cannot order the money found on their person to be confiscated. *Imperator v. Hiro*.

8 Cr. L. J. 182 :
1 S. L. R. 64.

—Ss. 6 and 7—Warrant—Further enquiry by Magistrate—Practice—Warrant and complaint—Production of.

The presumptions under S. 7 will not arise unless it is shown that the warrant is issued under the provisions of S. 6, and therefore in every case it is necessary that the Magistrate should exhibit and bring on the record the complaint on oath and the warrant. Where a complaint has been made to a Magistrate, S. 6 does not make it obligatory on him to make any further enquiry before issuing a "warrant if he thinks it unnecessary to do so." *Imperator v. Paman*

8 Cr. L. J. 185 :
1 S. L. R. 67.

BOMBAY HIGH COURT RULES (APPELLATE SIDE).**—R. 10.**

R. 10 of the Appellate Side Rules, Bombay High Court, made under the Letters Patent, is not *ultra vires*. *In re : Philip N. Godinho*.

148 I. C. 664 : 36 Bom. L. R. 1 :
58 Bom. 456 : 6 R. B. 312 (F. B.) :
A. I. R. 1934 Bom. 70.

—R. 865—'Given in charge to the Jury' meaning and significance of.

The expression "given in charge to the Jury" is used in r. 865 of the Bombay High Court Rules in a technical sense. Even if the prisoners were given in charge to a common jury, r. 865 will not operate as a bar to the trial of the prisoners by a special jury upon the altered charge. The question whether the prisoners have been given in charge to a jury must be determined by reference to the form of the oath administered and the procedure followed thereafter. But where after the Clerk of the Court calls the prisoner to the Bar and makes the following statement : "Members of the jury, the prisoner stands indicted for that he, on the (stating the substance of the offences charged in the indictment). To this indictment he has pleaded not guilty and it is your charge to say, having heard the evidence whether he is guilty or not", the prisoner is said to have been given in charge to the jury. But where the substance of the offence charged in the indictment has not been stated to the jury and except the fact that the jury is sworn and allowed to be challenged with a view to their trying the prisoners in due turn, nothing has been done to warrant the supposition that the prisoners have been given in charge to the jury, the trial shall take place

BOMBAY LAND REVENUE CODE (ACT V OF 1879).

on the altered charge with a special jury. *Emperor v. Yeswant Vithu*.

38 Cr. L. J. 850 (b) :
170 I. C. 153 : 39 Bom. L. R. 355 :
I. L. R. 1937 Bom. 369 : 10 R. B. 49 :
A. I. R. 1937 Bom. 260.

—R. 10—*Whether ultra vires—Criminal Procedure Code (Act V of 1898), S. 4 (r)—Pleader, meaning of—Advocate on Appellate Side, if Pleader—Whether can appear in High Court Sessions.*

—Rule 10 of the Appellate Side Rules, Bombay High Court, made under the Letters Patent, is not *ultra vires*.

Advocates on the Appellate Side do not come within the definition of "Pleader" as defined in the Criminal Procedure Code for the purposes of the Sessions Court, because they are not authorised by law for the time being in force to practise in that Court. Consequently, they have no authority to prectise in the Sessions Side of the High Court. *In re : Philip v. Godinho*.

36 Bom. L. R. 1 : 6 R. B. 312 :
58 Bom. 456 : 148 I. C. 664 (F. B.) :
A. I. R. 1934 Bom. 70.

BOMBAY JAIL MANUAL, PART I.

—R. 387 (c)—*Administrative rules for guidance of Jail Authorities—Conflict between rules and order of Court—Procedure.*

The rules of the Bombay Jail Manual are administrative rules for the guidance of the Jail officials; and it is for the Jailer to keep in safe custody a prisoner consigned to his care under the lawful order of the Court, and where any conflict occurs between an order of the Court and administrative rules, the order of the Court should be sent to the High Court through proper channels for consideration and modification, if need be. *Emperor v. Kadu*. 37 Cr. L. J. 1003 :

164 I. C. 576 : 29 S. L. R. 353 :
9 R. S. 49 : A. I. R. 1936 Sind 125.

BOMBAY LAND REVENUE CODE (ACT V OF 1879).

—Ss. 40, 214, r. 93—*Reserved trees growing after settlement, ownership of.*

There is nothing in the language of S. 40 to show that all future growths of reserved trees would belong to the Government. The plain and natural meaning of rule 93 of the rules framed under S. 214 is that the existing reserved trees belong to the Government and that all future growths belong to the occupant. *Emperor v. Yellappa Ramangowda*.

21 Cr. L. J. 716 :
58 I. C. 60 : 22 Bom. L. R. 884 :
A. I. R. 1921 Bom. 435.

—Ss. 102, 103, 104—*Land Revenue Rules, Rr. 17, 18—Survey Settlement, condition for introduction of—Notice of introduction—Revision of rates—Fresh notification, necessity of.*

When the introduction of a Survey Settlement is legal, the mere fact that certain formalities which were required to be observed under a Government resolution were not observed, would not nullify the validity of the introduction of Settlement.

BOMBAY LOCAL BOARDS ACT (VI OF 1923).

The necessity of a fresh sanction and a fresh notification under r. 18 of the Land Revenue Rules in the event of Government raising the rates proposed by the Settlement Officer is not prescribed by any section of the Land Revenue Code or by any rules made thereunder and even if a notification inviting objections be presumed to have been given, it would not nullify the effect of that introduction of the Survey Settlement under S. 102, completed by the sanction accorded by the Government and the notification under r. 18. *Moreshear Janardan Gogate v. Emperor*.

30 Cr. L. J. 353 :
114 I. C. 854 : 30 Bom. L. R. 1255 :
I. R. 1929 Bom. 262 : A. I. R. 1928 Bom. 497.

—S. 189—*Applicability to summary and formal enquiry.*

S. 189 would apply as much to an enquiry relating to the Record of Rights under Chap. 10-A as to a summary or formal enquiry within the provisions of S. 196. *Assudomal Ramdas v. Jhamandas Hotchand Malli*.

41 Cr. L. J. 861 :
190 I. C. 222 : 1940 Kar. 435 : 13 R. S. 73 :
A. I. R. 1940 Sind 100.

—Rules under—Rules 103 (1) and 40, breach of.

Where a person removed stone from the earth for making line without permission of the Revenue Authorities and was convicted under rs. 103 (1) and 40 of the Land Revenue Code: *Held*, reversing the conviction that r. 40 was permissive and merely conferred certain privileges on persons obtaining permission under it and that failure to apply for such permission did not amount to a breach of the rule. *Crown v. Mangho*.

9 Cr. L. J. 258 :
1 S. L. R. 16.

—S. 142—*Fine under.*

A conviction under the Penal Code stands on a different footing from a fine imposed under the Land Revenue Code. *Rasoolbuz Gazi v. Emperor*.

35 Cr. L. J. 26 :
146 I. C. 407 : 6 R. S. 63 :
A. I. R. 1933 Sind 276.

BOMBAY LOCAL BOARDS ACT (VI OF 1923).

—S. 4 (3)—*"Notified area" under Bombay District Municipal Act whether 'municipal district'—levy of octroi on goods imported in notified area within district.*

There is a distinction between a municipal district and a notified area under Bombay District Municipal Act. When the Bombay Local Boards Act, in S. 4 (3), refers to a municipal district, it does not include a notified area. The District Local Boards can, therefore, if duly empowered by its rules and by-laws levy octroi on goods imported into a notified area within the limit of its district. *Moheddin Baxasaheb Thakur v. Emperor*.

40 Cr. L. J. 522.
180 I. C. 940 : 41 Bom. L. R. 93 :
11 R. B. 318 : A. I. R. 1939 Bom. 97 :

BOMBAY LOCAL BOARDS ACT (VI OF 1923).**S. 102—Interpretation of.**

S. 102 does not say that the rules, when sanctioned, are to have the force of law, and, it cannot have been the intention of the legislature to give legal effect in this way to rules not covered by the provisions of the Act. *Dema Mahadu Amberkar v. Emperor*. 38 Cr. L. J. 37. 165 I. C. 637 : 38 Bom. L. R. 790 : 9 R. B. 159 : A. I. R. 1936 Bom. 376.

S. 136—Officer of Board delivering false bill—Prosecution—Protection of S. 136.

An officer of the Board delivering a false bill deliberately is not acting or purporting to act in pursuance of the Act. If, therefore, he is prosecuted under s. 420, I. P. C., he is not protected by S. 136, Bombay Local Boards Act. 181 I. C. 317 (2), distinguished. *R. K. Naik v. Emperor*. 41 Cr. L. J. 256 :

186 I. C. 133 : 41 Bom. L. R. 1227 : I. L. R. 1940 Bom. 29 : 12 R. B. 316 : A. I. R. 1940 Bom. 35.

S. 136—Protection clauses in Act, propriety.

The protection clauses which are so commonly inserted in Acts conferring powers on public authorities or their officers are never intended to protect a dishonest rascal from the consequences of his rascality. They are only intended to protect people who from excess of zeal or negligence or other cause exceed their powers. *R. K. Naik v. Emperor*. 41 Cr. L. J. 256 :

186 I. C. 133 : 41 Bom. L. R. 1227 : I. L. R. 1940 Bom. 29 : 12 R. B. 316 : A. I. R. 1940 Bom. 35.

S. 136 (2) as amended by Act XIII of 1935—Sub-overseer under Local Board preparing false bills of work done and overcharging Board in course of duty—Prosecution after lapse of three months—Propriety of.

An overseer under a Local Board had, as part of his duty, taking of measurements of repairs and other work done and preparing bills in respect thereof. He prepared false bills and overcharged the Board: *Held*, that the facts alleged to constitute a criminal offence were acts done by him, or purported to have been done by him, in pursuance of the Local Boards Act, and whether they were *bona fide* or otherwise, he had no concern with these inaccuracies and intricacies. S. 136 (2), afforded him immunity from prosecution after a lapse of three months from the date of the act complained of. *Tarachand Pribhdas v. Emperor*. 39 Cr. L. J. 668 : 175 I. C. 834 : 11 R. S. 7 : 32 S. L. R. 622 : A. I. R. 1938 Sind 116.

S. 136 (2) as amended by Act XIII of 1935—Applicability—President and servant of Taluka Board charged with offences under S. 120-B, read with S. 406 or S. 409, Penal Code, and S. 406 or S. 409 and S. 477-A, read with S. 109, Penal Code—Notice not given as required by S. 136 (2)—Prosecution more than three months after offence—S. 136 (2), if applies—Good faith—question of.

Per Davis, J. C. and Mehta, A. J. C. (*Rupchand, A. J. C.*, contra)—S. 136 (2), as amended by Act XIII of 1935, applies only to acts done by protected persons in discharge of their

BOMBAY MOTOR VEHICLES ACT (II OF 1904).

public duties towards the public. The President of a Taluka Local Board in his capacity as President, and the servant of the Board were charged with conspiring with a contractor to commit criminal breach of trust (S. 120-B with S. 406 or s. 409, Penal Code); and with the commission of criminal breach of trust and falsification of accounts (S. 406 or 409 and S. 477-A read with S. 109 (abatement) of the Penal Code). Notice required by Sub-S. 2 of S. 136 was not served on the accused and the proceedings were commenced more than three months of the acts complained of: *Held*, that the provisions of S. 136 (2), applied to the offences with which the applicants were charged. *Nuralhaqshah v. Emperor*.

38 Cr. L. J. 723 (F. B.) : 169 I. C. 274 : 9 R. S. 257 (F. B.) : A. I. R. 1937 Sind 129.

S. 136 (2)—Public and private prosecutions.

Per Davis, J. C.—A distinction between public and private prosecutions cannot be found in S. 136 (2). *Nuralhaqshah v. Emperor*.

38 Cr. L. J. 723 (F. B.) : 169 I. C. 274 : 9 R. S. 257 (F. B.) : A. I. R. 1937 Sind 129.

S. 136 (2)—As amended by Act XIII of 1935—Retrospective effect.

Section 136 has retrospective effect. *Nuralhaqshah v. Emperor*. 38 Cr. L. J. 723 : 169 I. C. 274 : 9 R. S. 257 (F. B.) : A. I. R. 1937 Sind 129.

BOMBAY MOTOR VEHICLES ACT (II OF 1904).**S. 2—Motor-car—Reckless or negligent driving.**

The accused, who was driving his own motor-car, attempted to pass a victoria which was a little ahead of him on the left, but as he was doing so the driver of the victoria turned it suddenly to the left with the result that it collided with the motor-car. The accused was, on these facts, convicted of driving his motor-car negligently and recklessly: *Held*, that the victoria driver was not justified in so suddenly changing his course back to the left, and therefore, the accused could not be said to have been negligent or reckless in driving his motor-car. *In re : Jehangir*.

12 Cr. L. J. 167 : 9 I. C. 945 : 13 Bom. L. R. 126.

S. 2—Negligent driving—Evidence—Rule of road.

Per Batchelor, J.—The rule of the road is not an invariable or inflexible rule, and a deviation from it may, upon occasion, be not only justifiable but actually necessary. The mere passing of another vehicle on the left is, no doubt, primarily evidence of negligence, but the inference arising from this solitary circumstances may be rebutted by the other circumstances appearing in the case. *In re : Jehangir*.

12 Cr. L. J. 167 : 9 I. C. 945 : 13 Bom. L. R. 126.

R. 19 (1)—Scope.

Rule 19 (1) covers tram car which is station-

BOMBAY MUNICIPAL ACT (III OF 1888).

ary—"Ordinarily" meaning explained. *Emperor v. W. M. Ribbons*.

34 Cr. L. J. 865 (1) :
144 I. C. 923 (1) : 35 Bom. L. R. 483 :
6 R. B. 24 : A. I. R. 1933 Bom. 229 :

BOMBAY MUNICIPAL ACT [III OF 1888].

—S. 3, cl. (w)—*Street*—*Passage kept open having houses on both sides of it.*

The owner of a large piece of land divided it into several small building sites which were sold to different persons. These sites were ranged on either side of two proposed roads, which ran through the land and which touched a high road at the one end and a dead wall on the other. Each of the purchasers entered into a covenant with the owner whereby he agreed to prepare and keep free for passage so much of the road as lay in front of his side : *Held* that the proposed road would constitute a "street", within the meaning of the Act. *The Municipal Commissioner v. Mathoorabai*. 4 Cr. L. J. 23 : 8 Bom. L. R. 457 : I. L. R. 30 Bom. 558 :

—S. 249—*Theatre*—*Place of public resort.*

A theatre is a place of public resort within the meaning of S. 249. *Emperor v. Dcarkadas Dharamsey*.

3 Cr. L. J. 236 :
8 Bom. L. R. 115 :

—S. 349-B—*Object*—*Duty of Court.*

The provisions of S. 349-B were intended in the interests of public health, and the Court ought to so construe them as to advance that object. *Emperor v. Rustomji*.

5 Cr. L. J. 338 :
9 Bom. L. R. 363.

—S. 410, 318—*Selling or exposing for sale fish*—*Sale from a basket placed on the foreshore of Chowpati*—*Place between high and low water mark*—*Private market*—*Burden of proof.*

The accused was charged with selling or exposing for sale, without licence fish intended for human food on the Chowpati foreshore, contrary to the provisions of S. 410 (1). The sale was from a basket which the accused had placed on the sand at some distance from the water, the place being between the high and the low water mark. The fish sold was fresh fish and it had been recently brought from one of the boats then in the Back Bay: *Held*, that the accused was liable under S. 410 (1) since it was impossible to say that fresh fish was sold from a vessel, when as a matter of fact it had been sold from the basket on the shore, having been brought from the vessel which was in the water. A place like the whole of the foreshore of Chowpatti could not be held to be a private market : and, even if this were not so, since the Municipality started their case by showing that the place in question was the foreshore of Chowpatti, that was sufficient to throw the onus upon the accused to show that the foreshore of Chowpatti was a private market within the meaning of S. 308: *Held* also, that the Act applied to the spot in question. *Emperor v. Budhobai*.

2 Cr. L. J. 604 :
7 Bom. L. R. 726 : I. L. R. 30 Bom. 126.

BOMBAY MUNICIPAL BOROUGHS (XVIII OF 1925).

—Ss. 429, 430—*Dangerous disease*—*Public conveyance.*

The driver of a public conveyance in the C of Bombay, who carries in his conveyance person suffering from small-pox, offends against the provisions of S. 430 (3). *Emperor Myaji Aliji*.

2 Cr. L. J. 43.
7 Bom. L. R. 40

—S. 449-B (as amended by Act V of 1905)—*Height of buildings with reference to width of streets.*

The accused erected a building which touched on either side of it public streets which ran parallel to each other. The height of the house having exceeded the permissible limits, the Municipality required the accused to reduce the height, conformably to the provisions of S. 349 (b). The accused disobeyed the requisition ; and he was convicted and sentenced for the disobedience : *Held*, that the building of the kind in question must, at all events, fulfil the conditions prescribed in Cls. 1, 2 and 3 of S. 349-B with reference to both the streets on which it abuts, even if it did not fall within Cl. 4 of the section. *Emperor v. Rustomji*.

5 Cr. L. J. 338 :
9 Bom. L. R. 363.

BOMBAY MUNICIPAL BOROUGHS ACT (XVIII OF 1925).

—S. 38.

Power to delegate under S. 33 does not apply to special functions allotted to Standing Committee—Municipality has power under S. 58 (a) to make rules delegating power or duty allotted by Act to Standing Committee to some other Committee. *Jesingbhai v. Emperor*.

36 Cr. L. J. 920 :
156 I. C. 380 : 37 Bom. L. R. 184 :
7 R. B. 505 : A. I. R. 1935 Bom. 201.

—Ss. 80, 81—*Individual notice under S. 81 proved*—*Presumption.*

If it is proved, that individual notice was given under S. 81, the presumption under S. 114, Evi. Act, should be raised and it should be presumed that public notice was properly given of the assessment list, under S. 80; and that all formalities required for the proper assessment of the tax were followed by the Municipality. *Municipality of Sholapur v. Sholapur Spinning and Weaving Co., Ltd.* (1), relied on.

41 Cr. L. J. 401 (b) :
187 I. C. 127 : 12 R. S. 223 :
A. I. R. 1940 Sind 42.

—S. 96—*Intention to defraud.*

Intention to defraud must involve something in nature of cheating—*Bona fide* allegation that tax is not payable : *Held*, did not show intention to defraud. *Visram Vaji v. Emperor*.

36 Cr. L. J. 1511 :
158 I. C. 1069 : 37 Bom. L. R. 102 :
8 R. B. 152 : A. I. R. 1935 Bom. 162.

—S. 123—*Notice, form of*—*Whether can be endorsed on plan itself.*

It is a proper notice to the Chief Officer as to work proposed to be constructed, to send a plan with the endorsement upon it saying that it was a plan as to the proposed drainage and

BOMBAY MUNICIPAL BOROUGHES ACT (XVIII OF 1925).

septic tank. Notice need not be separate from the plan. It can be endorsed on the plan. *Dhirajlal Dalsukhram v. Emperor.*

39 Cr. L. J. 413 :
174 I. C. 466 : 40 Bom. L. R. 67 :
10 R. B. 451 : A. I. R. 1938 Bom. 186.

———Ss. 123, 137—Notice of construction sent—Chief Officer not taking steps for one month—Consent, if presumed.

A building owner can proceed with the construction if even after a notice specifying the building sought to be constructed is given, the Chief Officer does not take any steps within a month in relation thereto; the consent of Chief Officer must, in such circumstances, be implied. *Dhirajlal Dalsukhram v. Emperor.*

39 Cr. L. J. 413 :
174 I. C. 466 : 40 Bom. L. R. 67 :
10 R. B. 451 : A. I. R. 1938 Bom. 186.

———S. 129—Notice not giving all particulars invalid.

The house-holder is entitled to know in the first instance what he is required to do, and the duty of the Chief Officer under S. 129 is to give a notice specifying the drain which he requires, stating the size, material, level and fall, and a notice which does not comply with those requirements is not a good notice within S. 129. *Emperor v. Trikamlal Keshavlal.*

39 Cr. L. J. 667 :
175 I. C. 765 : 40 Bom. L. R. 314 : 11 R. B. 5 :
A. I. R. 1938 Bom. 303.

———Ss. 129, 193—Owner, if can be required to submit plan under S. 129—Notice, requiring plan and to lay drain in accordance with it, when passed—Plan not passed—Notice, if proper—Conviction for its breach.

There is no power under S. 129 to require the owner of a building to submit a plan. S. 129 gives power to the Chief Officer to require something to be done, and it is for him to say what he requires to be done and not for the owner of the house or buildings to submit proposal. Where in a case the only notice given is to submit a plan, and then lay a drain in accordance with the plan when passed, and the plan is not passed, there is no proper notice within S. 129, and, therefore, the owner cannot be convicted under S. 193 for the breach of S. 129. *Emperor v. Trikamlal Keshavlal.*

39 Cr. L. J. 667 :
175 I. C. 765 : 40 Bom. L. R. 314 : 11 R. B. 5 :
A. I. R. 1938 Bom. 303.

———S. 137—Proper notice given—Constructions made—Order of demolition.

Municipality cannot order the drain to be demolished under S. 137, where the building including these drains has been built properly under Sub-S. (5) of S. 123, after a proper notice under S. 123. *Dhirajlal Dalsukhram v. Emperor.*

39 Cr. L. J. 413 :
174 I. C. 466 : 40 Bom. L. R. 67 : 10 R. B. 451 :
A. I. R. 1938 Bom. 186.

———S. 149.

House in ruinous or dangerous shape—Option to take down house does not rest with owner of property. Notice given by Chief

BOMBAY PREVENTION OF ADULTERATION ACT (V OF 1925).

Officer to take down house is a good notice. *Bastiao Audredez v. Emperor.*

35 Cr. L. J. 1036 (2) :
149 I. C. 1129 : 36 Bom. L. R. 430 :
6 R. B. 415 : A. I. R. 1934 Bom. 213.

———S. 167—"Cover over" and "fill up"—Power to order levelling of low-lying land.

The words "cover over" in S. 167 were not intended to apply to land. It is by no means clear, that the words "fill up" were intended to apply to the land on which water accumulates. No doubt they would properly apply to filling up holes or depression in a plot of land. It is extremely doubtful whether they would apply or could have been intended to apply to filling up in the sense of raising the level of a large area of land which is naturally low-lying land. *Emperor v. Don Fillius D'Silva.*

38 Cr. L. J. 535 :
168 I. C. 199 : 39 Bom. L. R. 77 :
9 R. B. 363 : A. I. R. 1937 Bom. 165.

———S. 167—Nuisance—Opinion of Chief Officer, proof of—Production of notice signed by him.

Under S. 167 what is required is that Chief Officer should be satisfied of the existence of a nuisance. It is not necessary, therefore, that it should be proved by evidence that a nuisance exists in fact. It is, however, necessary that the opinion of the Chief Officer should be properly proved and it is not sufficiently done by the mere production of a notice signed by him. *Emperor v. Don Fillius D'Silva.*

38 Cr. L. J. 535 :
168 I. C. 199 : 39 Bom. L. R. 77 :
9 R. B. 363 : A. I. R. 1937 Bom. 165.

———S. 167—Whether empowers levelling of low-land on which water accumulates.

The Chief Officer has no power under S. 167 to order levelling of low-lying land on which water accumulates. *Emperor v. Don Fillius D'Silva.*

38 Cr. L. J. 535 :
168 I. C. 199 : 39 Bom. L. R. 77 :
9 R. B. 363 : A. I. R. 1937 Bom. 165.

BOMBAY PLEADERS ACT (XVII OF 1920).

———S. 25.

Accepting brief on both sides—Professional misconduct. *Government Pleader, Bombay v. Ramanlal Jethalal Shah.*

36 Cr. L. J. 507 :
154 I. C. 335 : 36 Bom. L. R. 1225 :
7 R. B. 326 : A. I. R. 1935 Bom. 71.

BOMBAY PREVENTION OF ADULTERATION ACT (V OF 1925), S. 4.

———S. 4—Applicability to articles of food of which ghee is necessary ingredient—Alleged adulterated ghee taken from shop where sweetmeats were offered for sale—Presumption.

S. 4 does not apply only to the sale of ghee simply as such but applies also to the sale of articles of food of which it is a necessary ingredient. The words of the section are wide enough to include articles of food which contain ghee mixed with other substance. The fact that this ghee was taken from a shop where sweetmeats were offered for sale, and indeed from a

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frying-pan in which other sweetmeats were being made, makes it quite clear that the presumption apart, the admission of the accused himself apart, the sweetmeats in his shop had been manufactured for sale within the meaning of S. 4 (1) (b) of the Act and that he was manufacturing and offering for sale sweetmeats as containing pure ghee which contained the alleged impure ghee. *Nebhandas Hollaram v. Emperor*. 41 Cr. L. J. 246 : 185 I. C. 832 : 1940 Kar. 91 : 12 R. S. 192 : A. I. R. 1939 Sind 337.

S. 4—Burden to show that article is adulterated.

The burden of proof that the article of food is adulterated lies upon the prosecution, but that burden may in effect be assisted or even completely discharged by the admission of the accused himself. *Nebhandas Hollaram v. Emperor*. 41 Cr. L. J. 246 : 185 I. C. 832 : 1940 Kar. 91 : 12 R. S. 192 : A. I. R. 1939 Sind 337.

S. 4 (1)—Conviction under.

S. (4) (1) contemplates three separate and distinct offences under Cls. (a), (b) and (c), respectively and a conviction under S. 4 (1) generally is bad in law. *Choithram Menghraj v. Emperor*. 39 Cr. L. J. 474 : 174 I. C. 685 : 10 R. S. 259 : 32 S. L. R. 684 : A. I. R. 1938 Sind 70.

Ss. 4 (1), 3 (a), 4 (4)—Accused relying on defence of warranty—Proof of—Whether entitled to adjournment—Duty of prosecution.

Persons accused under the Act if they rely upon the defence of warranty, must prove it and they must have their witnesses present at the date of hearing. They are not entitled to adjournments as of right for this purpose. But they can be excused if they fail to state clearly their defence of warranty before the close of prosecution case, if neither the summons served on them nor the evidence for the prosecution makes it clear as to what case the accused has to meet. *Choithram Menghraj v. Emperor*. 39 Cr. L. J. 474 : 174 I. C. 685 : 10 R. S. 259 : 32 S. L. R. 684 : A. I. R. 1938 Sind 70.

S. 4 (1) (a)—Accused selling vinegar produced by diluting acetic acid with water—Guilt.

The prosecution examined an analyzer who said that "vinegar" was the product of fermentation or brewing and that the substance sold by the accused was "artificial" or synthetic vinegar produced not by fermentation or brewing but merely by diluting acetic acid with water. The defence produced no evidence whatever. Held, that the Magistrate was justified in finding the accused guilty under S. 4 (1) (a), Bom. Prevention of Adulteration Act. *Parsram Tekchand v. Emperor*. 41 Cr. L. J. 839 : 190 I. C. 159 : 1940 Kar. 282 : 13 R. S. 54 : A. I. R. 1940 Sind 127.

S. 4 (1) (a)—Proprietor, a sleeping partner—Liability of.

A proprietor of a shop is liable for the sale of adulterated food sold in his shop even when he is a sleeping partner, for it is not only the

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actual salesman who is responsible and who can be convicted under the Act for sale of adulterated food. *Gobindram Jamiatrai v. Karachi Municipal Corporation*. 40 Cr. L. J. 7 : 178 I. C. 119 : 11 R. S. 80 : 1939 Kar. 191 : A. I. R. 1938 Sind 218.

S. 4 (1) (a)—Purchase by public officer as such—Offence, if committed.

Even when a purchaser of adulterated food is a public officer, an offence under S. 4 (1) (a), is committed in respect of adulterated food purchased by him as such public officer. *Gobindram Jamiatrai v. Karachi Municipal Corporation*. 40 Cr. L. J. 7 : 178 I. C. 119 : 11 R. S. 80 : 1939 Kar. 191 : A. I. R. 1938 Sind 218.

Ss. 4 (4) (b), 5—Warranty, proof of—Personal attendance of warrantor—Issue of commission to warrantor under S. 506, Criminal Procedure Code—Rejection of application for—Reasons in writing, if necessary.

It is the rule that the warrantor must personally attend in Court, and it is only in exceptional cases that he should not do so. The words in the 'exception' in S. 4 (4) (b) include the power of the Magistrate to ask for the issue of a commission under S. 506, Criminal Procedure Code. If he thinks that it is only just and proper that that power should be exercised, there is nothing to prevent the Court asking the District Magistrate to issue a commission for the examination of the warrantor. The Magistrate need not, however, give his reasons in writing, while rejecting the application for the commission. *Girdharilal Mohanji v. Emperor*. 39 Cr. L. J. 477 : 174 I. C. 542 : 10 R. S. 257 : 32 S. L. R. 659 : A. I. R. 1938 Sind 72.

S. 6—Administering of oath.

The Commissioner of Police is competent to administer an oath to a complainant under S. 6. *Emperor v. Ismail Hirji*. 31 Cr. L. J. 633 : 124 I. C. 106 : 31 Bom. L. R. 1349 : 54 Bom. 146 : A. I. R. 1930 Bom. 49.

S. 6—Complaint, who can make.

Any person, having knowledge of the commission of an offence, may set the law in motion by a complaint, even though he is not personally interested or affected by the offence. *Emperor v. Ismail Haji*. 31 Cr. L. J. 633 : 124 I. C. 106 : 31 Bom. L. R. 1349 : 54 Bom. 146 : A. I. R. 1930 Bom. 49.

S. 12 (1)—Complaint addressed to Bench of Magistrates as such—Verification of complaint signed by one Magistrate only—Whether sitting as Bench.

In Hyderabad (Sind) the Magistrates who constitute the "B" Bench are Magistrates of the Second Class only when sitting together as a Bench, and when sitting singly, they are Magistrates only of the Third Class. Where the record shows that the complaint was addressed to a Bench of Magistrates as such ; from the mere fact that upon the verification of the complaint itself, there is only the signature of one Magistrate, it by no means follows that

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two Magistrates were not present sitting as a Bench on the case. *Lilaram Ladakmal v. Wadhmal Assudomal*. 40 Cr. L. J. 122 : 178 I. C. 648 : 11 R. S. S. 100 : 1939 Kar. 230 : A. I. R. 1938 Sind 209.

—S. 13 (1)—*Summons not applied for within 30 days of granting of certificate by analyst—Defect, if fatal.*

Section 13 should be considered separately as regards its two Sub-Sections because Sub-S. (1) relates to a condition of time, and that if it can be shown that a summons was not applied for within 30 days of the date of the grant of the certificate by the public analyst, that would be fatal to the prosecution case, for time once gone is gone beyond recall. This is not a mere irregularity which can be cured: It is a fatal defect in the proceedings *in limine*. *Lilaram Ladakmal v. Wadhmal Assudomal*. 40 Cr. L. J. 122 : 178 I. C. 648 : 11 R. S. S. 100 : 1939 Kar. 230 : A. I. R. 1938 Sind 209.

—S. 13 (2)—*Omission of date from summons whether mere irregularity which can be cured.*

Although it is desirable that the provisions of S. 13 (2), should be closely followed, that the name of the complainant should be given, the name and place fixed for hearing should be shown, it cannot be held that if for instance, the date be omitted from the summons, that could be said to be a fatal flaw in the proceedings. All that can be said is that it is an irregularity when can be cured, if necessary, by an issue of amended summons and by the Magistrate allowing such adjournment as the omission of any particular from the summons may seem to require so as to give the accused the notice in the summons to which he is entitled. *Lilaram Ladakmal v. Wadhmal Assudomal*. 40 Cr. L. J. 122 : 178 I. C. 648 : 11 R. S. S. 100 : 1939 Kar. 230 : A. I. R. 1938 Sind 209.

—Ss. 14, 16—*Presumption under S. 14 (1)—Applicability to certificate of public analyst produced by accused.*

Per *Broomfield, J.*—S. 14 (1) of the Act applies to any certificate of a public analyst and not only to a certificate on which the prosecution is based. There is no necessary connection between it and S. 16. The rebuttable presumption under S. 14 (1) will equally apply to a certificate of a public analyst produced by the accused himself. *Haridas Vallabhdas v. Bombay Municipality*. 38 Cr. L. J. 975 : 170 I. C. 867 : 39 Bom. L. R. 629 : 10 R. B. 141 : I. L. R. 1937 Bom. 751 : A. I. R. 1937 Bom. 364 :

—Ss. 14, 16—*Right to insist upon public analyst to be summoned and examined as witness even before accused leads evidence in defence.*

Per *N. J. Wadia, J.*—S. 14 does not deal with the procedure to be followed in a trial under the Act: it merely lays down a rule of evidence and allows a presumption to be drawn. The language of the S. 16 shows clearly that it is open to the accused at the commencement of the trial, as soon as he is accused of the

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offence, to require the Court to summon the public analyst as a witness, and the section provides that if the accused deposits the requisite amount in Court, he is entitled as of right to have the public analyst called as a witness. *Haridas Vallabhdas v. Bombay Municipality*. 38 Cr. L. J. 975 :

170 I. C. 867 : 39 Bom. L. R. 629 : 10 R. B. 141 : I. L. R. 1937 Bom. 751 : A. I. R. 1937 Bom. 364.

—S. 16.

Evidence of public analyst—Accused has a right to cross-examine him—Prior condition of deposit of fees before summoning him is illegal. *Haji Gokal Jetha v. Emperor*. 36 Cr. L. J. 571 : 154 I. C. 514 : 7 R. S. 162 : A. I. R. 1935 Sind 5.

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—Act applies to Delhi. *Ram Sahai v. Emperor*. 36 Cr. L. J. 418 : 153 I. C. 443 (1) : 35 O. L. R. 614 : 7 R. L. 440 : A. I. R. 1934 Lah. 760.

—*Betting on horse races, if playing game.*

Per *Heaton, J.*—Betting on a horse-race is not playing a game or playing with instruments used in playing a game within the meaning of S. 12. *Emperor v. Vilhal Das Hirji*. 19 Cr. L. J. 8 :

42 I. C. 920 : 19 Bom. L. R. 830 : A. I. R. 1917 Bom. 200.

—Betting slips with numbers on it employed in *satta* gambling are instruments of gaming. *Ram Sahai v. Emperor*. 36 Cr. L. J. 418 :

153 I. C. 443 (1) : 35 O. L. R. 614 : 7 R. L. 440 : A. I. R. 1934 Lah. 760.

—S. 12—*Railway carriage of special train if public place.*

A railway carriage forming part of a through special train is not a public place within the meaning of S. 12. *Emperor v. Hossein Noor Mohamed*. 3 Cr. L. J. 211 :

8 Bom. L. R. 22 : I. L. R. 30 Bom. 348.

—Under S. 12 only those persons who are gaming are punishable and those who aid and abet are not punishable. *Shadi Ram v. Emperor*. 34 Cr. L. J. 174 :

141 I. C. 543 (2) : 34 O. L. R. 173 : I. R. 1933 Lah. 139 (1) : A. I. R. 1933 Lah. 513 (1).

—S. 3.

A marked coin proved to have been used for the purpose of making a bet is an instrument of gaming within the meaning of S. 3 of the Bombay Prevention of Gambling Act. *P. X. D. Souza v. Emperor*. 33 Cr. L. J. 404 :

137 I. C. 188 : 34 Bom. L. R. 286 : 56 Bom. 200 : I. R. 1932 Bom. 236 : A. I. R. 1932 Bom. 180.

—S. 3—*A page of paper for registering wager, if instrument.*

A single page of paper used for registering wagers is an instrument of gaming within the meaning of S. 3. *Emperor v. Lakhamshi Malsi*. 1 Cr. L. J. 1074 :

6 Bom. L. R. 1091 : I. L. R. 29 Bom. 264.

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—S. 3—Common gaming house, what is—"Used for the profit or gain of the owner," meaning of.

In order to prove that a house is a common gaming house within the meaning of S. 3, it is sufficient to show that the house is one in which instruments of gaming are kept or used for the profit or gain of the persons keeping or using such place. The profit or gain may not actually result from such use. But the prosecution must establish that the purpose is profit or gain. This may be done either by showing that the owner was charging for use of the instruments of gaming or for the use of the house, room or place, or in any other manner that may be possible under the circumstances of the case, having regard to the nature of the game carried on in that house. *Emperor v. Dattatraya Shankar Paranjpye*.

25 Cr. L. J. 531 :
77 I. C. 995 : 25 Bom. L. R. 1089 :
47 Bom. 960 : A. I. R. 1924 Bom. 184.

—S. 3.

Definition of "instruments of gaming" is extraordinarily wide. *Rustom Cursetji v. Emperor*.

33 Cr. L. J. 389 :
136 I. C. 868 : 34 Bom. L. R. 267 :
I. R. 1932 Bom. 228 :
A. I. R. 1932 Bom. 181.

—S. 3—Instruments of gaming—Books.

Books registering transactions in American Futures are instruments of gaming. *Tribhovan Motiram v. Emperor*.

30 Cr. L. J. 794 :
117 I. C. 434 : 31 Bom. L. R. 53 :
53 Bom. 137 : I. R. 1929 Bom. 402 :
A. I. R. 1929 Bom. 74.

—S. 3—Instrument of gaming—"Book recording bets."

A green book used for making entries of the bets made by those engaged in the wagering which could not be conveniently conducted otherwise than with or by means of this green book, is a 'means' or "instrument" of gaming within the definition in S. 3 of the Act. *Manilal Mangalji v. Emperor*.

16 Cr. L. J. 827 :
31 I. C. 1003 : 17 Bom. L. R. 1030 :
A. I. R. 1915 Bom. 218.

—S. 3—Instruments of gaming—Books recording gaming transaction—Wagering contracts.

A book used for the purpose of registering or recording any gaming transaction is an 'instrument of gaming' within the meaning of the Act. The transactions in what are known in the Bombay Market as American Futures are ordinarily wagering transactions. *Emperor v. Thazarmal Rupchand*.

30 Cr. L. J. 595 :
116 I. C. 251 : 31 Bom. L. R. 158 :
I. R. 1929 Bom. 347 : 53 Bom. 367 :
A. I. R. 1929 Bom. 157.

—S. 3—Passage, if can be common gaming house.

A passage may be a place within the meaning of the Act. A passage may also no doubt be a common gaming house if it otherwise satisfies

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the definition of such place. 124 I. C. 100 (3), 20 I. C. 609 (4) and *Brown v. Patch* (5), relied on. *Krishnaji Madhusudan v. Emperor*.

41 Cr. L. J. 233 :
186 I. C. 242 : 41 Bom. L. R. 1114 :
12 R. B. 338 : A. I. R. 1940 Bom. 18.

—S. 3—"Using or keeping" meaning of—Case, when can come under S. 3.

The expression "using or keeping" in S. 3 means having a right to use or keep as in S. 4 (a) and if the accused is not a person having a right to use this passage, then it would be irrelevant to prove that he is making a profit out of the gaming carried on there. To bring the case within the definition under S. 3 it is necessary to show that profit was to be made for the person owning, keeping or using the passage. *Ibrahim Haji Abdul Rahiman v. Emperor*.

41 Cr. L. J. 571 :
188 I. C. 316 : 42 Bom. L. R. 161 :
I. L. R. 1940 Bom. 322 : 12 R. B. 508 :
A. I. R. 1940 Bom. 129.

—Ss. 3, 4.—Currency notes and coins if instruments of gaming.

Though currency notes and coins are not in themselves 'instruments of gaming', they would fall within the definition of the said expression in the Act if they are used as a subject or means of gaming. *Tribhovan Motiram v. Emperor*.

30 Cr. L. J. 794 :
117 I. C. 434 : 31 Bom. L. R. 53 : 53 Bom. 137 :
I. R. 1929 Bom. 402 : A. I. R. 1929 Bom. 74.

—Ss. 3, 4 (a).—Word "using" in S. 3 and word "having the use of" in S. 4 (a) meaning of.

According to the *cjusdem generis* rule of construction, the word "using" in S. 3 should connote some sort of right or some sort of possession. The words "having the use of" in S. 4 (a) imply something more than mere using even though the use may be habitual. *Krishnaji Madhusudan v. Emperor*.

41 Cr. L. J. 273 :
186 I. C. 242 : 41 Bom. L. R. 1114 : 12 R. B. 338 :
A. I. R. 1940 Bom. 18.

—Ss. 3, 5, 7.—Person caught actually taking bets over telephone—Conviction under S. 5.

Section 3 makes "gaming" within the meaning of the Act the collection or soliciting of bets, and it makes no difference if these bets are brought by a messenger or person or sent by telephone or sent and received by telephone. It is gaming within the definition of S. 3 and in S. 7 the word "persons," includes "person" the plural includes the singular. Therefore, a person caught actually in the act of taking bets over the telephone can be rightly convicted of gaming, under S. 5. *Bhagwandas Ghanshamdas v. Emperor*.

41 Cr. L. J. 399 :
187 I. C. 78 : 1940 Kar. 150 : 12 R. S. 219 :
A. I. R. 1940 Sind 28.

—S. 3 (a)—Person performing operations necessary for gaming—Whether gaming.

Persons taking part in operations to enable the game to be played such as giving instructions to those who come to participate in it, etc., must be deemed to be gaming within the provisions

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of the Act as they actually assist in the gaming. *Muhammad Hassan v. Emperor*. 38 Cr. L. J. 668 : 169 I. C. 35 : 31 S. L. R. 44 : 9 R. S. 225 : A. I. R. 1937 Sind 99.

—S. 4—Offence, nature of.

An offence punishable under S. 4, is a non-cognizable offence. *Raghunath Lahanusa Walvekar v. Emperor*. 33 Cr. L. J. 733 : 139 I. C. 281 : 34 Bom. L. R. 901 : I. R. 1932 Bom. 484 : A. I. R. 1932 Bom. 610.

—S. 4.—Conviction under, essentials.

In order to convict a person under S. 4 it is not necessary that he could be shown to have used the place as a common gaming house habitually. *Bhanji v. Emperor*.

27 Cr. L. J. 905 : 96 I. C. 217 : 20 S. L. R. 10 : A. I. R. 1926 Sind 254.

—S. 4.—Inability to pay is special reason for imposing, lesser fine.

It is within the meaning of the proviso of the clause relating to the imposition of punishments for offences under S. 4, for the Court to put on record as a special reason for the imposition of a lesser fine, the inability of the accused to pay it. *Narsi Devji v. Emperor*.

41 Cr. L. J. 959 : 190 I. C. 703 : 13 R. S. 112 : A. I. R. 1940 Sind 187.

—S. 4.—Instrument not introduced by bogus punter—Value of, as corroboration of his evidence.

If instruments of gaming are found, which are not introduced by the bogus punter himself like marked coins, that is very good independent corroboration of the punter's evidence that the marked coin was also an instrument of gaming. *Krishnaji Madhusudan v. Emperor*.

41 Cr. L. J. 273 : 186 I. C. 242 : 41 Bom. L. R. 1114 : 12 R. B. 338 : A. I. R. 1940 Bom. 18.

—S. 4.—Jota—Sutta—Common gaming house—Wagering books if instruments.

Carrying on of "jota" business, that is, wagering from day to day on the total sale of cotton bales in Liverpool, is an offence under S. 4. The wagering books kept or used in "jota" business are instruments of gaming and the business premises are a common gaming house. *Emperor v. Chaganlal Jiwraj*.

1 Cr. L. J. 259 : 6 Bom. L. R. 249.

—S. 4.—Offence under, if cognizable.

Offence punishable under S. 4 as modified up to date are cognizable offences in all cases. *Emperor v. Ismail Haji*. 31 Cr. L. J. 633 : 124 I. C. 106 : 31 Bom. L. R. 1349 : 54 Bom. 146 : A. I. R. 1930 Bom. 49.

—S. 4.—'Place'—Determination of.

It is for the Magistrate to consider on the evidence in each case whether an area where betting is carried on is 'a place' within the meaning of the Act. *Emperor v. Ismail Haji*.

31 Cr. L. J. 633 : 124 I. C. 106 : 31 Bom. L. R. 1349 : 54 Bom. 146 : A. I. R. 1930 Bom. 49.

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—S. 4—Gaming house—Inference.

Play goes on in many private houses ; and players will usually be found to have cash ; but from these two things alone it is not legitimate to draw an inference that the host is deriving from his visitors profit or gain from the use of his house and his cards. *Emperor v. Asial*.

36 Cr. L. J. 902 : 156 I. C. 294 : 29 S. L. R. 19 : 7 R. S. 240 : A. I. R. 1935 Sind 102.

—S. 4—Scope of.

Section does not enumerate four distinct offences to render a person liable to enhanced punishment. The connections need not be under the same section. *Emperor v. Appa Ganpat*.

37 Cr. L. J. 43 : 159 I. C. 176 : 37 Bom. L. R. 656 : 8 R. B. 182 : A. I. R. 1935 Bom. 399.

—S. 6—Warrant in name of Sub-Inspector—Arrest by constable, Sub-Inspector being nearby—If vitiates warrant.

Where a warrant is in the name of a Sub-Inspector and he is present near the room used for gambling purposes but the accused is actually arrested by his constable who had already entered the room, the irregularity is not such as would vitiate the warrant or the proceedings in any way. *Boplist De Souza v. Emperor*.

41 Cr. L. J. 127 : 185 I. C. 203 : 41 Bom. L. R. 974 : 12 R. B. 229 : A. I. R. 1939 Bom. 465.

—Ss. 4, 4 (a), 5—Marked coin, when instrument of gaming.

A marked coin may no doubt be an instrument of gaming. It becomes an instrument of gaming if it has in fact been used as a means of gaming. 137 I. C. 181 (1), relied on. *Krishnaji Madhusudan v. Emperor*.

41 Cr. L. J. 273 : 186 I. C. 242 : 41 Bom. L. R. 1114 : 12 R. B. 338 : A. I. R. 1940 Bom. 18.

—Ss. 4, 5—Conviction of accused under Ss. 4 and 5 on same facts—One punishment.

Where the prosecution have relied upon the same facts and upon the same acts of the accused to prove that the offences under Ss. 4 and 5 were committed, the accused may be convicted under both sections but there should be one punishment for both. *Bhagwandas Ghanshamdas v. Emperor*.

41 Cr. L. J. 399 : 187 I. C. 78 : 1940 Kar. 150 : 12 R. S. 219 : A. I. R. 1940 Sind 28.

—Ss. 4, 5—Telegrams announcing certain events, whether instruments of gaming—Papers used by brokers for recording transactions.

A telegram announcing the happening or not happening of an event upon which wagers have previously been made, cannot possibly be an instrument of gaming within the meaning of the Act. Nor can such pieces of paper as brokers may carry with them for the purpose of recording a transaction between their clients be brought within the definition of instruments of gaming or wagering. *Jesang Motilal v. Emperor*.

16 Cr. L. J. 572 : 30 I. C. 124 : 17 Bom. L. R. 600 : A. I. R. 1915 Bom. 48.

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—Ss. 4, 5, 6—Evidence of bogus punters—Value of.

The bogus punters are usually very unsatisfactory witnesses. It does not much matter whether they are called accomplices or spies or Police agents. No doubt, it is very difficult to get better evidence and the Police may have to make use of such people, and if their evidence is corroborated and fits in reasonably well with the prosecution case, the Court may be justified in relying on it. But if the punter is called as a witness and does not support the prosecution case, it is obviously worse than if he was not called at all. *Baptist De Souza v. Emperor*.

41 Cr. L. J. 127 :
185 I. C. 203 : 41 Bom. L. R. 974 :
12 R. B. 229 : A. I. R. 1939 Bom. 465.

—Ss. 4, 5, 6—Finding of marked coins and slip of paper with figures, when sufficient for conviction.

The mere fact of the finding of the marked coins and the slip of paper with figures on it in the room is sufficient to justify the conviction only if the evidence makes it perfectly clear that these articles were instruments of gaming. *Baptist De Souza v. Emperor*.

41 Cr. L. J. 127 :
185 I. C. 203 : 41 Bom. L. R. 974 :
12 R. B. 229 : A. I. R. 1939 Bom. 465.

—Ss. 4, 5, 6—Search warrant—Honorary First Class Magistrate, jurisdiction of, to issue.

An Honorary First Class Magistrate has power to issue a search warrant as defined in S. 5, provided he is a Magistrate for the local area in which the premises are situate in respect of which he issues a search warrant. *Tillockchand v. Emperor*.

26 Cr. L. J. 1356 :
89 I. C. 396 : A. I. R. 1929 Sind 65.

—Ss. 4, 5, 6—Statements of Police long after event—Value of.

The Court cannot possibly be expected to rely on the mere statements of the Police Officers long after the event without any independent corroboration. *Baptist De Souza v. Emperor*.

41 Cr. L. J. 127 :
185 I. C. 203 : 41 Bom. L. R. 974 :
12 R. B. 229 : A. I. R. 1939 Bom. 465.

—Ss. 4, 5, 6 and 7—Keeping a common gaming-house—Delay in executing warrant—Presumption created by S. 7—Applicability of such presumption to cases under S. 4—Previous conviction—Proof of.

(Per Chandavarkar and Aston, JJ. Jacob, J., dissenting) that (1) The presumption created by S. 7, can be applied to cases falling under S. 5 as well as to those falling under S. 4 of the Act; (2) The effect of S. 7 is not taken away by the mere fact that there has been an interval of many days between the issue of the warrant and its execution; (3) In a trial for an offence of keeping a common gaming-house the evidence that the accused had been previously convicted of the same offence is admissible to show guilty knowledge or intention: Per Jacob, J.—(1) The presumption created by S. 7 is sufficient for the purposes of S. 5, as well as for the purposes of S. 4 (a), so far as regards the fact that the house, &c., is so used, but it is not sufficient for the purposes of

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showing that the house is so kept or used by any specified person; (2) In a trial for an offence under S. 4 (a), the evidence of previous convictions for similar offences cannot be admitted either under Ss. 11, 14, 15 or 54 of the Evidence Act; (3) The question of delay in execution of a warrant must be decided with reference to the circumstances of each case. *Emperor v. Alloomiya Husan*.

1 Cr. L. J. 227 :
I. L. R. 28 Bom. 129 :
5 Bom. L. R. 805.

—Ss. 4, 5, 6, 7—Warrant of search, defective—Effect—Guilt, proof of, by other evidence.

A search warrant which gives a wrong number of the house to be searched and gives no other description of it, is a defective one. If the search warrant is bad because of misdescription of the house, no presumption can be made that the house where the accused were found is a common gaming house. But it cannot be said that because a search warrant is illegal, whatever is found as a result of that search cannot be evidence. Similarly the mere fact that presumption under S. 7 cannot be raised, does not prevent the prosecution from establishing by evidence in the ordinary way that on the facts proved the accused were guilty of the offences charged. The fact of a stranger going into a house and obtaining a bet on a horse race coupled with the betting books and slips found on Police search shortly afterwards necessitates the inference that the house is a common gaming house. *Emperor v. Abasbhai Abdulhussein*.

27 Cr. L. J. 503 :
93 I. C. 967 : 28 Bom. L. R. 272 :
50 Bom. 344 : A. I. R. 1926 Bom. 195.

—Ss. 4, 5, 6, 7, 12—"Place"—Shop abutting on public street, whether 'place'—Issue of—Search warrant—Presumption against keeper of such shop—Conviction.

The word "place" in S. 4 has a wide meaning. S. 12 does not exclude the application of S. 4 in proper cases even though in certain circumstances S. 12 might apply to the same "place". Hence a place such as a shop abutting on to a public street although a place within the meaning of S. 12 is still a place within the meaning of S. 4, and a search warrant under the Act can be issued and presumption under S. 7 can be drawn against the keeper of such a shop kept for the purposes of gaming for profit and he can be convicted under S. 4. *Sat Narain Amratal v. Emperor*.

40 Cr. L. J. 817 :
183 I. C. 562 : 12 R. S. 60 : 1939 Kar. 741 :
A. I. R. 1939 Sind 184.

—Ss. 4, 6, 7—Issue of search warrant on complaint of Police Officer to complainant himself, legality of—House belonging to joint Hindu family—Manager residing elsewhere, liability of.

A warrant under S. 6 may be issued on the complaint made on oath by a Police Officer, and may be issued to the Police Officer who makes the complaint. By residing with his mistress in a separate house the accused who is manager of joint Hindu family does not cease to be the occupier of the family house where the ladies of his family continue

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residing. If in any case, the accused is present when the gaming is presumed to be going on in his house, he could be properly convicted for knowingly permitting the house to be used as a gambling house, under S. 4. *Emperor v. Nanalal Dwarkadas Tolat*.

31 Cr. L. J. 1112 :
126 I. C. 894 : 32 Bom. L. R. 794 :
A. I. R. 1930 Bom. 350.

—Ss. 4, 7—Search warrant—Description of house, sufficiency of.

Where the entire block of a certain building is numbered 100, and each tenement in that building is numbered separately, such as 101-1, 103-2 and so on, a description of the house in a search warrant under S. 6 as "House No. 100" is not too vague and the Crown can take advantage of the presumption created by S. 7 of the Act. *Bhanji v. Emperor*.

27 Cr. L. J. 905 :
96 I. C. 217 : 20 S. L. R. 10 :
A. I. R. 1926 Sind 254 :

—S. 4 (a)—*Mere trespasser, if can be convicted.*

The words "having the use of" in S. 4 (a) mean "a person having the right to the use of" under some title, e. g., a licence which is less than ownership or right of occupation. The whole of S. 4 is directed against those who enable premises to be used as a common gaming house. Therefore, in the absence of evidence from which it can be held that the accused had got anything in the nature of a licence to use the place as a common gaming house from a person entitled to give such licence, he cannot be convicted under S. 4 (a). *Gulam Hussein Rawji v. Emperor*.

41 Cr. L. J. 253 :
185 I. C. 148 : 41 Bom. L. R. 1326 :
I. L. R. 1940 Bom. 105 : 12 R. B. 310 :
A. I. R. 1940 Bom. 62.

—S. 4 (a)—"Place", meaning of.

A small open space surrounded by houses on all sides and accessible only by a narrow lane is a "place" within the meaning of S. 4 (a). *Fattu Mahomed v. Emperor*.

14 Cr. L. J. 449 :
20 I. C. 609 : 15 Bom. L. R. 689 :
37 Bom. 651.

—Ss. 4 (a), 3, 5, 7—Instruments of gaming found in passage—Accused having right to use it as means of passage to his residence—Whether has right to use it within meaning of S. 4 (a).

Where instruments of gaming are found in a passage on the ground floor used by the accused as a means of passage to his rooms on the second floor, the accused cannot be said to have a right to the use of the passage within the meaning of S. 4 (a), in the absence of evidence that the landlord or his agent knew the purposes for which the passage was being used or that the accused had any right to use it except as a means of passage. *Ibrahim Haji Abdul Rahiman v. Emperor*.

41 Cr. L. J. 571 :
188 I. C. 316 : 42 Bom. L. R. 161 :
I. L. R. 1940 Bom. 322 : 12 R. B. 508 :
A. I. R. 1940 Bom. 129.

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—S. 5—Prosecution—Search, necessity of.

A prosecution under S. 5 need not necessarily be preceded by a search under S. 6. A prosecution under S. 4 or S. 5 might be launched on evidence quite independent of Police evidence, for example, the evidence of neighbours. *Emperor v. Shankar Venkusa Chavan*.

36 Cr. L. J. 543 :
154 I. C. 634 : 36 Bom. L. R. 1113 : 7 R. B. 355 :
A. I. R. 1935 Bom. 39.

—S. 5—Betting on horse-race—Adjournment of race—Betting, if offence.

Where a bet is entered into with regard to a horse race to be run on a certain date, the agreement to bet would be a wager and would amount to an offence under S. 5 even though the race is postponed to another date. *Emperor v. Ismail Hirji*.

31 Cr. L. J. 633 :
124 I. C. 106 : 31 Bom. L. R. 1349 :
54 Bom. 146 : A. I. R. 1930 Bom. 49.

—S. 5—'Found gaming' meaning of.

The words 'found gaming' in S. 5 do not mean that the accused should actually be arrested in the place where the gaming has been going on. *Tribhovan Motiram v. Emperor*.

30 Cr. L. J. 794 :
117 I. C. 434 : 31 Bom. L. R. 53 :
53 Bom. 137 : I. R. 1929 Bom. 402 :
A. I. R. 1929 Bom. 74.

—S. 5—Gambling, what is.

The essence of the offence of gambling is that the game played is not a game of skill but of chance and that in view of the number, position and income of players, the game is one where loss might be the result not of a lack of skill but of lack of luck. *Tillockchand v. Emperor*.

26 Cr. L. J. 1356 :
89 I. C. 396 : A. I. R. 1926 Sind 65.

—Ss. 65, 67—Penal Code—Gambling—Sentence of fine—Imprisonment in lieu of fine, duration of.

The provisions of Ss. 65 and 67 of the Penal Code apply equally to punishment inflicted under a special law like the Gambling Act and, therefore, the maximum term of imprisonment which can be awarded in lieu of fine in respect of an offence under S. 5 of the Gambling Act is one week only. *Emperor v. Radho*.

27 Cr. L. J. 90 :
91 I. C. 394 : 20 S. L. R. 31 :
A. I. R. 1926 Sind 144.

—Ss. 5, 6—Power of superintendence of High Court in Case of wrong conviction.

Where certain persons were convicted under Ss. 4 and 5, Bombay Prevention of Gambling Act, but the majority of them were acquitted on appeal on the ground that the warrant under S. 6 being issued by an officer not empowered to do so, the conviction was illegal, on revision by two of the accused who did not appeal, the Sessions Judge referred the matter to the High Court : *Held*, that in view of S. 439 (5), Criminal Procedure Code, revision did not lie, but as the case was one of wrong conviction on the face of it, it was desirable to use the power of superintendence in judicial matter which vested in the High Court under S. 107, Government of India Act, to set aside

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the conviction. *Emperor v. Jamnadas Nathji Shah*.

38 Cr. L. J. 606 :
168 I. C. 718 : 39 Bom. L. R. 82 :
I. L. R. 1937 Bom. 263 : 9 R. B. 303 :
A. I. R. 1937 Bom. 153.

—Ss. 5, 6—Search under Gambling Act—
Mashirs, absence of, effect of.

All searches under a special or local law are not to be conducted in accordance with the provisions of the Cr. P. C. and, therefore, the absence of *mashirs* at a search held under the Bombay Gambling Act, does not make the search illegal. *Emperor v. Aslum*.

16 Cr. L. J. 238 :
28 I. C. 910 : 8 S. L. R. 213 :
A. I. R. 1914 Sind 158.

—Ss. 5, 6, 7—Arrest while coming from gaming house.

Where a person was seen coming out from a house in which gaming was going on : Held, that a legitimate inference could be drawn that he was in the house when gambling was in progress and was present there for the purpose of gambling. *Tribhovan Motiram v. Emperor*.

30 Cr. L. J. 794 :
117 I. C. 434 : 31 Bom. L. R. 53 :
53 Bom. 137 : I. R. 1929 Bom. 402 :
A. I. R. 1929 Bom. 74.

—Ss. 5, 12—Presumption mentioned in S. 5, applicability to cases under S. 12—Conviction under S. 12 when proper.

The reason underlying the presumption mentioned in S. 5 has no applicability at all to cases under S. 12. Before any conviction could properly be arrived at under S. 12, it is essential that the accused persons should be shown by evidence to have been actually taking part in gambling. *Emperor v. Hiratal*.

14 Cr. L. J. 383 :
20 I. C. 142 : 15 Bom. L. R. 331.

—S. 6—Found, meaning of.

A person may be said to be 'found' in a place where he is actually present, and there is nothing in the section to show that the word "found" refers only to a finding by the Police. *Emperor v. Shankar Venkusa Chanan*.

36 Cr. L. J. 543 :
154 I. C. 634 : 36 Bom. L. R. 1113 :
7 R. B. 355 : A. I. R. 1935 Bom. 39.

—S. 6—Accused pleading guilty—Duty of Magistrate to convict.

Where an accused pleads guilty but shows no sufficient cause why he should not be convicted, the Magistrate should not acquit him. *Emperor v. Aslum*.

16 Cr. L. J. 238 :
28 I. C. 910 : 8 S. L. R. 213 :
A. I. R. 1914 Sind 158.

—S. 6.

An officer of Police who issues the warrant

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under S. 6 of the Act must be careful to confine himself exactly within the limits which the Act lays down. *Emperor v. Asial*.

36 Cr. L. J. 902 :
156 I. C. 294 : 29 S. L. R. 19 :
7 R. S. 240 : A. I. R. 1935 Sind 102.

—S. 6—Complaint on oath as basis of warrant—Non production, effect of.

Non-production by a Court of the complaint on oath, which forms the foundation of a warrant issued under S. 6, is not improper, if the object of the production is to ascertain merely the name of the informer. *Baghumal Wadhmal v. Emperor*.

18 Cr. L. J. 70 :
37 I. C. 54 : 10 S. L. R. 134 :
A. I. R. 1917 Sind 43.

—S. 6—Complaint on oath—If must be in writing or recited in warrant.

The complaint on oath referred to in S. 6 need not necessarily be in writing, and need not necessarily be recited in the warrant or set out in any complaint that may be subsequently filed before the Magistrate. *Tribhovan Motiram v. Emperor*.

30 Cr. L. J. 794 :
117 I. C. 434 : 31 Bom. L. R. 53 :
53 Bom. 137 : I. R. 1929 Bom. 402 :
A. I. R. 1929 Bom. 74.

—S. 6—Complaint on oath.

The complaint on oath is not a necessary part of the evidence of the prosecution ; ordinarily, it would be sufficient to rely on the maxim "omnia rite esse acta" after formal proof of the search warrant. *Abdullah v. Emperor*.

12 Cr. L. J. 149 :
8 I. C. 895.

—S. 6—Criminal Procedure Code (V of 1898), S. 103—Search of gaming house without mashirs, legality of—Evidence discovered in illegal search, admissibility.

A search conducted under S. 6 is not rendered illegal by the mere non-presence of *mashirs*, as required by S. 103 of the Cr. P. C. But such an omission in case of searches conducted under the provisions of the Cr. P. C. would render them illegal, although the illegality would be no bar to the consideration of the evidence discovered by the search. *Kadir Mohamed v. Emperor*.

18 Cr. L. J. 49 :
37 I. C. 33 : 10 S. L. R. 137 :
A. I. R. 1917 Sind 16.

—S. 6—District Superintendent of Police if can administer oath.

The District Superintendent of Police is competent in cases contemplated by S. 6 to administer an oath to the person making the complaint before him. *Tribhovan Motiram v. Emperor*.

30 Cr. L. J. 794 :
117 I. C. 434 : 31 Bom. L. R. 53 :
53 Bom. 137 : I. R. 1929 Bom. 402 :
A. I. R. 1929 Bom. 74.

—S. 6—Search, essentials of

It is not essential that a search made under S. 6 should necessarily conform to the pro-

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visions of S. 103, Cr. P. C. *Walvekar v. Emperor*.

33 Cr. L. J. 733 :
139 I. C. 281 : 34 Bom. L. R. 901 :
I. R. 1932 Bom. 484 : A. I. R. 1932 Bom. 610.

—S. 6—Powers arising under outside Bombay District Police Act, if can be conferred on Additional Superintendent of Police by Provincial Government—Issue of warrant by such officer—*Legality*.

Section 6 does not confer on the Provincial Government the right to confer on the Additional Superintendent of Police powers arising outside the Bombay District Police Act, and the powers arising under S. 6 are outside the Bombay District Police Act. The words "specially empowered by Government in this behalf" in S. 6 only cover the Assistant or Deputy Superintendent of Police. Although the Additional District Superintendent of Police is carrying out all the powers under the Police Act, of a District Superintendent of Police, he is not in fact a District Superintendent of Police, and he cannot be given power to issue a warrant under S. 6. Section 17, Bombay General Clauses Act, 1904, does not apply to this case at all. *Asgaralli Mahammedalli Herahwala v. Emperor*.

41 Cr. L. J. 485 :
187 I. C. 459 : 42 Bom. L. R. 203 :
12 R. B. 487 : A. I. R. 1940 Bom. 127.

—S. 6—Power of Commissioner to ask subordinates to arrest in his presence.

Where the Commissioner of Police went with his subordinates to arrest several persons and one of his subordinates arrested the accused under the authority of the Commissioner and in his presence though not within his view : *Held*, that the arrest could not be held to be illegal merely because the arrest was not made by the Commissioner personally or within his view. *Emperor v. Ismail Haji*.

31 Cr. L. J. 633 :
124 I. C. 106 : 31 Bom. L. R. 1349 :
54 Bom. 146 : A. I. R. 1930 Bom. 49.

—S. 6—Power to arrest without warrant.

A person who is authorized to issue a warrant under S. 6 could himself arrest without a warrant. *Emperor v. Ismail Haji*.

31 Cr. L. J. 633 :
124 I. C. 106 : 31 Bom. L. R. 1349 :
54 Bom. 146 : A. I. R. 1930 Bom. 49.

—S. 6—Power to order search and arrest.

The legislature must be presumed to have intended that the Magistrate, First Class, should have the authority to make the arrest and the search himself, if necessary. For when the legislature empowers an officer to delegate an authority to do a certain act to another person, it necessarily implies that the original authority to do such act is fully and completely in the officer himself, but that it is necessary for the exigencies of business that it should be done in the majority of cases by persons acting under authority derived from him. No provision of the Code of Criminal Procedure as to the authority empowered to issue a warrant for arrest or search, or the persons to whom and the conditions under which such warrant may be issued can apply for the purposes of S. 7 of

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the Gambling Act. The authority, the persons and the conditions must be respectively those specifically mentioned in S. 6 of the Act and no other. But the special provision in S. 6 would still be subject to the general provisions of Ss. 65 and 105 of the Code. *Emperor v. Fernand*.

6 Cr. L. J. 34 :
9 Bom. L. R. 695 : I. L. R. 1931 Bom. 438.

—S. 6—'Special search warrant,' essentials of—*Misdescription, effect of*.

A search warrant issued under S. 6 must describe the place intended to be searched with great clearness and freedom from ambiguity. But a mere inaccuracy of description which is not so material or substantial as to mislead a stranger, if he were to go to the locality and attempt to find the place with the help of the warrant will not vitiate the warrant. *Emperor v. Thavarnal Rupchand*.

30 Cr. L. J. 595 :
116 I. C. 251 : 31 Bom. L. R. 158 :
I. R. 1929 Bom. 347 : 53 Bom. 367 :
A. I. R. 1929 Bom. 157.

—S. 6—Special warrant—Intended to apply to large number of persons.

The expression 'special warrant' in S. 6 has reference only to the limitation as regards the person or persons who would be competent to execute it, and a warrant does not cease to be a special warrant merely because it is intended to apply to a large number of tenements and persons. *Emperor v. Thavarnal Rupchand*.

30 Cr. L. J. 595 :
116 I. C. 251 : 31 Bom. L. R. 158 :
I. R. 1929 Bom. 347 : 53 Bom. 367 :
A. I. R. 1929 Bom. 157.

—S. 6—Special warrant, requirements of—*Authority to search cannot be delegated*.

A warrant issued under S. 6 must specify the officer to whom the authority is given, and the only person who can execute the warrant is the officer therein named. The officer cannot delegate the authority to execute the warrant to another officer. *Mithu v. Emperor*.

10 Cr. L. J. 3 :
2 I. C. 371 : 3 S. L. R. 56

—S. 6—Strict construction.

S. 6 of the Act must be construed strictly because S. 7 gives to an arrest and seizure under it an operation different from that of the general presumption of innocence in criminal cases. *Emperor v. Fernad*.

6 Cr. L. J. 34 :
9 Bom. L. R. 695 : I. L. R. 31 Bom. 438.

—S. 6—Second warrant

There is no express provision in S. 6 empowering the issue of a second warrant on the strength of the sworn testimony on which a prior warrant has been issued. *Emperor v. Asiat*.

36 Cr. L. J. 902 :
156 I. C. 294 : 29 S. L. R. 19 : 7 R. S. 240 :
A. I. R. 1935 Sind 102.

—S. 6—Warrant—Description of the house and locality.

A warrant issued under S. 6 which accurately describes the house or room to be searched, is not illegal merely because it does not correctly

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specify the locality of such house or room.
Emperor v. Krishna Rutna Dalvi.

1 Cr. L. J. 5 :
6 Bom. L. R. 52.

—S. 6—Warrant containing direction for seizure of money found on people in gaming house, legality of.

A warrant issued under S. 6 is not rendered wholly bad or illegal by reason of its containing a direction for seizure of all money found on people in the gaming house, such a direction should be regarded as mere surplusage not affecting the main purpose of the warrant.
Baghumal Wadhmal v. Emperor.

18 Cr. L. J. 70 :
37 I. C. 54 : 10 S. L. R. 134 :
A. I. R. 1917 Sind 43.

—S. 6—Warrant—Wrong occupation property to be searched—Effect.

If a warrant wrongly describes the property to be searched, then it is a bad warrant. But a description may be good in part on the principle of *falsa demonstratio non nocet*.
Vallibhai v. Emperor.

34 Cr. L. J. 137 (2) :
141 I. C. 346 : 34 Bom. L. R. 1447 :
I. R. 1933 Bom. 74 : A. I. R. 1933 Bom. 79.

—S. 6—Warrant—Presumption.

If a warrant issued under S. 6 is regular a presumption arises that the premises were used as a common gaming house, and, that the persons playing on those premises were guilty of an offence under S. 5 of the Act.
Tillockchand v. Emperor.

26 Cr. L. J. 1356 :
89 I. C. 396 : A. I. R. 1926 Sind 65.

—Ss. 6, 7 (as amended in 1936)—Evidence of approver—Corroboration.

In gambling cases, as in other cases, the evidence of approvers or accomplices must be corroborated in the usual manner, that is to say, by evidence other than that provided by themselves whereby the Court can be satisfied that they speak the truth not only as to the factum of the crime but as to the identity of the accused as well. The amount of that evidence and whether it is sufficient corroboration depends upon the circumstances of each particular case.
Emperor v. Ali Molo.

40 Cr. L. J. 271 :
179 I. C. 794 : 11 R. S. 150 : 1939 Kar. 217 :
A. I. R. 1938 Sind 228.

—Ss. 6, 7 (as amended in 1936)—Interpretation—Liberal—Reason to suspect—Reasonable grounds—Information given by police informant.

Sections 6 and 7 must be interpreted in a reasonably broad spirit having some fair relation to the realities of the lives of the kind of peoples to which the Act was intended by the Legislature to apply. Sections 6 and 7 of the Act must be read together. The words "which he has reason to suspect" in S. 6 must be read with the words "had reasonable grounds for suspecting" which occur in S. 7. The reason for suspicion which is referred to in Cl. (a)

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of S. 6 must obviously include information given by a Police informant, and so far as the seizure of all things reasonably suspected to have been used or intended for the purpose of gaming under Cl. (c) is concerned, it cannot be expected that the Police Officer must wait for a translation or interpretation of a writing, otherwise unintelligible to him found upon slips of paper on the person of the suspected man. He must judge and be judged by all the surrounding circumstances and the information be then possessed.
Emperor v. Ali Molo.

40 Cr. L. J. 271 :
179 I. C. 794 : 11 R. S. 150 : 1939 Kar. 217 :
A. I. R. 1938 Sind 228.

—Ss. 6, 7 (as amended in 1936)—Raid by Sub-Inspector on information—Persons found sitting at table at midnight—Money and slips recovered—Slips containing unintelligible writing—Sub-Inspector, if justified in inferring that they are betting slips—Presumption.

Where the Sub-Inspector finds, upon the information of the Police informant that in a particular house gambling in American Futures is going on, that a number of persons of different communities having no particular relationship with each other are sitting at a table in a room in that house at midnight, who can give no satisfactory account of their presence and who are found to possess on them considerable sums of money, while slips of paper with unintelligible writing upon them are found upon one of them, the Sub-Inspector has every reason to suspect that these slips of papers with the unintelligible writing contain the record of bets, and under the circumstances, the Court can raise presumption against the accused which puts upon them the burden of proof under S. 7.
Emperor v. Ali Molo.

40 Cr. L. J. 271 :
179 I. C. 794 : 11 R. S. 150 : 1939 Kar. 217 :
A. I. R. 1938 Sind 228.

—Ss. 6, 7—Common gaming house—Search by Commissioner without warrant.

The Commissioner of Police in the City of Bombay is entitled to make a search in a common gaming house and to arrest the persons found there, even in the absence of a warrant under S. 6. The Commissioner has himself power to do that which under S. 6 he is empowered to authorize a subordinate Police Officer to do.
Emperor v. Jaffur Mahomed.

14 Cr. L. J. 204 :
16 I. C. 204 : 15 Bom. L. R. 106 :
37 Bom. 402.

—Ss. 6, 7—Search by Commissioner without warrant—Presumption under S. 7.

The presumption under S. 7 of the Act does not arise where a house is not entered under a special warrant but is raided by the Commissioner of Police without a warrant. The special rule of evidence authorized by S. 7 only comes into operation when the imperative provisions of the section have been satisfied.
Emperor v. Jaffur Mahomed.

14 Cr. L. J. 204 :
16 I. C. 204 : 15 Bom. L. R. 106 :
37 Bom. 402.

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———Ss. 6, 7—*Warrant—Search—Complaint on oath.*

Though it is desirable to formally produce in evidence a warrant issued under S. 6, yet where the complainant states that he searched the house under warrant and such warrant and his complaint on oath, appear in the proceedings of the Magistrate, and it is not alleged that the complainant searched the house under any other warrant, or that the warrant was not regularly issued under the said section, the High Court will not exercise its discretionary powers of revision. *Abdullah v. Emperor.*

12 Cr. L. J. 149 :
8 I. C. 895.

———Ss. 6, 7—*Warrant, validity of—Burden of proof—Presumption under S. 7 when applicable.*

Before applying the provisions of S. 7, the prosecution is bound to prove that the house was entered under a warrant duly issued under S. 6. The mere assertion of a police officer that information was given on oath to the Magistrate granting the warrant is not sufficient material to justify the conclusion that the warrant was properly issued. No presumption can be drawn against the accused in the absence of proof as to the validity of the warrant, and in such a case, the mere finding of instruments of gaming in the house entered under the warrant is not proof that it was used as a common gaming house. *Kadir v. Emperor.*

10 Cr. L. J. 406 :
3 S. L. R. 78 : 3 I. C. 893.

———Ss. 6, 8—*Money found in coat pocket of accused convicted of gaming—Seizure of under S. 6.*

The power of forfeiture exercisable by the Magistrate under S. 8 is discretionary. Where the money seized was found in the coat pocket of the accused, it cannot be said, in the absence of any satisfactory explanation by him that this money was not rightly seized under S. 6 and was not connected with the gaming of which he has been convicted. *Bhagwandas Ghanshamdas v. Emperor.*

41 Cr. L. J. 399 :
187 I. C. 78 : 1940 Kar. 150 : 12 R. S. 219 :
A. I. R. 1940 Sind 28.

———S. 7—*Complaint and warrant on file but not formally put in evidence—Discretion—Magistrate should ascertain whether document to be regarded as evidence.*

Where the complaint, under S. 6 and the warrant issued thereon, were actually on the file of the proceedings but were not formally exhibited and put in evidence owing to an inadvertent omission on the part of the prosecution : *Held*, that the Magistrate should, in the exercise of a wise discretion, have drawn the attention of the Police Prosecutor to the fact that the documents had not been exhibited and have ascertained whether or not they were to be regarded as having been produced as evidence for the prosecution under S. 244, Criminal Procedure Code. *Emperor v. Ghulam Hossein.*

10 Cr. L. J. 408 :
3 S. L. R. 84 : 3 I. C. 895.

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———S. 7—*Presumption—Rebuttal.*

Instruments of gaming found only being slips of paper with names of horses and sums of money—Presumption, held rebuttable by very little evidence. *Rustam Cursetji v. Emperor.*

33 Cr. L. J. 389 :
136 I. C. 868 : 34 Bom. L. R. 267 :
I. R. 1932 Bom. 228 :
A. I. R. 1932 Bom. 181.

———S. 7—*Presumption.*

No presumption arises under S. 7 that a place is kept by any person as a common gaming house. The fact that a person keeps or uses or occupies a common gaming house must be proved in the ordinary way. *Bhanji v. Emperor.*

27 Cr. L. J. 905 :
96 I. C. 217 : 20 S. L. R. 10 :
A. I. R. 1926 Sind 254.

———S. 7—*Presumption under — Evidence sufficient to rebut presumption.*

A warrant was issued upon the sworn information of an avowed gambler, who was not even subjected to the test of cross-examination. When the premises were entered, the accused, who were all of the same caste, were found engaged in preparing tea. Some cricketing things as well as some cards and dice and a money box, with a little cash in it, were found on the premises. The accused asserted that the premises were used by them as a club : *Held*, that the presumption arising under S. 7 had sufficiently been rebutted. *Tyab Ali v. Emperor.*

10 Cr. L. J. 407 :
3 I. C. 894 : 3 S. L. R. 80.

———S. 7—*Presumption under, nature of—When arises and how rebutted.*

There are two events on which presumption under S. 7 arises. The first event is when any instrument of gaming has been seized in the house, room or place entered under S. 6 or about the person of anyone found therein. All that the Court has to do is to see whether the documents and things found in the house raided fall within the definition of "instruments of gaming." If they do, then the presumption arises. The occurrence of other event requires two things to be proved, first, that something has been seized, which is other than an instrument of gaming, and secondly, that the Police Officer had reasonable grounds for suspecting that the thing so seized was an instrument of gaming. When these two things are proved, then the Court must presume that the house, which has been entered was used as a common gaming house until the contrary is proved. But obviously if the only evidence of the house being used as a common gaming-house lies in the seizure in the house of something which is in fact not an instrument of gaming although the Police Officer had reasonable grounds for suspecting that it was an instrument of gaming, then there is no evidence of such user and the presumption is rebutted. The presumption arising in the second event specified in S. 7 must always be stillborn, because it is rebutted by proof of the very event which gives it birth,

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namely seizure of something other than an instrument of gaming. The second event can only arise, when it is proved that the thing which was found in the house raided was not an instrument of gaming and, directly it is proved, the evidential value of the thing found is destroyed. *Emperor v. Nathalal Vanmali*.

40 Cr. L. J. 891 :
184 I. C. 252 : 41 Bom. L. R. 548 :
I. L. R. 1939 Bom. 434 : 12 R. B. 155 :
A. I. R. 1939 Bom. 339.

—S. 7—Presumption under, when can be drawn—Special warrant, what constitutes—Extraneous evidence as to nature of warrant, admissibility of.

A Magistrate cannot draw any of the presumptions mentioned in S. 7 unless the warrant issued is a special warrant, that is, a warrant which is directed personally to a particular Police Officer named therein and not one which can be endorsed over to any other Police Officer of similar rank. A special warrant must on the face of it, be a special warrant and if it is not directed to a special officer, extraneous evidence cannot be admitted to prove that it was meant to be executed by a special Police Officer personally and only by him. *Assudomal v. Emperor*.

30 Cr. L. J. 1074 :
119 I. C. 535 : I. R. 1929 Sind 215 :
A. I. R. 1930 Sind 59.

—S. 7—Presumption, when arises.

The presumption under S. 7 only arises where there has been an arrest and a search under S. 6 of the Act. *Emperor v. Fernad*.

6 Cr. L. J. 34 :
9 Bom. L. R. 695 : I. L. R. 31 Bom. 438.

—S. 7—Presumption, when rebutted.

If the circumstances show that the only person who can make a profit from the gaming is not the owner, occupier or person using or having the use of the place in which the gaming is carried on within the meaning of Ss. 3 and 4 of the Act, the presumption must be rebutted and no conviction would be possible either under S. 4 or S. 5. *Krishnaji Madhusudan v. Emperor*.

41 Cr. L. J. 273 :
186 I. C. 242 : 41 Bom. L. R. 1114 :
12 R. B. 338 : A. I. R. 1940 Bom. 18.

—S. 7—Presumption.

The presumption under S. 7 will arise only if the house has been entered under warrant issued under the provisions of S. 6. *Emperor v. Asiat*.

36 Cr. L. J. 902 :
156 I. C. 794 : 29 S. L. R. 19 : 7 R. S. 240 :
A. I. R. 1935 Sind 102.

—Ss. 7, 5—Accused failing to rebut presumption—Effect.

Where the prosecution proves the facts necessary to raise the presumption under S. 7, they need not prove anything further, and it becomes necessary for the accused to prove that the passage was not a common gaming house. Where he fails to rebut the presumptions under S. 7, his conviction under S. 5 is justified. *Ibrahim Haji Abdul Rahiman v. Emperor*.

41 Cr. L. J. 571 :
188 I. C. 360 : 42 Bom. L. R. 161 :
I. L. R. 1940 Bom. 322 : 12 R. B. 508 :
A. I. R. 1940 Bom. 129.

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—Ss. 5, 7—Presumption under S. 7—Onus to prove that place was not common gaming house—Onus not discharged—Conviction under S. 5.

Where the Crown has proved the finding of instruments of gaming, and the presence of the accused in the place, the burden is thrown upon the accused to show that the place was not a common gaming house. Where the accused has not discharged this burden, his conviction under S. 5 is justified. *Ghulam Hussein Rawji v. Emperor*.

41 Cr. L. J. 253 :
186 I. C. 148 : 41 Bom. L. R. 1326 :
I. L. R. 1940 Bom. 105 : 12 R. B. 310 :
A. I. R. 1940 Bom. 62.

—S. 8—Cash and ornaments found on persons of gamblers—Forfeiture.

Under S. 8 cash, currency notes and ornaments found on the persons of those in a gaming house cannot be treated as instruments of gaming, even though they may have been used, or may be intended to be used for the purposes of gaming, and, therefore, are not liable to forfeiture. The power of forfeiture extends only to securities for money, and other articles seized in the house which are not instruments of gaming. *Sadashiv Bab Habbu v. Emperor*.

21 Cr. L. J. 384 :
55 I. C. 864 : 22 Bom. L. R. 197 :
44 Bom. 686 : A. I. R. 1920 Bom. 311.

—S. 8—Money found on persons of those gaming and present in common gaming house, when can be forfeited.

S. 8 does not provide for the forfeiture of money found on the persons of those in the common gaming house; money or currency notes used or intended to be used as a means of gaming or the proceeds of gaming found on the person of one present in the common gaming house for the purpose of gaming and so on, can be forfeited but the prosecution must, of course, show that any particular money to be forfeited as a means of gaming falls within the definition of "instruments of gaming" in S. 3. 55 I. C. 864 (1) and 137 I. C. 181 (2), referred to. *Doongersi Awchar v. Emperor*.

41 Cr. L. J. 385 :
186 I. C. 883 : 1940 Kar. 125 : 12 R. S. 221 :
A. I. R. 1940 Sind 22.

—Ss. 8, 6 (c)—Forfeiture, articles liable to.

The second paragraph of S. 8 refers back to cl. (c) of S. 6, and the articles liable to seizure and forfeiture are limited to articles of value reasonably suspected to have been used or intended to have been used for the purposes of gaming and found within the premises. *Rasul Gulab Kadir v. Emperor*.

18 Cr. L. J. 663 :
40 I. C. 311 : 19 Bom. L. R. 352 :
A. I. R. 1917 Bom. 238.

—S. 10—Examination of accused person as witness, legality of—His evidence, admissibility.

A Magistrate is not justified under S. 10 to examine and therefore commits an irregularity, if he examines an accused person while he is still in the position of an accused person and has obtained no order of discharge or acquittal. Statements made by accused persons under

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such circumstances are not admissible in evidence. *Babilal Balwant v. Emperor*.

17 Cr. L. J. 2 :
32 I. C. 132 : 17 Bom. L. R. 1078 :
A. I. R. 1915 Bom. 123.

—S. 12—*Apprehension of person, whether should be in actual act.*

S. 12 does not require that the Police should apprehend persons in the actual act of gaming. The words "are found gaming" in S. 12 have a wider meaning than "seen gaming." The word "found" is more akin to the word "discovered" in its nature and purpose, and if people are found by the Police in such circumstances that it is clear that when the Police came upon the scene they were engaged in gaming, it does not matter that dice and darts were not seen actually thrown. The transaction as a whole must be looked at, and not one particular minute or second of time. *Ghanshamdas v. Emperor*.

37 Cr. L. J. 1005 :
164 I. C. 642 : 29 S. L. R. 349 :
9 R. S. 50 : A. I. R. 1936 Sind 126.

—S. 12—*Construction—Deciding factor.*

In construing the expression, "any place to which the public have or are permitted to have access" in S. 12, the deciding factor is not whether the place is or is not owned by a private individual or a statutory body, but the use to which it is put. If a private owner invites either expressly or by implication the public generally to enter his garden, then so long as that invitation is extended to the public generally, the garden is a place to which the public have or are permitted to have access within the meaning of the section. The fact that the owner reserves to himself the right to exclude undesirables is not the deciding factor. *Tahirali v. Emperor*. 37 Cr. L. J. 876 :

164 I. C. 58 : 30 S. L. R. 72 :
9 R. S. 29 : A. I. R. 1936 Sind 90.

—S. 12—*Conviction—Confiscation—Order for sale of instruments of gaming—Legality of.*

The forfeiture of money and the severer penalties imposed by the section relate to a person convicted of wagering or betting but not to a person convicted merely of gaming. Where there has been a conviction under S. 12, the money and the instruments of gaming will not be forfeited and will be returned to the owner of the instruments. *Muhammad Hassan v. Emperor*.

38 Cr. L. J. 668 :
169 I. C. 35 : 31 S. L. R. 44 :
9 R. S. 255 : A. I. R. 1937 Sind 99.

—S. 12—*Dart game—Case of average person should be considered.*

The law is enacted for the average man and not for a person of unusual skill, and the question whether in a game of dart, chance or skill is a deciding factor, is to be decided by taking the case of an average man. *Ghanshamdas v. Emperor*.

37 Cr. L. J. 1005 :
164 I. C. 642 : 29 S. L. R. 349 :
9 R. S. 50 : A. I. R. 1936 Sind 126.

—S. 12—*Dart game—Persons gaming within Act.*

In a game of darts a person who sells the

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ticket and receives the wager takes just as great a part in the act of gaming as does the person who hands the dart to the individual who is to try his chance, and as does, the third individual who removes the dart from the board and all the three can be held to be engaged in a gaming within the provision of the Act. *Ghanshamdas v. Emperor*.

37 Cr. L. J. 1005 :
164 I. C. 642 : 29 S. L. R. 349 :
9 R. S. 50 : A. I. R. 1936 Sind 126.

—S. 12—"Game," whether wager—Instrument of gaming.

The word "game" as used in S. 12 does not include a wager. Accused were gambling within the second enclosure of the Bombay Race Course during the races. They received money from persons who bet on the horses running and promised to pay on the winner at certain rates. They were charged under S. 12 : *Held*, that the accused were not guilty of an offence under S. 12 inasmuch as they were not playing with instruments of gaming used in playing a game. *Emperor v. Vilhal Das Hirji*.

19 Cr. L. J. 8 :
42 I. C. 920 : 19 Bom. L. R. 830 :
A. I. R. 1917 Bom. 200.

—S. 12—*Person on private premises accepting bets from persons in streets—Offence.*

Although a person may be on private premises yet if he stands or sits so as to be able to take bets from the public in a public street, he can be held to be actually betting or gaming in that street. Where accused sat on a chair placed just within his shop and accepted bets from persons in the public street : *Held*, that the accused was gaming in a place to which the public had access and was guilty of an offence under S. 12. *Pakirbhai Nathubai v. Emperor*.

27 Cr. L. J. 452 :
93 I. C. 244 : 28 Bom. L. R. 92 :
A. I. R. 1926 Bom. 149.

—S. 12—"Place to which public have or are permitted to have access," whether includes hotel.

The words in the amended S. 12 "in any place to which the public have or are permitted to have access" include a hotel. *Emperor v. Mangubhai Dhayabhai*.

31 Cr. L. J. 1119 :
127 I. C. 81 : 32 Bom. L. R. 790 :
54 Bom. 491 : A. I. R. 1930 Bom. 369.

—S. 12—*Playing cards for very insignificant stakes near a masjid—Offence, trifling—Sentence.*

Accused, who were peons and mill-hands, were convicted for gaming in that they played cards for very insignificant stakes under the shades of a *masjid* and were sentenced to fifteen days' imprisonment each : *Held*, that the offence was very trivial and the sentence inflicted grossly disproportionate and that a warning or small fine would have answered the ends of justice. *Mahamad Nathu v. Emperor*.

18 Cr. L. J. 97 :
37 I. C. 305 : 18 Bom. L. R. 940 : 41 Bom. 149 :
A. I. R. 1916 Bom. 98.

—S. 12—*Public place, street or thoroughfare.*

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The word "place," in S. 12 is qualified by the word "public," and it must mean a place of the same general character as a "road or thoroughfare." *Emperor v. Hossein Noor Mahomed.*

3 Cr. L. J. 211 :
8 Bom. L. R. 22 : I. L. R. 30 Bom. 348.

—Ss. 12, 13—*There may be offence under S. 12 when passage is place accessible to public.*

Obiter.—In cases where the passage is a place to which the public have access or are permitted to have access, there might be an offence under S. 12 of the Act. *Krishnaji Madhusudan v. Emperor.*

41 Cr. L. J. 273 :
186 I. C. 242 : 41 Bom. L. R. 1114 :
12 R. B. 338 : A. I. R. 1940 Bom. 18.

—S. 12 (a)—*Accused travelling in train arrested—Wagering chits and money intended to distribute at some other place, found in his possession—Conviction under S. 12 (a).*

Where an accused travelling in a train is arrested, he cannot be convicted under S. 12 (a) for being found in possession of wagering chits and money representing winnings which the accused intended to distribute at some other place, unless those winnings are shown to be winnings of gaming in a public place. *Emperor v. Somabhai Govindbhai.*

40 Cr. L. J. 97 (F. B.) :
178 I. C. 588 : 40 Bom. L. R. 1082 :
11 R. B. 176 : I. L. R. 1939 Bom. 53 (F. B.) :
A. I. R. 1938 Bom. 484.

—S. 12 (a)—*Object.*

The object of the amended S. 12 (a) was to free the word "place" which had been originally used in that section from the restricted meaning which it was held to bear, appearing as it did between the expression "public street," and the word "thoroughfare". *Emperor v. Mangubhai Dhayabhai.*

31 Cr. L. J. 1119 :
127 I. C. 81 : 32 Bom. L. R. 790 :
54 Bom. 491 : A. I. R. 1930 Bom. 369.

—S. 12 (a)—*Public place—Murgi-Swami Math at Haveri.*

The Murgi-Swami Math at Haveri, in the Dharwar District of the Bombay Presidency, which is enclosed in a compound wall, is of the highway, is managed by a Swami as trustee for the Lingayat community who has power to keep people out if he chooses, and is not a public place within the meaning of S. 12 (a). *Emperor v. Chennappa.*

14 Cr. L. J. 167 :
19 I. C. 167 : 15 Bom. L. R. 101.

—Ss. 12 (a), 3—*Conviction for being reasonably suspected to be gaming—Propriety—"Gaming in public place", essentials of.*

The mere fact of being reasonably suspected by a Police Officer is not sufficient to justify a conviction of a criminal offence. A man can only be convicted of actual gaming in public. When the Courts are concerned with a particular form of gaming made punishable under the Act and the charge is based on one of the ancillary acts in the definition, some connection ought to be shown between that act and the particular form of gaming which is the subject of the charge. The words "intended to aid or

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facilitating the various acts described must be read as ancillary to the general words of the definition. Before convicting a man of aiding or facilitating an act, it must be shown that that act has taken place and that it is an offence. If it be proved that gaming has taken place in a public place, then anyone who is shown to have aided or facilitated such gaming is guilty although he has not himself taken part in the actual gaming. But it is impossible to convict a person under this statute of aiding or facilitating an act when the act itself which he has aided or facilitated is not shown to be a criminal act. But if the charge is gaming in a public place and the only act alleged is one which facilitates the distribution of profits of some other kinds of gaming, the ancillary act cannot be said to form part of the offence charged, unless it is an overt act which itself amounts to gaming in public within the intendment of the section. To put in a nutshell though the distribution of the winnings of gaming and any act facilitating the same is gaming, it is not gaming in a public place, unless (a) the winnings are the winnings of gaming in a public place, in which case the mischief aimed at has been committed somewhere, or (b) the distribution or ancillary act is itself public. *Emperor v. Somabhai Govindbhai.*

40 Cr. L. J. 97 (F. B.) :
178 I. C. 588 : 40 Bom. L. R. 1082 :
11 R. B. 176 : I. L. R. 1939 Bom. 53 (F. B.) :
A. I. R. 1938 Bom. 484.

—S. 13—*Game of skill, what is.*

No game can be a game of skill alone, and in any game in which even great skill is required, chance must play a certain part. Where the elements of chance more strongly predominate, the game is not a game of mere skill. *Muhammad Hassan v. Emperor.*

38 Cr. L. J. 668 :
169 I. C. 35 : 31 S. L. R. 44 : 9 R. S. 255 :
A. I. R. 1937 Sind 99.

—Ss. 13, 4—*Game of cards called patti-ata, if comes within mischief of Act.*

"Mere skill" means pure skill, skill and nothing else. A game in which there is substantial element of chance cannot be described as a game of mere skill or pure skill. Of course, if the element of chance in a game is so small as to be negligible, it may be reasonable to ignore it. A game of cards called *patti-ata* played for money stake is not a game of mere skill, and comes within the mischief of the Act. *Emperor v. Kallapa Gurappa Kota Gunshi.*

41 Cr. L. J. 157 :
185 I. C. 315 : 41 Bom. L. R. 970 :
I. L. R. 1939 Bom. 679 : 12 R. B. 231 :
A. I. R. 1939 Bom. 481.

BOMBAY PREVENTION OF PROSTITUTION ACT (XI OF 1923)

—Ss. 3, 10 (1)—*Police Officer not specially authorised—Arrest without complaint, legality of—Court, whether can try accused.*

The arrest of a woman under S. 10 (1) by a Police Officer who is neither specially authorised in this behalf by the Commissioner of Police, nor has received any complaint against her, is

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illegal, and the Court has no jurisdiction to take cognizance of the offence without a proper complaint within the meaning of S. 4 (1) (h) of the Cr. P. C. being filed in the ordinary way. *Chandri Bawoo v. Emperor*.

26 Cr. L. J. 441 :
85 I. C. 57 : 26 Bom. L. R. 1225 :
49 Bom. 212 : A. I. R. 1925 Bom. 131.

———S. 7—'Prostitute,' meaning of—*Mistress and prostitute distinguished—Having stray paramour, effect of.*

The idea underlying prostitution is that a woman should surrender for a monetary consideration to some one who is not in law entitled to have sexual intercourse with her. A mistress is not necessarily a prostitute, the relationship being of a more permanent nature than the casual relationship implied in prostitution. Nor would having a stray paramour constitute a woman a prostitute. Prevention of Prostitution Act XI of 1923 does not contemplate any distinction between an ordinary prostitute and a common prostitute. *Emperor v. Lalya Bapu Jadha*.

30 Cr. L. J. 737 :
117 I. C. 336 : 31 Bom. L. R. 521 :
I. R. 1929 Bom. 384 :
A. I. R. 1929 Bom. 266.

BOMBAY PRIMARY EDUCATION (DISTRICT MUNICIPALITIES) ACT (I OF 1918).

———S. 1 (3)—*Bye-laws of Surat Municipality—Bye-law No. 4, whether ultra vires—Information for purposes of census.*

Bye-law No. 4 of the Bye-laws of the Surat Municipality is not *ultra vires*, and a person who refuses to supply the information required under the bye-law is liable to the penalty provided in bye-law No. 5. *Parshotam Jagjivan v. Emperor*.

25 Cr. L. J. 330 :
77 I. C. 186 : 25 Bom. L. R. 767 :
A. I. R. 1924 Bom. 47.

———Ss. 7, 8, 9, 10—*Scope of—School Committee, powers and duties of—Attendance order, failure to obey—Reasonable excuse—Instruction, meaning of—Duty of Court.*

The powers conferred on the School Committee by the Act are wide. They are in curtailment of the right of the parent to give efficient instruction to his child according to his own ideas. It is, therefore, essential that an attendance order passed by the Committee must be shown to have been passed in strict compliance with the procedure therein prescribed, namely, as laid down in S. 9 of the Act. The direction as to enquiry in the section is not merely permissive, it has compulsory force. It is not essential that the "instruction" referred to in S. 8 (b), in order to be efficient should conform to the standards as adopted in the recognised primary school. When a complaint is made to a Court under S. 10, it is the function of the Court to see whether it is proved that the parents failed to send the child to a recognised school, without reasonable cause, on or

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after the date specified in the attendance order. *Nemchand Natha v. Emperor*.

25 Cr. L. J. 338 :
77 I. C. 226 : 25 Bom. L. R. 896 :
47 Bom. 942 : A. I. R. 1924 Bom. 105.

BOMBAY PUBLIC CONVEYANCES ACT (BOM. ACT VI OF 1863)

———S. 2—*Licensed pony in licensed tonga—Numbers different—No offence.*

There is no provision of the Act which requires that a particular pony or ponies should be yoked to a particular *tonga* or that the ponies used should be branded with the number of a particular *tonga*. The use in a licensed *tonga* of a licensed pony, even if the pony does not bear the number of the *tonga*, is no offence under the Act. *Emperor v. Sanjina Shivappa Bader*.

17 Cr. L. J. 144 :
33 I. C. 320 : 18 Bom. L. R. 65 :
A. I. R. 1916 Bom. 222.

———S. 2—*Yoking of unlicensed pony to tonga.*

To yoke an unlicensed pony to a *tonga* is an offence under S. 2. *Emperor v. Hari Tanaji*.

14 Cr. L. J. 458 :
20 I. C. 618 : 15 Bom. L. R. 700.

BOMBAY PUBLIC CONVEYANCES ACT (VII OF 1920).

———The Railway Police have the right to complain of an offence punishable by the Bombay Public Conveyances Act and Magistrates on such complaints are bound to deal with the case on the evidence before them. *Emperor v. Baloo Babaji*.

33 Cr. L. J. 462.
137 I. C. 8 : 34 Bom. L. R. 275 :
I. R. 1932 Bom. 241 : A. I. R. 1932 Bom. 256.

———S. 24—*Essentials for conviction under—Licensee of public conveyance himself taking his family or permitting unlicensed driver to take his family for a treat—Offence, if committed.*

To convict an accused under S. 24 it is not sufficient merely to show that the accused is a licensee of a public conveyance and that he permitted it to be driven by a driver who is not licensed; it must be shown that when this unlicensed driver was driving, he was driving a public conveyance for use as such. The section does not mean that if the licensee of a public conveyance himself takes his family out for a treat or permits an unlicensed driver to take his family out for a treat, an offence is committed, for the public conveyance is not then used for the purpose of public conveyance at all. It is used for the purpose of private conveyance. It is not being plied for hire or for carrying members of the public for hire. *Bhojraj Pheroomal v. Abdul Wahed*.

39 Cr. L. J. 976 :
177 I. C. 783 : 11 R. S. 68 (1) :
A. I. R. 1938 Sind 190.

———S. 26.

Plying of public conveyance without licence within the railway yard of the Victoria Terminus Station is an offence under S. 26. Railway

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(VII OF 1920).**

Police can set the law in motion. *Emperor v. Alli Hassan*. 34 Cr. L. J. 235 :

141 I. C. 790 : 34 Bom. L. R. 1662 :

I. R. 1933 Bom. 151 :

A. I. R. 1933 Bom. 63.

—(Act VI of 1863) S. 2—*Conveyance licensed for labour, if can be used for passengers.*

A person who has his conveyance licensed for labour only cannot use it for passengers, and is liable under S. 2 if he does so. *Emperor v. Barkya Tiku*. 26 Cr. L. J. 581 :

30 I. C. 133 : 17 Bom. L. R. 607 :

A. I. R. 1915 Bom. 49.

—(Act VII of 1920) S. 2—*"Plying for hire," meaning of—public conveyance.*

The essential idea of a conveyance being used for the purpose of plying for hire is, that it should be available at some public place, or on some regular route for any one who wishes to travel by it. A conveyance, therefore, which is kept for letting out on hire to particular persons does not become by such user a public conveyance within the meaning of S. 2. *Emperor v. Nasarwanji Bomanji*. 24 Cr. L. J. 310 :

72 I. C. 70 : 25 Bom. L. R. 951 :

A. I. R. 1923 Bom. 248.

—S. 12 (2)—*Superintendent of Police—Powers of—Delegation to Assistant Superintendent—Mode—Proof.*

A District Superintendent of Police has the authority to delegate powers conferred upon him under the Act to the Assistant Superintendent of Police, but where in a criminal case the question arises whether there was such delegation, the delegation must be clearly proved. There should be written order giving references to the various sections of the Act and specifying particular powers and duties which the Superintendent delegates to the Assistant or Deputy Superintendent of Police. The power to refuse to grant a license or to refuse to renew it or to suspend or cancel it, is one which is of some importance, and before delegating such a power, the Superintendent of Police ought to consider whether it can be properly delegated. *Emperor v. Karim Raja Mahamad*. 27 Cr. L. J. 150 :

91 I. C. 886 : 27 Bom. L. R. 1421 :

A. I. R. 1926 Bom. 77.

—S. 26—*Driving conveyance after suspension of licence—offence.*

Where a person continues to drive a public conveyance after he has been deprived of his licence, he ought to be prosecuted under Sub-S. 1 of S. 26 for driving a public conveyance without a licence for the time being in force, rather than under Sub-S. 2 (c) of the section for failure to produce a licence which is not an offence really affected by the question of suspension of licence except on the principle of *lex non cogit ad impossibilia*. *Emperor v. Karim Raja Mahamad*. 27 Cr. L. J. 150 :

91 I. C. 886 : 27 Bom. L. R. 1421 :

A. I. R. 1926 Bom. 77.

—(Bom. Act VI of 1863), S. 34 (a)—*"All vehicles kept in readiness for hiring on demand," meaning of—Government notification extending provisions of the Act to such vehicles, legality of.*

BOMBAY REGULATION (XII OF 1827).

Bombay Government Notification No. 955 of 1885, applying the provisions of the Bombay Public Conveyance Act to "all vehicles kept in readiness for hiring on demand," is not inconsistent with the provisions of S. 34 (a) of the Act and is, therefore, not *ultra vires*. The words 'on demand' are equivalent to 'not ordinarily used for the purpose of plying for hire.' The words 'in readiness' do not limit the application of the Act to any particular class of vehicles. The words "all vehicles kept in readiness for hiring on demand" include vehicles let on monthly hire and kept in the stables of the hirer. The owner of such a vehicle would be guilty of an offence under S. 2 of the Act if he let the vehicle on hire without a license; but the driver of such a vehicle could not be convicted under S. 3 of the Act for plying for hire, as the contract for hiring is between the owner and the hirer. *Jiwanji & Co. v. Emperor*. 17 Cr. L. J. 231 :

34 I. C. 647 : 9 S. L. R. 205 :

A. I. R. 1926 Sind 65.

BOMBAY REGULATION (XII of 1827).

—S. 27—*Action under, essentials.*

Before any action, under S. 27 of the Regulation, can be taken against a person (1) he must be shown, in accordance with legal procedure, to have been a suspected person, and (2) his assent to the measures adopted should be taken. *Emperor v. Kavtik Chaitram*. 3 Cr. L. J. 338 : 8 Bom. L. R. 241.

—S. 27—*Conditions in bond to be imposed by the District Magistrate himself, nature of.*

The restriction in a bond taken under S. 27 of the Regulation should be imposed by the District Magistrate himself, and should not unreasonably affect the personal liberty of the suspect, or have the effect of depriving him of the means of procuring a livelihood. *Emperor v. Umar*. 14 Cr. L. J. 255 :

19 I. C. 511 : 6 S. L. R. 177.

—S. 27—*Notice under, when to be issued—Restrictions when to be enforced.*

A notice, under S. 27 of the Regulation, can only be issued after proceedings have been taken against each person individually under Ch. VIII of the Cr. P. C.; and it is only on his failure to furnish security under that chapter that the restrictions mentioned in the latter half of the section can be enforced and that, too, with the assent of the accused person. *Emperor v. Gahina Kom Babaji*. 7 Bom. L. R. 459.

—S. 37—*"Investigate the matter as a criminal offence"—Presence of accused at trial optional—Conviction of individual members—'Village,' meaning.*

In proceedings under S. 37, the attendance of the villagers against whom action is being taken is not necessary. The words in S. 37 "investigate the matter as a criminal offence" merely mean that the Magistrate should proceed on evidence and after hearing both sides, or giving both parties an opportunity of being heard. S. 37 only empowers the Magistrate to take proceedings against the inhabitants of a village. When notice has been given to the villagers, the Magistrate may make an order affecting the whole village as a community, but he cannot

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make an order affecting only individual villagers. The Magistrate has no power to limit to a part of the village the responsibility which attaches under S. 37 to the whole village. The word "village" might be construed to mean also a hamlet or any such independent cluster of houses as might be described as a hamlet or village. *Imperator v. Abdula Shah*.

11 I. C. 256 : 4 S. L. R. 269.

—S. 37—*Neglect—Cowardice not included—Exemption by particular hamlets or individuals—Imposing separate fines on Hindus and Muhammadans.*

Neglect under S. 37 must at least consist of acts or omissions which lead to the inference that the inhabitants of a village were in sympathy with the robbers and endeavoured to obstruct or defeat the Police investigation. Mere cowardice is irrelevant to the matter. The section imposes responsibility on the whole community residing within the boundaries of a village, and a Magistrate proceeding under the section has no jurisdiction to exempt particular hamlets, or to exempt particular villagers from his order. It is incompetent to impose separate fines on Muhammadan and on Hindu residents. *Emperor v. The Entire Deh (Village) of Chakarkote*.

14 Cr. L. J. 249 :

19 I. C. 505 : 6 S. L. R. 124.

—Ss. 50, 53, 56—*Pleader's duty towards client—Clients with conflicting interests, whether can be represented by same Pleader.*

By the custom of the *mofussil*, a Pleader, employed by a party to a proceeding before a Court, is bound faithfully and exclusively to serve that party throughout the whole proceeding. The practice is based on, and implied in, the words of S. 50, cl. 3, and S. 53, cl. 3 of the Regulation. The Pleader in the *mofussil* is not merely an Advocate—he is the confidential Legal Adviser of the client and does for him those things which in the Presidency towns are often done by Solicitors. For legal advice, for the prosecution of legal proceedings in all their stages, the client depends on the Pleader. This dependence makes the position of the Pleader peculiarly onerous and binds him to give exclusive attention to the interests of the client throughout any proceeding in which he is engaged. It is possible, in winding up proceedings, for a single Pleader to represent several independent creditors of a Company whose interests are not identical. But a Pleader must not represent two different creditors whose interests are known to conflict. The principle is that a Pleader must show exclusive devotion to the interests of his client throughout the proceedings. Therefore, a Pleader must not accept a *vakalatnama* when he knows that he cannot act for his client throughout the proceedings. *Government Pleader v. Bhagubhai Dayabhai*.

13 Cr. L. J. 913 :

16 I. C. 788 : 14 Bom. L. R. 700 :

36 Bom. 605.

—S. 56—*Pleader—Misbehaviour not limited to professional misconduct—High Court—Jurisdiction disciplinary.*

The occurrence of the word "misbehaviour" in juxtaposition with the case of a Pleader merely accused of a criminal offence suggests that the

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misbehaviour need not necessarily be restricted to professional misbehaviour. The jurisdiction of the Bombay High Court in such matters is not limited to cases where a Pleader's alleged misconduct is committed in the course of his professional duties. *Government Pleader v. Annaji Narayan Deshpande*. 14 Cr. L. J. 257 : 19 I. C. 529 : 15 Bom. L. R. 231 : 37 Bom. 354.

—S. 56—*Pleader insulting District Judge—Jurisdiction of High Court.*

A Pleader, on being called upon by a District Judge to explain his unprofessional conduct, submitted applications attributing scandalous and shocking motives to the District Judge : *Held*, that as the applications were written by the Pleader as a Pleader, the High Court had jurisdiction in the matter and the defence that the Pleader acted as an accused person and had, therefore, the licence of such, had no substance. *Government Pleader v. Bhagubhai Dayabhai*.

13 Cr. L. J. 913 :

16 I. C. 788 : 36 Bom. 605 : 14 Bom. L. R. 700 .

BOMBAY RENT (WAR RESTRICTIONS No. 2) ACT (VII OF 1918).

—S. 7—*Charge for electricity, receipt of, if part of rent.*

The supply of electric light for premises let on rent is a matter of arrangement or contract between the tenant and the landlord and the charge levied by the landlord for such supply does not necessarily form part of the rent. A landlord who charges a fair amount for electric light supplied to the premises in addition to the standard rent cannot be convicted of receiving excess rent under S. 7 (1). *Ram Gopal Rupji v. Emperor*.

21 Cr. L. J. 725 :

58 I. C. 149 : 22 Bom. L. R. 900 :

A. I. R. 1921 Bom. 162.

BOMBAY SALT ACT (II OF 1890).

—S. 47 (a)—*Removal of salt in contravention of a licence or permit—Dishonest intention.*

S. 47 (a) prohibits the removal of salt in contravention of any licence or permit. Such removal is prohibited in itself. The section does not, in express terms or by necessary implication, make intention or knowledge an essential ingredient of the offence. *Emperor v. Magan Lal Dulabhai*.

1 Cr. L. J. 104 :

6 Bom. L. R. 93 : I. L. R. 28 Bom. 348.

BOMBAY SPECIAL (EMERGENCY POWERS) ACT (XVI OF 1932).

—S. 4.

In order that there should be an offence under S. 14, it is necessary that there should be a valid order under S. 4. *In re: Krishnarao Ramchandra*.

35 Cr. L. J. 230 :

146 I. C. 688 : 35 Bom. L. R. 845 :

57 Bom. 690 : 6 R. B. 170 :

A. I. R. 1933 Bom. 409.

—S. 16.

District Magistrate can be invested with powers of Governor-in-Council and delegation, can extend throughout the Presidency. *Vishvasrao v. Emperor*.

36 Cr. L. J. 276 :

153 I. C. 40 : 36 Bom. L. R. 968 : 7 R. B. 208 :

A. I. R. 1934 Bom. 464.

BOMBAY TOLLS ON ROADS AND BRIDGES ACT (III OF 1875).**—S. 29—Application of.**

It is extremely doubtful whether the Act can be made to apply to a person who is not a resident in the Bombay Presidency, and not even in British India, but resides in foreign territory. *In re : Krishnarao Ramchandra.*

35 Cr. L. J. 230 :
146 I. C. 688 : 35 Bom. L. R. 845 : 57 Bom. 690 :
6 R. B. 170 : A. I. R. 1933 Bom. 409.

—S. 29.

S. 29 is [no bar to the High Court entertaining a petition for quashing proceedings taken under the Act. *In re : Krishnarao Ramchandra.*

35 Cr. L. J. 230 :
146 I. C. 688 : 35 Bom. L. R. 845 : 57 Bom. 690 :
6 R. B. 170 : A. I. R. 1933 Bom. 409.

BOMBAY TOBACCO DUTY (TOWN OF BOMBAY) ACT (IV OF 1857)**—S. 18—Confiscation of vehicle—Notice to owner is necessary—Duty of Court.**

The discretion given to Court to confiscate the vehicle under S. 18 can only be properly used after hearing the owner, and ascertaining whether he had given his consent or knew the use to which the vehicle was put. The Court is given the option to mitigate the rigour of confiscation by commutting the same to fine. From the fact that the servant has consented to the illegal use and has been convicted, it does not follow that notice can be dispensed with as the act of the servant might be outside his employment. *In re : Jafferbhai Hasam.*

38 Cr. L. J. 224 :
166 I. C. 562 : 38 Bom. L. R. 961 :
9 R. B. 238 : A. I. R. 1937 Bom. 10.

BOMBAY TOLLS ON ROADS AND BRIDGES ACT (III OF 1875)**—S. 11.**

Accused motor driver evading toll on six days by taking side track—Non-stopping at toll bar though signalled by contractor—Obstruction of public servant in discharge of his duty, is committed—One trial for all six evasions and one sentence is not legal under Cr. P. C., S. 234. *Emperor v. Suleman Abba.*

36 Cr. L. J. 516 :
154 I. C. 556 : 36 Bom. L. R. 1124 :
7 R. B. 337 : A. I. R. 1935 Bom. 24.

—S. 11.

The toll contractor and his servants employed under S. 11, are public servants within the meaning of S. 21, Penal Code. *Emperor v. Suleman Abba.*

36 Cr. L. J. 516 :
154 I. C. 556 : 36 Bom. L. R. 1124 :
7 R. B. 337 : A. I. R. 1935 Bom. 24.

—S. 24—Bye-laws framed by Tramway Company—Notice modifying bye-laws not sanctioned by Governor-in-Council, validity of.

BOMBAY TRAMWAYS ACT (I OF 1874)

A notice issued by the Bombay Tramway Company modifying a bye-law framed by the Company under S. 21 of the Act and duly sanctioned by the Governor-in-Council, has no legal effect unless it is sanctioned by the Governor-in-Council. *Sorab Merwanji Alpaivalla v. Emperor.*

21 Cr. L. J. 88 :
54 I. C. 488 : 21 Bom. L. R. 1103 :
A. I. R. 1920 Bom. 211.

—S. 24—Fine—Duty of Magistrate.

It is for the bye-laws, and not for the Magistrate to impose the fine, and the duty of the Magistrate is to recover the penalty so imposed. *C. S. Modi v. Emperor.*

35 Cr. L. J. 1439 (2) :
151 I. C. 875 : 36 Bom. L. R. 369 :
7 R. B. 91 : A. I. R. 1934 Bom. 205.

BOMBAY VILLAGE POLICE ACT (BOMBAY ACT VIII OF 1867)**—Ss. 6, 14—Police Patel—Judicial proceedings—District Magistrate's power to transfer—High Court—Superintendence.**

The duties which are enumerated in S. 6 are the executive duties of the Police Patel; they are duties imposed upon him quite independently of the authority which he has been given under S. 14 to try and punish in cases of petty assault and abuse. The authority been given by S. 14 is a judicial and not an executive authority. S. 6, therefore, does not justify the District Magistrate in stopping the judicial proceeding which is already in progress before the Police Patel. Apart from the power expressly conferred by the Act upon the Magistrate in that connection, the only right of superintendence over the judicial functions of the Police Patel created by the Village Police Act, is vested in the High Court by Clauses 26 and 27 of the Letters Patent. *In re : Dayal Kanji.*

8 Cr. L. J. 141 :
10 Bom. L. R. 630.

—S. 14—High Court power to quash proceedings before Patel.

The High Court of Bombay has no power under the Cr. P. C. to quash proceedings before a village Patil, but it has power to do this under the general powers of superintendence conferred upon it by Letters Patent. *In re : Vasudeo Pundlik Samant.*

20 Cr. L. J. 315 :
50 I. C. 491 : 21 Bom. L. R. 274 :
A. I. R. 1919 Bom. 79.

—S. 14—Letters Patent (Bom.), Cl. 25—Offence committed at sea—Jurisdiction of village Patil—Revision.

A complaint was presented to a village Patil against the Captain of a steamer. The allegation was that the Captain had abused the complainant on board the steamer at some distance from the shore : *Held*, that the Patil had

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no jurisdiction in the matter under S. 14.
In re : Pundlik Samant. 20 Cr. L. J. 315 :
 50 I. C. 491 : 21 Bom. L. R. 274 :
 A. I. R. 1919 Bom. 79.

———S. 15—*Police Patil's jurisdiction to award confinement in default of payment of fine.*

A Village Police Patil, under S. 15, has jurisdiction to award the alternative punishment, viz., fine or confinement only. S. 64 of the Penal Code not being made applicable by the Bombay General Clauses Act to proceedings under the Bombay Village Police Act, he has no jurisdiction to award confinement in default of payment of fine. *Emperor v. Puna Laxman Bhil.* 1 Cr. L. J. 327 :
 6 Bom. L. R. 357:

———S. 15—*Police Patel, power of, to inflict fine for making false complaint.*

A Police Patel, to whom a commission has been issued under S. 15 of the Act, has no power to inflict a fine on a complainant for making a false complaint. *In re : Maganlal Khemchand.* 46 I. C. 415 :
 20 Bom. L. R. 600 : A. I. R. 1918 Bom. 151.

BONA FIDES

———*See* Cr. P. C., S. 133. ;

BORSTAL SCHOOL

———*See* under Local Acts.

BOYCOTT

———*See* Penal Code, S. 297.

BREACH OF PEACE

———*See* Cr. P. C. Ss. 106, 123, 145.

BREACH OF TRUST

———*See* Penal Code, 1860, Ss. 403—409.

BRIBE

———*See* Penal Code, S. 161.

**BOMBAY ABKARI ACT (BOMBAY)
(ACT V OF 1878), S. 43 (a)—**

———*Importation of bhang from Wadhwan Civil Station to Viramgam.*

Wadhwan Civil Station is not a part of British India. The importation of twenty tolas of bhang from Wadhwan Civil Station into Viramgam is an importation of bhang from foreign territory into Presidency of Bombay and is, therefore, punishable under S. 43. *Emperor v. Chimanlal Jagjivan.* 13 Cr. L. J. 790 :
 14 Bom. L. R. 876 : 17 I. C. 534.

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———*Wadhwan Civil Station.*

Wadhwan Civil Station is not a part of British India. *Emperor v. Chimanlal Jagjivan.*

13 Cr. L. J. 790 :
 14 Bom. L. R. 876 : 17 I. C. 534.

BRITISH NORTH-AMERICA ACT, 1867

———S. 91 (27).

S. 498 of Criminal Code and major portion of

BUDDHIST LAW (BUDDHIST).

Combines Investigations Act are *intra vires*. *Proprietary Articles Trade Association v. Attorney General of Canada.* 32 Cr. L. J. 899 :
 132 I. C. 593 : 328 L. J. 899 : I. R. 1931 (P. C.)
 I. R. 1931 (P. C.) 177 : A. I. R. 1931 (P. C.) 94

BROTHEL

———*See* Bengal Disorderly Houses Act, S. 2.
 ———*See* (i) Bombay District Police Act, S. 41.

(ii) Burma Suppression of Brothels Act.

A brothel is a place resorted to by persons of both sexes for the purpose of prostitution, who are strangers to the occupancy. *Emperor v. Versimal Bahagiomal.* 14 Cr. L. J. 282 :
 19 I. C. 714 : 6 S. L. R. 224.

BUDDHIST LAW (BUDDHIST)

———*Ecclesiastical Law.*

It would be an offence to ordain as a *hpoongyi* a layman unless and until he has made due provision for the sustenance and support of his children. *Maung Tin v. Ma Hmin.*

34 Cr. L. J. 815 :
 144 I. C. 187 (2) : 11 R. 226 :
 I. R. 1933 Rang. 92 (F. B.) :
 A. I. R. 1933 Rang. 138.

———*Husband and wife.*

The wife is a co-sharer in the joint property, but this does not mean that the husband is bound to allow her to mismanage the property. *Chan Toon v. Ma Ti.* 37 Cr. L. J. 6 :
 159 I. C. 31 : 8 R. Rang. 245 (2) :
 A. I. R. 1935 Rang. 359.

———*Marriage—Chino-Burman Buddhist and Burmese Buddhist woman—Parties sui juris—evidence of valid marriage.*

The law that is applicable to the union of a Chino-Burman Buddhist and a Burmese Buddhist woman is the same as is applicable to the case of a Burmese Buddhist man and a Burmese Buddhist woman. All that is required so long as they are *sui juris*, is their mutual consent to live together as husband and wife. Where such consent is proved by evidence, the spouses must be held to be legally married. *Ma Mya Tin v. Maung Ah Lon.* 39 Cr. L. J. 796 :
 183 I. C. 477 : 12 R. Rang. 77 :
 A. I. R. 1939 Rang. 252.

———*Marriage—Consent obtained by pressure, whether free.*

Under the Burmese Buddhist Law, there must be free consent of the parties to a valid marriage. Consent reluctantly given under pressure is not such free consent as is required by that law. *L. B. Ma Twe v. Lwe Hain.*

22 Cr. L. J. 123 :
 59 I. C. 555 : 13 Bur. L. T. 105.

———*Ecclesiastical—Pongyis, duties of—Participation in politics, whether permissible.*

Under the Burmese Buddhist Law it is the bounden duty of the laity to do their utmost to discourage *pongyis* from transgressing the bonds which the *vinaya* lays down for them and the rules which by donning the yellow

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robe, they voluntarily promised to observe. And it is the bounden duty of a *pongyi* who desires to participate in party politics to put off the yellow robe and re-assume the responsibilities as well as the privileges of ordinary civil life. *Pongyis* are subject to the laws of the land they live in. If they are dissatisfied with such laws, it is not for them to oppose the authorities but to move to other parts where the laws will be more congenial. So long as the civil laws are not in conflict with the rules to be observed by monks, they must be obeyed by them. In attempting to oppose the orders of the executive, a monk not only breaks his own personal law but sets an example to the laity which is greatly to be lamented. *Maung Tok v. Emperor*.

26 Cr. L. J. 1622 :
90 I. C. 918 : 3 Rang. 352 :
A. I. R. 1925 Rang. 354.

BUDDHIST LAW (BURMESE)

———*Marriage—Essentials to be proved to establish marriage.*

In order to establish a marriage, there should be mutual agreement that the parties become man and wife coupled with consummation. The ceremony is not necessary; it is no more if it takes place, than evidence whereby the fact of this mutual agreement can be proved. Similarly open living together is not necessary but is cogent evidence to prove the central fact, the mutual agreement. *Ma Kyin Mya v. Maung Sit Han*.

38 Cr. L. J. 895 :
170 I. C. 355 : 1937 Rang. 103 :
10 R. Rang. 77 :
A. I. R. 1937 Rang. 245.

———*Marriage—Girl under 20 years—Parents, consent of, whether essential.*

Under the Burmese Buddhist Law, except in the case of widows and divorcees, a girl under 20 years cannot contract a valid marriage without the consent, either express or implied, of her parents or guardians. *Ma E Sein v. Mg. Hla Min*.

26 Cr. L. J. 1613 :
90 I. C. 717 : 3 Rang. 455 :
4 Bur. L. J. 123 :
A. I. R. 1925 Rang. 280.

———*Marriage—Marriage between Chinese Confucian and Burmese Buddhist woman—Law applicable.*

The Burmese Buddhist Law regarding marriage is *prima facie* applicable as the *lex loci contractus* to a marriage in Burma between a Chinese Confucian and a Burmese Buddhist woman. *Ma Kyin Mya v. Maung Sit Han*.

38 Cr. L. J. 895 :
170 I. C. 355 : 1937 Rang. 103 : 10 Rang. 77 :
A. I. R. 1937 Rang. 245.

———*Marriage—What is—Proof of—Ceremony, if necessary—Absence of direct proof by reputation—Held that parties were not married and maintenance order could not be passed.*

Marriage among Burman Buddhist is a contract entered into by mutual consent of the parties; no ceremony is necessary for such marriage. In the absence of direct proof, consent may be inferred from the conduct of the parties or established by reputation. The evidence of

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the intention to enter into married life must be clear. Clandestine acts of sexual intercourse do not, by themselves, establish marital relationship, and where there is no regular co-habitation under the same roof, and the couple who resort to each other for purposes of intimacy, are thought by some to be engaged, and by others to be cousins or mere friends, proof of marriage has not been established by reputation. Moreover, as it takes two persons to make a contract in order to prove marriage, there must be evidence not merely of a desire by one person to be considered as having married another, but of the consent of that other, express or implied, to the joint assumption of a status consistent only with the marriage bond: *Held*, on facts that the parties were not married and, therefore, no maintenance order could be passed under S. 488, Cr. P. C. *Tun Sein v. Ma San Myint*.

39 Cr. L. J. 571 :
175 I. C. 418 : 10 Rang. 490 :
A. I. R. 1938 Rang. 115.

———*Marriage, forms of—Presumption—Long co-habitation.*

Though there are usually six preliminary steps to a first class marriage in China, these forms are not indispensable and there is nothing to show that any particular ceremony is essential for a valid marriage under the Chinese Law. If the parties co-habit for several years as man and wife, the presumption that there was a valid marriage must prevail. *Ma Shein v. Kim Sein*.

17 Cr. L. J. 112 :
32 I. C. 848 : 8 L. B. R. 225 : 9 Bur. L. T. 81 :
A. I. R. 1916 L. B. 28.

BULLOCK CARTS.

———*Forceful seizure of, by Tahsil peons, how far valid—Private defence, right of, when exercisable.* *Pershudi Pani v. Baljit Singh*.

14 Cr. L. J. 409 :
20 I. C. 233.

BURDEN OF PROOF.

See also Evidence Act, 1872, Ss. 101—114.

BURIAL GROUND.

See Penal Code, S. 297.

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———*S. 4—Notice declaring certain persons are not recognised—Offence.*

The accused, who were *Pongyis* residing in a certain Kyaung hung, a notice-board at the gate of a Kyaung compound on which was written: "Those who do not belong to the Thanga Thamagyi Society are not recognised, those who are not recognised by the Wunthanu are not recognised:" *Held*, that the notice was a direct instigation to the villagers to boycott the persons indicated and that the accused were, therefore, guilty of an offence under S. 4. *Nandiya v. Emperor*.

26 Cr. L. J. 306 :
84 I. C. 450 : 3 Bur. L. J. 86 :
A. I. R. 1924 Rang. 379.

BURMA ANTI-BOYCOTT ACT (V OF 1922)

—Ss. 4 (a), 7 (a)—*Boycott—Abetment.*

Where a person being cognisant of a proposal to boycott another, allows his house and compound to be used for a meeting convened for the purpose, he facilitates and, therefore, intentionally aids the boycott within the meaning of S. 107 of the Penal Code. *Tiloka v. Emperor.*

25 Cr. L. J. 255 :
76 I. C. 719 : 2 Bur. L. J. 221 : I. R. 629 :
A. I. R. 1924 Rang. 19.

—Ss. 4 (a), 7 (a)—*Excommunication, bona fide, requisites of—Burden of proof—Boycott.*

In order to claim the benefit of S. 7 (a), it must be proved that the excommunication was proclaimed in a *sima* or *thien* by a properly convened chapter or senior monks, and that the procedure laid down in a *Vinayawas* strictly followed. It must also be proved that the boycott was proposed for *bona fide* religious purposes. Where a motive other than religious is also present, the burden of proving good faith lies heavily on the proposer. Where a boy is made use of as a weapon of attack for the furtherance of a political purpose, it falls within the mischief of the Act. *Tiloka v. Emperor.*

25 Cr. L. J. 255 :
76 I. C. 719 : 2 Bur. L. J. 221 :
1 R. 629 : 1924 Rang. 19.

—S. 9 (1)—*Sanction for prosecution in respect of definite offence, whether can be extended to cover different offence.*

Where sanction is granted by the Local Government under S. 9 (1) for the prosecution of certain persons for an offence under the Act, in respect of an act which is precisely defined in the order granting the sanction, the order cannot be treated as an authority for a prosecution in respect of an offence which is absolutely distinct and is alleged to have been committed on an occasion different from that specified in the order. *Pathada v. Emperor.*

26 Cr. L. J. 245 :
84 I. C. 245 : 3 Bur. L. J. 178 :
A. I. R. 1924 Rang. 371.

—Ss. 9, 3—*Omission to invite person to wedding owing to political difference—Offence.*

Where the omission to invite to wedding the non-members of the Society is due to political differences and the resolution of the Society, the accused is guilty of an offence under S. 3 of the Burma Anti-Bycott Act. *Nga Aung Hman v. Emperor.*

25 Cr. L. J. 193 :
76 I. C. 561 : 2 Bur. L. J. 196 :
A. I. R. 1924 Rang. 65.

—S. 9 (1)—*Sanction to prosecute, form and contents of.*

The intention of the Legislature in enacting S. 9 (1) was to ensure that no prosecution under the Act should be launched except on a complaint authorised by the Local Government, and where this intention has been given effect to, it is immaterial whether or not all the facts on which the complaint is to be based are stated in the authority with meticulous precision. *Nga Aung Hman v. Emperor.*

25 Cr. L. J. 193 :
76 I. C. 561 : 2 Bur. L. J. 196 :
A. I. R. 1924 Rang. 65.

BOMBAY COURTS ACT (XI OF 1922).

—S. 27—*Revision—Sessions Judge.*

Prima facie the Sessions Judge of Hanthawaddy, Rangoon, is invested with revisional jurisdiction in connection with applications for revision from the Courts of Magistrates in Rangoon. *Maung Chit Sein v. Emperor.*

34 Cr. L. J. 189 :
141 I. C. 259 : 10 Rang. 488 :
I. R. 1933 Rang. 21 :
A. I. R. 1932 Rang. 192 (2).

BURMA COURTS MANUAL

—Para. 791—*Evidence only of year of birth—Fixing of date.*

Under para. 791, Burma Courts Manual, if there is evidence only of the year of birth, the birthday may be fixed as January 1. It is, therefore, at the option of the Court to fix a date other than January 1. *King v. Unoosc.*

39 Cr. L. J. 697 :
176 I. C. 217 : 11 R. Rang. 36 :
A. I. R. 1938 Rang. 228.

—Para. 664-A—*Applicability—Does not apply to cognizable warrant case.*

Paragraph 664-A relating to the deposit of witness expenses relates to order under Ss. 244 and 245, Cr. P. C., and does not apply to a cognizable warrant case. It is only from the defence, that the Magistrate can, under certain circumstances, require the deposit of witness expenses: Vide S. 227 (2), Cr. P. C. *Rang Chin Hone On v. C. Ah Foo.*

A. I. R. 1937 Rang. 35.

BURMA CRIMINAL LAW AMENDMENT (CONDITIONALLY RELEASED PRISONERS) ACT (III OF 1928).

—S. 2—*Penal Code, S. 227—Conviction by First Class Magistrate under S. 227—Enhanced sentence to more than two years, legality of.*

There is nothing in either S. 227 of the Penal Code or Burma Act III of 1928 to empower any Magistrate to pass a sentence in excess of that which he is empowered under the Cr. P. C. to pass. Where a Magistrate who had ordinary first class powers empowering him to impose a maximum sentence of two years, convicted an accused person under S. 227, Penal Code, and sentenced him under that section and S. 2 of the Burma Act III of 1928 to 2 years 8 months and six days: *Held*, that the sentence was illegal and the case should be re-tried. *Nga Mya v. Emperor.*

31 Cr. L. J. 175 :
120 I. C. 693 : 7 Rang. 318 :
A. I. R. 1929 Rang. 279.

BURMA EXCISE ACT (V OF 1917)

—*Excise Officer, whether 'Police Officer'—Admission to Excise Officer, admissibility of—Seizure in transit—Non-observance of rules—Validity of conviction.*

An Excise Officer appointed under the Burma Excise Act of 1917 is not a Police Officer and

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an admission made to him is not inadmissible in evidence. *Maung San Nyin v. Emperor*.

31 Cr. L. J. 303 :
121 I. C. 715 : 7 Rang. 771 :
A. I. R. 1930 Rang. 49.

———*Illegal search—Property illegally possessed found—Effect.*

Dictum.—Though persons who make a search illegally may render themselves liable to be sued for damages, the illegality of the search does not affect the question whether the person whose house was illegally searched has committed an offence, if property which cannot legally be possessed, is actually found during the search. *Maung San Myin v. Emperor*.

31 Cr. L. J. 303 :
121 I. C. 715 : 7 Rang. 771 :
A. I. R. 1930 Rang. 49.

———Ss. 5 (1), (a) and (b)—*Financial Department Notification No. 72 of 1917—Possession or sale of tari, when punishable.*

By para. 1 (4) of Financial Department Notification No 72 of the Government of Burma dated 18th September, 1917, *tari* is exempted from all provisions of the Excise Act throughout Upper Burma except in places within five miles of a licensed *tari* shop. Consequently except within such limits neither the possession nor the sale of *tari* is an offence. To prove an offence, it is necessary to show that the place of possession or sale is within five miles of a licensed *tari* shop. *Aung Shan v. Emperor*.

30 Cr. L. J. 752 :
117 I. C. 254 : 7 Rang. 3 : I. R. 1929 Rang. 190 :
A. I. R. 1929 Rang. 120.

———Ss. 12, 16, 30—*Vinegar, whether alcoholic liquor—Manufacture of—Possession of, whether offence—Financial Department Notification No. 70, Cl (1).*

Under Financial Department Notification No. 70 of the Government of Burma, vinegar is an alcoholic liquor for the purposes of S. 12 of the Burma Excise Act, and manufacture of vinegar except under licence is an offence under S. 12 (a). But vinegar not being an alcoholic liquor except for the purpose of S. 12 of the Act, possession or import or export of vinegar in any quantity is not an offence. *Yee Wan v. Emperor*

20 Cr. L. J. 321 :
50 I. C. 657 : 11 Bur. L. T. 268 : 9 L. B. R. 277 :
A. I. R. 1919 L. B. 120.

———Ss. 12 (c), 30 (d)—*Yeast balls, possession of,—Offence.*

Yeast balls are not excisable articles, but as they are materials for the manufacture of an excisable article, namely, liquor, the possession of them is prohibited by S. 12 (c) and is made punishable under S. 30 (d). *Nan Masmya v. Emperor*.

23 Cr. L. J. 313 :
66 I. C. 665 : 11 L. B. R. 138.

———S. 16—*Possession of various kind of liquor—Offences—Punishment.*

There is nothing to prevent the possession of each kind of article up to the limit prescribed though the total of all the articles possessed may exceed the limit prescribed for each of them. When different kinds of liquor are

BURMA EXCISE ACT (V OF 1917)

seized together, it is undesirable that more than one punishment should be inflicted. *Emperor v. Nga Sein*.

34 Cr. L. J. 8 (1) :
140 I. C. 302 : 10 R. 396 : I. R. 1932 Rang. 225 :
A. I. R. 1932 Rang. 184.

———Ss. 16, 30—*Liquor intended for private consumption—Person in possession, whether liable.*

The manager of a Store was prosecuted for having in his possession 3 cases of wine. It appeared that the firm employed 25 or 30 men, that the cases were sent to them quite openly as such just before the New Year, and that one of the proprietors was a Roman Catholic who observed the New Year and the anniversary of the election of the Chinese President : *Held*, that under the circumstances, the liquor, which was not excessive in quantity, was intended for the bona fide private consumption of the firm and its employees at the New Year and the accused was not, therefore, liable to conviction. *Choo Khin v. Emperor*.

26 Cr. L. J. 42 :
83 I. C. 522 : A. I. R. 1923 Rang. 41.

———Ss. 30, 37—*Conviction under S. 30, alteration under S. 37, validity.*

An illegal conviction under S. 30 (a) cannot be altered to a conviction under S. 37 when the accused has not been called upon to answer a charge under that section. *Emperor v. Nga Po Seik*.

30 Cr. L. J. 920 :
119 I. C. 223 : 7 R. 316 : I. R. 1929 Rang. 303 :
A. I. R. 1929 Rang. 256.

———S. 30 (a)—*Possession of less than one quart, if punishable.*

Possession of less than one quart of liquor is not punishable under S. 30 (a) whether the liquor involved is country spirit or country liquor other than spirit. *Emperor v. Nga Po Seik*.

30 Cr. L. J. 990 :
119 I. C. 223 : 7 R. 316 : I. R. 1929 Rang. 303 :
A. I. R. 1929 Rang. 256.

———Ss. 30 (a), 37—*'Country liquor', meaning of—Duty of prosecution to specify kind of liquor.*

"Country liquor" is a generic term which can be equally applied to *tari*, country spirit, and country alcoholic liquor other than spirit. In excise cases, it is always necessary to distinguish between these different kinds of country liquor and specify which particular kind is involved in the case, as the quantities of each of these different kinds of alcoholic liquor which may be possessed without a licence, differ.

Emperor v. Nga Po Seik. 30 Cr. L. J. 990 :
119 I. C. 223 : 7 R. 316 : I. R. 1929 Rang. 303 :
A. I. R. 1929 Rang. 256.

———S. 30 (b)—*Restaurant-keeper procuring liquor without licence for customers, if commits offence.*

A restaurant-keeper who holds no licence for the sale of liquor and who, to oblige a customer, procures for him a bottle of beer from a liquor shop, cannot be convicted under S. 30 (b) of selling liquor without a licence. *Ah Kway v. Emperor*.

20 Cr. L. J. 529 :
51 I. C. 769 (2) : 12 Bur. L. T. 54 :
A. I. R. 1919 L. Bur. 117.

BURMA EXCISE ACT (V OF 1917)

———S. 30 (c)—*Liquor of several persons kept in one place but separately—Possession, whether joint.*

Where the liquor of each of several persons in a place is kept separate, the owners of each portion of it are not in joint possession of the whole. *Appaya v. Emperor.*

26 Cr. L. J. 327 :
84 I. C. 551 : 3 Bur. L. J. 255 : 2 Rang. 657 :
A. I. R. 1925 Rang. 135.

———S. 37—*Offence under, essentials.*

In order to establish an offence under S. 37, it is necessary that the guilty knowledge or belief which is an essential ingredient of the offence should be included in the particulars of the offence stated to the accused and proved at the trial. *Emperor v. Nga Po Seik.*

30 Cr. L. J. 990 :
119 I. C. 223 : 7 Rang. 316 :
I. R. 1929 Rang. 303 : A. I. R. 1929 Rang. 256.

———S. 37—*Unlawful possession of tari where tree-tax system is not in force—Offence.*

In a district in which the tree-tax system is not in force and in which, consequently, the law does not prohibit or place any restriction upon the manufacture of *tari*, it cannot be unlawfully manufactured, and S. 37 does not, therefore, apply to the possession of *tari* manufactured in such a District. *Emperor v. Nga Po Kyan.*

19 Cr. L. J. 970 :
47 I. C. 870 : 3 U. B. R. (1918) 86 :
A. I. R. 1918 U. B. 23.

———Ss. 37, 44—*Possession of excisable article, failure to account—Offence.*

A person who fails to satisfactorily account for being in possession of any excisable article, although the quantity he possesses is within the limit allowed for possession, renders himself liable to be convicted under S. 37. *Nga Han Kyi v. Emperor.*

23 Cr. L. J. 290 :
66 I. C. 514 : 11 L. B. R. 134.

———Ss. 41 (c), 63 (1) (a)—*Offence under S. 41 (c)—Sanction for prosecution by Collector, form of.*

A mere order by the Collector sanctioning the prosecution of a person under S. 41 (c) on the report of the District Superintendent of Police is not a sufficient compliance with the provisions of S. 63 (1) (a). The Collector must authorise some particular Excise Officer to make the report or complaint. *Kaung ki v. Emperor.*

21 Cr. L. J. 452 :
56 I. C. 436 : 3 U. Bur. R. (1919) 197 :
A. I. R. 1920 U. Bur. 46.

———Ss. 44, 30 (a)—*Applicability to case under S. 30 (a).*

S. 44 has no application to the common case under S. 30 (a) where the charge is one of possession of a larger quantity of an excisable article than is allowed under the Act. In prosecution under S. 30 (a), it is necessary to prove such possession, and there is no room or need for any presumption. *The King v. Mi Nga Soe.*

41 Cr. L. J. 541 :
188 I. C. 72 : 1940 Rang. 290 : 12 R. Rang. 363 :
A. I. R. 1940 Rang. 109.

BURMA FERRIES ACT (II OF 1898)

———Ss. 33 (a), 63 (1) (6)—*Accused prosecuted under S. 304-A, I. P. C.—Accused though unlicensed medical practitioner used hypodermic syringe—Magistrate finding no offence under S. 304, I. P. C., but charging accused under S. 33 (a), Excise Act—Is sufficient compliance with S. 63 (1) (6).*

The applicant was originally prosecuted under S. 304-A, I. P. C. The charge sheet set out that the applicant, an unregistered medical practitioner, gave an intravenous injection to the deceased prior to his death, and that death followed this injection. The Magistrate found, on inquiry, that there was not sufficient evidence to charge applicant under S. 304-A, I. P. C., but charged him under S. 33 (a), Excise Act : *Held*, that a reference in police report to the use of an hypodermic syringe by an unlicensed practitioner was a sufficient compliance with the provisions of S. 63 (1), (6), and the Magistrate in charging applicant under S. 33 of the Act was acting on a police report. *A. Nandi v. Emperor.*

A. I. R. 1935 Rang. 198.

BURMA EXPULSION OF OFFENDERS ACT (I OF 1926).

———Ss. (b), 4—*Burma Habitual Offenders Restriction Act—S. 7—Order of restriction—Liability to be expelled—Jurisdiction of District Magistrate and High Court.*

Although a person who had not been convicted of any offence but against whom an order under S. 7 of the Burma Habitual Offenders Restriction Act has been passed is an 'offender' within the meaning of the Burma Expulsion of Offenders Act and is liable to be expelled from Burma under S. 3 of the said Act, the Act provides no machinery for the enforcement of that liability and neither the District Magistrate nor the High Court has jurisdiction to proceed against such a person under S. 4 of the said Act. *Emperor v. Nga Po Sein Gyi.*

30 Cr. L. J. 990 :
119 I. C. 213 : 7 Rang. 266 :
I. R. 1919 Rang. 293 :
A. I. R. 1929 Rang. 254.

———Ss. 2 (a), (b) 3—*Accused brought by parents to Burma from India when very young—No intention to acquire domicile—No intention of not returning to India—Whether liable to expulsion.*

The accused was brought to Burma from India by his parents when he was a few years old. There were no circumstances showing that he acquired a domicile in Burma or that he did not intend to return to India : *Held*, that the accused was a non-Burman within the meaning of S. 2 (a) and an offender within the meaning of S. 2 (b) and consequently liable to expulsion under S. 3. *Emperor v. Rangaswamy.*

38 Cr. L. J. 432 (b) :
167 I. C. 589 : 9 R. Rang. 324 :
A. I. R. 1937 Rang. 54.

BURMA FERRIES ACT (II OF 1898).

———*Rules under, r. 4—'Plying for hire,'—Person crossing river with parcels once each way.*

It is necessary before a person can be said to

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be plying that he waits or attends at a certain place for hire by anybody who chooses to employ him or requires his services. To cross the river with parcels once each way on the arrival and departure of the trains at and from a place cannot be properly described as "plying for hire." *Lim Twa Kee v. M. Ismail.*

38 Cr. L. J. 872 :
170 I. C. 236 : 10 R. Rang. 68 :
A. I. R. 1937 Rang. 275.

—S. 12—Rules under, R. 4-A, is ultra vires.

R. 4-A of the rules framed under S. 12 is ultra vires. *Shwe Phone v. Chairman, District Council, Mergui.*

40 Cr. L. J. 77 :
178 I. C. 445 : 1938 Rang. 573 :
11 R. Rang. 237 : A. I. R. 1938 Rang. 384.

—S. 15.

Conveying passengers without sanction—No exemption under S. 15 : *Held*, offence under S. 27 committed. *Ali Bhai v. Emperor.*

37 Cr. L. J. 146 :
159 I. C. 472 : 13 Rang. 619 :
8 R. Rang. 274 : A. I. R. 1935 Rang. 464.

—S. 15.

When a launch halts in the stream for the purpose of setting down or picking up passengers, it becomes to all intents and purposes such "an island," and is without doubt "a point" for the purpose of S. 15. *Ali Bhai v. Emperor.*

37 Cr. L. J. 146 :
159 I. C. 472 : 13 Rang. 619 :
8 R. Rang. 274 : A. I. R. 1935 Rang. 464.

—Ss. 15, 12—Rules, framed under S. 12, r. 4-A—"Plying for hire,"—Person waiting on bank or in stream regularly for hire by public.

A person is said to ply for hire a ferry when he waits or attends on the bank or in the stream regularly, (that is to say, not uninterruptedly, for it might be done periodically, but regularly in the sense of repeatedly making a business of it) for hire by the public or lay anybody who chooses to employ him to cross the river or convey goods across the river. *Shwe Phone v. Chairman, District Council, Mergui.*

40 Cr. L. J. 77 :
178 I. C. 445 : 1938 Rang. 573 :
11 R. Rang. 237 : A. I. R. 1938 Rang. 384.

—Ss. 25, 26—Some accused employing others to carry their goods in boats from one place to another within limits of ferry—Offence.

The evidence at most showed that the first three accused employed the other accused to carry their betel leaves from one place to another within the limits of a ferry : *Held*, that the sampans of the accused so employed did not thereby become "ferry boats," between two fixed points for all comers indiscriminately. That no offence was disclosed under S. 25 and that, as none of the accused were shown to have fraudulently or forcibly crossed the public ferry or used the landing place without paying the ferry toll, there was no evidence of an offence under S. 26 (b). *Po U v. Emperor.*

7 Cr. L. J. 311 :
14 Bur. L. R. 22.

BURMA FISHERIES ACT (III OF 1905)

—Ss. 25, 27—Offence under, essentials.

If either the point of departure or of arrival is outside two miles from the limits of a ferry, there can be no offence under S. 25 or 27 of the Act. In other words, to constitute an offence under these sections, both the points must be within the two miles' limit. *Maung Tha Gyaw v. Emperor.*

25 Cr. L. J. 214 :
76 I. C. 646 : 2 Bur. L. J. 125 : 1 Rang. 313 :
A. I. R. 1923 Rang. 161.

BURMA FISHERIES ACT (III OF 1905)

—Preamble—Lessee of fishery rights, whether buys fish—Putting dams to fishery—Members of public, if can fish—Offence of criminal trespass or theft.

Under the preamble to the Act, the Government merely claims to dispose of the right to fish. When a person takes the lease of a fishery, he does not thereby buy the fish to be found therein from Government ; nor does Government transfer the property in the fish to him. The fish come into his possession only when he catches them. It matters not that for his own convenience of catching them he dams up the pond so that the fish cannot escape out of it. This operation is merely preliminary to catching the fish. Even after that has been done, any member of the public may come to the fishery and, provided that he uses not more than four rods and lines, may catch fish therefrom and he does not thereby commit any offence of criminal trespass or theft. *Mohamed Kassim v. The King.*

39 Cr. L. J. 692 :
176 I. C. 150 : 11 R. Rang. 31 (2) :
A. I. R. 1938 Rang. 220.

—Rules under—Rule 45—Meaning of.

The meaning of r. 45 of Rules framed under the Act is that baling is not allowed. The ban placed by the Rule upon baling may be lifted at any moment by the Deputy Commissioner with the Commissioner's sanction and baling, thereafter, so long as it has been continuously permitted, can be practised without infringement of the law until the Deputy Commissioner again prohibits. *Maung Mon Bin v. The King.*

39 Cr. L. J. 499 :
174 I. C. 931 : 10 R. Rang. 444 :
A. I. R. 1938 Rang. 104.

—S. 3 (2).

Collection of water on private land is fishery—Owner or occupier can get permission to fish free of charge. *Abdul Rahman v. Emperor.*

35 Cr. L. J. 120 :
146 I. C. 644 : 6 R. Rang. 311 :
A. I. R. 1933 Rang. 311.

—S. 3 (2).

Tank does not cease to be fishery merely because it dries up during the certain period of the year. *Abdul Rahman v. Emperor.*

35 Cr. L. J. 120 :
146 I. C. 644 : 6 R. Rang. 311 :
A. I. R. 1933 Rang. 311.

—S. 21 (a)—Fishing in fishery by using engine for baling out water, without permission.

Where a person fishes in a fishery by using an

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engine for pumping up and baling out water, the use of such engine must be deemed, in all cases, to be an offence except where the person against whom proof is given of having used such an engine is able to show the express permission which is indicated by the Proviso to r. 45 framed under the Act. *Maung Mon Bin v. The King*. 39 Cr. L. J. 499 : 174 I. C. 931 : 10 R. Rang. 444 : A. I. R. 1938 Rang. 104.

—S. 21 (b).

By mere leasing tank for fishing, lessor does not become abettor in absence of proof of instigation, conspiracy or aid. *Abdul Rahman v. Emperor*. 35 Cr. L. J. 120 : 146 I. C. 644 : 6 R. Rang. 311 : A. I. R. 1933 Rang. 311.

—S. 21 (b)—Scope of.

Use of yin without permission falls within mischief of S. 21 (b). *Abdul Rahman v. Emperor*. 35 Cr. L. J. 120 : 146 I. C. 644 : 6 R. Rang. 311 : A. I. R. 1933 Rang. 311.

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—R. 22.

If the offence is found to be committed by the servant in the course of his employment for his master's benefit even without his master's knowledge or consent, the master would be criminally liable. *Emperor v. S. Mangalchand*. 35 Cr. L. J. 1404 : 151 I. C. 676 : 7 R. Rang. 113 : A. I. R. 1934 Rang. 182.

—Rules framed under, Rr. 22, 98—*Licensee to fell timber, breach of condition of—Licence, liability of, for acts of servants.*

A licensee or other person permitted to fell timber in accordance with certain conditions under rules framed under the Forest Act is liable to be punished under those rules for the acts of his servants, whether authorised by him or not, and even if the acts are in contravention of his instructions, provided that those servants were acting within the scope of their master's authority and unless the master can show that he acted in good faith and did all that could be reasonably expected of him to prevent the breach of the conditions under which he is permitted to fell the timber. *Emperor v. U. Gyaw*. 19 Cr. L. J. 331 : 44 I. C. 347 : 9 L. B. R. 112 : 11 Bur. L. T. 102 : A. I. R. 1918 L. Bur. 24.

—Rules framed under Rr. 25, 98—*House built with unreserved timber obtained free from Government, sale of—Offence.*

Where the accused built a house with unreserved timber obtained free from Government under rule 25 and subsequently sold the house : *Held*, that he had committed no offence under r. 98 read with r. 25. *Nga Po Myit v. Emperor*. 25 Cr. L. J. 587 : 81 I. C. 75 : 2 Bur. L. J. 12 : A. I. R. 1923 Rang. 143.

—Rules framed under : R. 65—*Removal of firewood without paying royalty—Offence—Dispute as to amount of royalty.*

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Accused removed certain firewood without paying the Government royalty due thereon : *Held*, that the accused was guilty of a breach of r. 65, and it was not a valid defence that he disputed the amount of the royalty demanded. *R. U. Tha v. Mg Tun Pru*. 26 Cr. L. J. 288 : 84 I. C. 352 : 3 Bur. L. J. 198 : A. I. R. 1924 Rang. 382.

—Rules framed under Rr. 88 (2) (iii), 98—*Marking hammer, use of, by servant, in contravention of rules—Offence.*

The use of a marking hammer by the servant of a licensed holder of the hammer, under a licence in the old Form No. 20 or the new Form No. 26, to mark timber in contravention of the provision contained in r. 88 (2) (iii) of Burma Forest Rules, amounts to a breach of the rule by the holder of the licence and renders him liable to punishment under r. 98. *Mg Toc Bwa v. Emperor*. 25 Cr. L. J. 275 : 76 I. C. 867 : 1 Bur. L. J. 214 : A. I. R. 1924 Rang. 171.

—S. 3 (7)—*A permanent, heritable and transferable right—How acquired—Status of land-owner.*

If a cultivator has not acquired the status of a landowner in respect of land, he cannot have acquired a permanent, heritable and transferable right in respect of the land. *Nga Pyu Ba v. Emperor*. 2 Cr. L. J. 824 : 11 Bur. L. R. 296.

—Ss. 33, 77—*Rules framed under Act, Rr. 22, 98—Licensee, whether liable for illegal acts of servant.*

A person who hold a licence for the extraction of timber from the Forest Department is responsible if under cover of the licence something illegal is done, and it makes no difference whether that illegal act is done by the licensee or by some one employed by him, provided the servant is acting within the scope of his employment. *Nga Shwe Baw v. Emperor*. 20 Cr. L. J. 332 : 50 I. C. 668 (b) : 3 U. B. R. 1918 114 : A. I. R. 1919 U. Bur. 28.

—S. 55.

Rules under Act—Rr. 87 (b) and 98—Property mark given in possession of servant—Master is liable for servant's acts of impressing mark on timber unlawfully felled under rr. 87 (b) (vi) and 98. *Maung Ba Cho v. Emperor*. 36 Cr. L. J. 450 : 154 I. C. 57 : 12 Rang. 300 : 7 R. Rang. 248 : A. I. R. 1934 Rang. 245.

—S. 64 (1)—*Confiscation of property, when permissible.*

S. 64 (1) only applies to cases in which any person is convicted of a Forest offence, and until a person has been convicted, there is no authority for confiscating anything except forest produce in respect of which the offence has been committed. *Maung Po Maung v. Emperor*. 26 Cr. L. J. 897 : 86 I. C. 961 : 3 Bur. L. J. 166 : A. I. R. 1924 Rang. 378.

BURMA GAMBLING ACT (I of 1899).

—Ss. 2, 3, 10, 11—*Instruments of gaming*
—*Fighting birds, whether instruments—Cock*
fighting in private enclosure.

Fighting birds are not instruments of gaming within the meaning of S. 3 (3). The fact that cock fighting and betting are carried on in a private enclosure does not suffice to make the enclosure a common gaming house within the meaning of the Act. *Emperor v. Maung Ka.*

20 Cr. L. J. 330 :
50 I. C. 666 : 11 Bur. L. T. 265 :
9 L. B. R. 185 : A. I. R. 1919 L. Bur. 153.

—S. 3.—*Common gaming house—Club.*

Where it is not proved that gambling at a club was confined to the members of the club, the place called the club might be a "common gaming house" as defined in S. 3, even though the profits of the gaming carried on at the club are devoted to feasting and to the general purposes of the club. *Htaung v. Emperor.*

15 Cr. L. J. 523 :
24 I. C. 835 : 7 Bur. L. T. 163 : 7 L. B. R. 275 :
A. I. R. 1914 L. Bur. 258.

—S. 3—*Coins, if instruments of gaming.*

Coins found on the actual persons of gamblers are not necessarily instruments of gambling and are not liable to seizure and forfeiture, unless there is evidence to show that they were actually used or intended to be used for the purpose of gaming. *Ah Ngwe v. Emperor.*

20 Cr. L. J. 323 :
50 I. C. 659 : 11 Bur. L. T. 263 :
9 L. B. R. 205 : A. I. R. 1919 L. Bur. 125.

—S. 3—*Instruments of gaming, coins.*

White beans, cigarettes and cups, not being articles devised or actually used for the purpose of gaming, are not instruments of gaming: *Ah Ngwe v. Emperor.*

20 Cr. L. J. 323 :
50 I. C. 659 : 11 Bur. L. T. 263 :
9 L. B. R. 205 : A. I. R. 1919 L. Bur. 125.

—S. 3—*Fighting cocks, if instruments of gaming.*

Fighting cocks are not instruments of gaming within the meaning of the Act, and setting cocks to fight is not in itself an offence in Burma. *Emperor v. Po Kyee.*

20 Cr. L. J. 335 :
50 I. C. 671 : 11 Bur. L. T. 266 :
9 L. B. R. 219 : A. I. R. 1919 L. B. 153.

—S. 3, 11, 12—*Common Gaming House.*

The definition of Common Gaming House in Section 3, applies to private as well as to public houses and places and Sections 11 and 12 render players in, and the owners, occupiers and users of common gaming houses liable to punishment. *Emperor v. Po Yin.*

12 Cr. L. J. 80 :
9 I. C. 450 : 4 Bur. L. T. 11.

—S. 3 (2)—*"Ma-chauk," whether game of chance or skill.*

The game of "Ma-chauk" also known as "Chauk-ba" and "Ma-jongg" is a game requiring considerable skill and judgment, the element of chance being practically nil, and falls under the exception contained in Sub-

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S. (2) of Section 3. *Ah Shein v. Emperor.*

25 Cr. L. J. 172 :
76 I. C. 396 : 1 R. 303 :
1923 A. I. Rang. 214.

—S. 3 (3).

Money except coins actually used for gaming is not included in the definition of "instrument of gaming" in S. 3 (3) of the Act. *Po Nyun v. Emperor.*

36 Cr. L. J. 72 :
152 I. C. 242 : 7 R. Rang. 146 :
A. I. R. 1934 Rang. 240.

—S. 4—*Billiard-skittle.*

The game of billiard-skittle is one of mere human skill within the meaning of S. 4. *Emperor v. Nga Po Kin.*

2 Cr. L. J. 319 :
11 Bur. L. R. 132.

—S. 4—*Game of skill—Thoubonpe of dominoes.*

In the game of thoubonpe of dominoes, as played in Burma, the element of chance is so subordinated to the element of skill that the game must be looked upon as a game of the kind contemplated by S. 4. *Emperor v. Tan Zun.*

11 Cr. L. J. 653 :
8 I. C. 451 : 5 Bur. L. T. 66.

—S. 4—"Ket," whether game of mere human skill.

The Burmese game "ket" is not a game of mere human skill within the meaning of S. 4. *Po On v. Emperor.*

18 Cr. L. J. 756 :
41 I. C. 132 : 8 L. B. R. 629 :
A. I. R. 1917 L. Bur. 57.

—S. 5.

The Police have no power under S. 5 to seize or the Magistrate to confiscate the money seized on the spectators of the cock-fight or even on a person alleged to have taken an active part. *Po Nyun v. Emperor.*

36 Cr. L. J. 72 :
152 I. C. 242 : 7 R. Rang. 146 :
A. I. R. 1934 Rang. 240.

—S. 6—*Criminal Procedure Code, S. 103—Search list added to after being signed by witnesses, effect of.*

A Police officer should not add any new items to a search list after it has been signed under S. 103 of the Criminal Procedure Code, but his doing so would not be a breach of S. 103, Criminal Procedure Code, invalidating the search. *U. P. B. R. Htaung v. Emperor.*

15 Cr. L. J. 523 :
24 I. C. 835 : 7 Bur. L. T. 163 :
7 L. B. R. 275 :
A. I. R. 1914 L. Bur. 258.

—S. 6—*Duty of Magistrate to sift information before acting under S. 6.*

It behoves Magistrates to sift information most carefully before acting under S. 6, the effect of which is to throw on the accused the burden of proving that the house which is raided is not a common gaming house. *Emperor v. Sit Mycin.*

11 Cr. L. J. 746 :
8 I. C. 988 : 3 Bur. L. T. 143.

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—S. 6—*Money found in longyi of gambler—Presumption, if can be drawn.*

Where it is the usual way for the class of people to which the accused belongs to carry their money wrapped up in their *longyis*, no presumption can be safely drawn that money found in the *longyi* of the accused is intended to be used for the purpose of gaming. *Maung Tha Zan v. Emperor.*

38 Cr. L. J. 976 :
170 I. C. 818 : 10 R. Rang. 108 :
A. I. R. 1937 Rang. 317.

—S. 6—*Search—Witnesses assisting in search—Search, whether illegal.*

A search under S. 6 is not rendered illegal by the fact that it was made with the assistance of the search witnesses. *Emperor v. Wun Na.*

28 Cr. L. J. 701 :
103 I. C. 557 : 5 Rang. 291 :
18 A. I. Cr. R. 391 :
A. I. R. 1927 Rang. 241.

—Ss. 6, 7—*Criminal Procedure Code, S. 101—Search warrant under S. 6, endorsement of, to another officer—Search by officer to whom warrant endorsed, legality of—Presumption under S. 7.*

S. 101 of the Criminal Procedure Code is not applicable to warrants issued under S. 6. The Burma Gambling Act contains no provision authorising the endorsement of a warrant issued under S. 6 thereof by the officer to whom it is issued, to another officer. Therefore, the entry and search of a house by an officer to whom a warrant is so endorsed is not an entry under the provisions of S. 6 of the Act, and consequently anything found as the result of such search cannot give rise to the presumption contained in S. 7 of the Act. *Po Thwai v. Emperor.*

21 Cr. L. J. 9 :
54 I. C. 57 : 12 Bur. L. T. 165 :
A. I. R. 1920 L. Bur. 49.

—Ss. 6, 7—*Presumption, when arises.*

Where there is no proof that articles seized in a house are instruments of gaming or were actually used for the purpose of gaming, the presumption that the house is a common gaming house does not arise. *Ah Ngwe v. Emperor.*

20 Cr. L. J. 323 :
50 I. C. 659 : 11 Bur. L. T. 263 :
9 L. B. R. 205 : A. I. R. 1919 L. Bur. 125.

—Ss. 6, 7—*Search—Entry—Presumption from discovery of instruments of gaming—List of things seized in search.*

No presumption arises under S. 7 unless the search, as well as the entry is made in accordance with the provisions of S. 6, and consequently in accordance with the provisions of Ss. 102 (3) and 103 of the Criminal Procedure Code. Where a list of articles seized in a house entered under S. 6 was written on three sheets of paper, the first of which only was signed by the witnesses, it was held that only the articles mentioned on the first sheet had been seized in accordance with the provisions of S. 103 of the Cr. P. C. : and as no instruments of gaming were mentioned in that sheet, it followed that no instruments of

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gaming had been seized at a search made in accordance with the provisions of S. 6, and that therefore the presumption provided for in S. 7 did not arise. *Ana Deva Sing v. Emperor.*

7 Cr. L. J. 411 :
4 L. B. R. 134.

—Ss. 6, 7—*Search by police-officer—Entry—Witnesses to search—Persons not qualified to witness search—Ward-headman in Rangoon—Respectable inhabitant of locality.*

A place is not entered under the provisions of S. 6 unless the officer entering is accompanied by two or more respectable inhabitants of the locality. Where certain premises were entered by a police officer accompanied only by two Ward-headmen appointed under the Lower Burma Towns Act by the Commissioner of Police, Rangoon : *Held (Irwin J., dissenting)*, that in view of the fact that the Ward-headmen in Rangoon are appointed by the Commissioner of Police, and have police duties to perform, and are, in some cases, being constantly called on to attend searches, they do not fall within the class of persons whom the Legislature intended to be called as witnesses, and that, therefore, the premises in question were not duly entered in accordance with the provisions of S. 6. *Emperor v. Kwe Haw.*

7 Cr. L. J. 479 :
4 L. B. R. 213 : 14 Bur. L. R. 8

—Ss. 6, 7—*Warrant issued after recording information that gambling is going on at certain place—Presumption under S. 7 if can be made.*

The provisions of Sub-S. (1), S. 6 are all important and unless those provisions are strictly carried out, a house or place cannot be said to have been entered under the provisions of that section and consequently the presumption specified in S. 7 cannot be made. A mere record made of the information that illegal gambling is going on at a certain place and leaving no stamp of credibility in issuing the warrant, is not sufficient to meet the requirements of the law. Consequently, the result of the raid or the search made under that warrant does not constitute a legal basis of the presumption under S. 7. *Ah Sein v. The King.*

40 Cr. L. J. 529 :
181 I. C. 112 : 11 R. Rang. 452 :
1939 Rang. 447 : A. I. R. 1939 Rang. 120.

—Ss. 6, 7—*Criminal Procedure Code, S. 103—Search—Respectable persons in the locality.*

The object of S. 103 of the Cr. P. C. in requiring that respectable inhabitants of the "locality" should be called to witness the search, is to ensure that false evidence may not be fabricated. The stress is on the word "respectable" and not on the word "locality". Therefore, for the purposes of S. 103, a person living in a quarter within hail of the place to be searched may reasonably be regarded as an inhabitant of the locality, even if a river flows between. *Emperor v. Sit Myein.*

11 Cr. L. J. 746 :
8 I. C. 988 : 3 Bur. L. T. 143.

—Ss. 6, 11, 12, 15—*Seizure of money in common gaming-house—Entry—Forfeiture.*

There is no provision in the Act empowering

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any person to seize moneys found in a common gaming-house which is not entered under the provisions of S. 6, nor authorizing a Magistrate to order that moneys so seized shall be forfeited. *Po Hla v. Emperor*.

7 Cr. L. J. 488 :
4 L. B. R. 227.

—S. 7—*Criminal Procedure Code, S. 103*
—Search—Ward-headmen and Block-Elders not qualified to be witnesses of search.

By the Full Bench (Ormond J., dissenting). The words "respectable inhabitants" in S. 103 of the Cr. P. C. should not be construed to include Ward-headmen and block-elders who are appointed by the Deputy Commissioner. *Emperor v. Kan Haw*. 12 Cr. L. J. 251 (F. B.) : 10 I. C. 796 : 4 Bur. L. T. 91.

—S. 7—Presumption—*Criminal Procedure Code, S. 103*—Witnesses to search.

Per Parlett, Young and Ormond, JJ., (Hartnoll, Offg. C. J. and Robinson, J., dissenting.)—Ward-headmen in towns other than Rangoon are competent witnesses of searches under S. 103, Cr. P. C. *Ti Ya v. Emperor*.

15 Cr. L. J. 441 :
24 I. C. 32 : 7 Bur. L. T. 143 :
A. I. R. 1914 L. Bur. 128.

—S. 7.

Presumption arising under S. 7—Conviction cannot be under S. 13 (c) but under S. 11 or S. 12—Persons found around table, writing: *Held*, presumption under S. 7 rebutted. *Kyn Wah v. Emperor*.

36 Cr. L. J. 1295 :
158 I. C. 87 : 8 R. Rang. 144 :
A. I. R. 1935 Rang. 298.

—S. 7—Presumption on finding gaming instruments.

Where a house is entered and searched under the provisions of S. 6 and gaming instruments found therein, the presumption mentioned in S. 7 arises, although there is no proof of any payment of commission by the players to the keeper. *Emperor v. Po Yin*.

12 Cr. L. J. 80 :
9 I. C. 450 : 4 Bur. L. T. 11.

—S. 7—Presumption—Headmen of wards—Whether respectable inhabitants of locality.

Held, that S. 103, Cr. P. C., contemplates that two respectable members of the public and inhabitants of the locality, unconnected with the Government and officialdom, should be called in to witness a search: *Held*, further, that the headmen were not such persons as S. 103 of the Cr. P. C., contemplates should be called in to witness a search, and consequently the premises were not duly entered and searched under the provisions of S. 6 of the Burma Gambling Act; and that, therefore, the presumption, which S. 7 of that Act enacts shall be drawn, could not legitimately be applied: *Held*, therefore, that in the absence of evidence to show that illegal gaming occurred on the premises, there was no justification for holding that the premises constituted a common gaming house under the Act and that

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the convictions of all the accused were unjustified. *Ah Tuck v. Emperor*.

4 Cr. L. J. 390 :
12 Bur. L. R. 248.

—S. 7—Presumption, if optional.

The presumption under S. 7 is not optional for the Magistrate to make. He is bound to presume that the house was a common gaming-house until the contrary is proved. *Emperor v. Sil Myein*.

11 Cr. L. J. 746 :
8 I. C. 988 : 3 Bur. L. T. 143.

—S. 7—Presumption under, rebuttal of.

Where numerous packs of cards as well as some dice were found in a house, but it was held proved that the persons who were playing cards in the house were nearly all employees of the house-owner, that they were playing for recreation and that though the play was for money no commission was taken: *Held*, that the presumption under S. 7 was rebutted. *Emperor v. Sein Kee*.

21 Cr. L. J. 4 :
54 I. C. 52 : 12 Bur. L. T. 163 :
A. I. R. 1920 L. Bur. 38.

—Ss. 7, 12—"Common gaming-house"—Presumption under S. 7—Whether rebutted by circumstances.

Where there is no independent evidence as to the actual taking of the commission by the accused and the conviction of the accused rests on the bare presumption coupled with the discovery of the instruments of gaming under S. 7, it is necessary to consider very carefully whether the legal presumption is rebutted by the circumstances of the case and by the evidence produced for the defence. *Chari v. Emperor*.

12 Cr. L. J. 250 :
10 I. C. 792 : 4 Bur. L. T. 87.

—Ss. 8, 9—Accused, whether can be examined as witness—Evidence of incompetent witness—Procedure.

The evidence given by an accused person under S. 8 is not defence evidence and it does not justify the examination of an accused person otherwise than on the requisition of the Magistrate before whom the trial is being conducted. An accused person cannot be put on his oath or examined as a witness in the case in which he is accused. The fact that there are several co-accused in the case is immaterial, if the accused person whom it is sought to examine as a witness is at the time himself upon his trial with the other accused. *Nga Ngae Gyaw v. Emperor*.

20 Cr. L. J. 341 :
50 I. C. 821 : 3 U. B. R. 1918 115 :
A. I. R. 1919 U. Bur. 31.

—S. 10—Field-shed, whether place to which public have access.

A field-shed which the owner has left after the completion of the field work and which is not in the occupation of anybody, but which has not been abandoned to the use of the public is not a place to which the public have access within the meaning of S. 10. *Nga Hka v. Emperor*.

2 Cr. L. J. 21 :
54 I. C. 50 : 12 Bur. L. T. 164 :
A. I. R. 1920 L. Bur. 14.

—S. 10.

Mere spectators of a bull fight taking place in

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a paddy field after reaping of the crops, a place to which the public have access, are not guilty of any offence under S. 10. *Maung Aung Mye v. Emperor*. 35 Cr. L. J. 1321 :

151 I. C. 418 : 12 Rang. 453 : 7 R. Rang. 78 :
A. I. R. 1934 Rang. 222.

———S. 10—"Place", meaning of—First offence—Sentence.

S. 10 is not applicable to a man who merely runs away from a gambling *waing*. It must be shown that he actually played. Whether alleged gambling took place on a privately-owned piece of land on which fruit trees were growing and on which land revenue was paid but which was unenclosed and people could pass freely through to and fro : *Held*, that such a place was of the same genus as a street or a thoroughfare within the meaning of S. 10. A sentence of one month's imprisonment for a first offence was considered excessive and altered to one of a fine of Rs. 30. *Ah Kon v. King Emperor*, 2 L. B. R. 195 : 1 Cr. L. J. 461, referred to. *On Ban v. Emperor*.

11 Cr. L. J. 737 :
8 I. C. 949 : 3 Bur. L. T. 121.

———S. 10—Place to which public have access—Fenced garden not such a place.

"The place to which the public have access" in S. 10 must be a place akin to or of the same nature as a street or a thoroughfare. A fenced garden which is private property cannot be held to be akin to or of the same nature as a street or thoroughfare. *Lu Gale v. Emperor*.

12 Cr. L. J. 245 :
10 I. C. 775 : 4 Bur. L. T. 71.

———S. 10.

The mere fact that a person assaulted another on way home after a bull fight, accusing him of being a spy does not lead to the inference that he had taken an active part in encouraging the fight. *Maung Aung Mye v. Emperor*.

35 Cr. L. J. 1321 :
151 I. C. 418 : 12 Rang. 453 : 7 R. Rang. 78 :
A. I. R. 1934 Rang. 222.

———Ss. 10, 11, 12—Betting on cock fight, whether offence.

Cock fighting in a public place is made an offence under S. 10 but holding a cock fight on private premises, even if accompanied by wagering, will not render the place a common gaming house within the meaning of the Act. *Emperor v. Po Kywe*.

20 Cr. L. J. 335 :
50 I. C. 671 : 11 Bur. L. T. 266 :
9 L. B. R. 219 : A. I. R. 1919 L. Bur. 153.

———Ss. 10, 12.

A person who conducts gaming in a public street, or similar place, should be convicted under S. 10. The primary object of the Legislature was not to make the conduct of gambling in public place punishable under S. 12. *Emperor v. Nga Net*.

2 Cr. L. J. 471 :
U. B. R. 1905 Gambling 1.

———Ss. 10, 12—Gambling in a public place, person conducting—daing, Conviction of.

A *daing* can only be convicted of an offence under S. 12 when the gambling he conducts

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is punishable under S. 11. A person conducting gambling in a place to which the public have access is only punishable, like the players, under S. 10. *Emperor v. Po Wa*.

6 Cr. L. J. 285 :
4 L. B. R. 47.

———S. 10 (c).

Mere presence at a cock-fight without aiding and abetting it by gestures, words or other form of active encouragement of the fight is not punishable under S. 10 (c). *Po Nyun v. Emperor*.

36 Cr. L. J. 72 :
152 I. C. 242 : 7 R. Rang. 146 :
A. I. R. 1934 Rang. 240.

———S. 11.

Charge of gambling in club—Fact that on previous raid persons said to be members of club were found there and were convicted is not relevant to show that on subsequent raid persons found were engaged in unlawful gaming. *Boon Chin v. Emperor*.

36 Cr. L. J. 1228 :
157 I. C. 798 : 8 R. Rang. 110 :
A. I. R. 1935 Rang. 233.

———S. 11—Duty of Magistrate to examine accused under S. 342, Cr. P. C.

Two respondents denied the offence charged against them under S. 11 of the Gambling Act : *Held*, that it was the duty of the Magistrate at the close of the prosecution to examine those persons under S. 342 of the Cr. P. C. and to call upon them for their defence; that as those requirements were disregarded, those accused could not be said to have had a fair trial. *Emperor v. Sit Myein*.

11 Cr. L. J. 746 :
8 I. C. 988 : 3 Bur. L. T. 143.

———S. 11, 12.

Cases under Ss. 11 and 12 are not cognizable offences, and an order by Magistrate asking for the payment of process fees to summon witnesses is correct. *Htwan Htin v. Emperor*.

36 Cr. L. J. 998 :
156 I. C. 719 : 13 Rang. 130 :
8 R. Rang. 40 : A. I. R. 1935 Rang. 181.

———Ss. 11, 12—Daing and gambler, offences of—Sentences.

The law regards the offence of the *daing* (owner, keeper or manager of a gaming-house) as far greater than the offence of a mere gambler. Therefore, under ordinary circumstances, the former must be punished very much more heavily than the latter. *Emperor v. Jan Maistry*.

30 Cr. L. J. 708 :
117 I. C. 60 : 6 Rang. 655 :
I. R. 1929 Rang. 172 :
A. I. R. 1929 Rang. 30.

———Ss. 11, 12—Owner of common gaming-house taking part in gambling—Double conviction—Sentence—Separable offences—Penal Code, S. 71.

The taking part in gambling by the house-owner or occupant himself may be and often is, a part of the method of conducting or assisting in conducting the business of a common gaming-house, and may also be a part of the way in

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which a house is used as a common gaming-house for the profit or gain of the owner or occupier. A house-owner, therefore, who used her house as a common gaming-house, and at the same time took part herself in the unlawful card playing therein, was held to be only liable, by virtue of S. 71 of the Penal Code, to one sentence, viz., under S. 12 of the Gambling Act, although she was liable to convictions under both S. 11 and S. 12. *Emperor v. Mi Thin*.

7 Cr. L. J. 76 :
4 L. B. R. 104.

—Ss. 11, 12—"Gonnyin," whether game of chance.

The game of "gonnyin" is a game of pure skill. The mere fact that it is played on sloping ground does not alter the nature of the game and convert it into a game of chance. *Mg. Paw v. Emperor*.

26 Cr. L. J. 897 :
86 I. C. 961 : 3 Bur. L. J. 166 :
A. I. R. 1924 Rang. 378.

—S. 12—Conviction; under, essentials for.

In order to justify a conviction under the section, there must be evidence of actual knowledge on the part of the accused. *Ah Lim v. Emperor*.

24 Cr. L. J. 871 :
75 I. C. 7 : 2 Bur. L. J. 5 :
A. I. R. 1923 Rang. 141.

—S. 12—Conviction, when justified.

Where a person is charged under S. 12, the mere fact that on one occasion he received a sum of money from one of the players, or from the winner, would not be sufficient to justify his conviction; there ought to be evidence of other inculminating circumstances in order to prove the offence. *Nga Sen Dun v. Emperor*.

24 Cr. L. J. 933 :
75 I. C. 357 : 2 Bur. L. J. 8 :
A. I. R. 1923 Rang. 144.

—S. 12—Keeping 'common gaming-house,' what amounts to—Proof of habitual use—Profit to owner.

The mere fact that persons were found playing a game of cards with stakes in a house, will not render the owner of the house liable to conviction under S. 12 for keeping a common gaming-house. He cannot be convicted even if there is evidence to show that he received a commission for the use of the cards in the absence of some evidence of habitual keeping or using. A house is a common gaming-house, only if instruments of gaming are kept or used in it for the profit of the person owning the house. *Nga Ngaz Kyi v. Emperor*.

28 Cr. L. J. 483 :
101 I. C. 659 : 5 Bur. L. J. 230 :
8 A. I. Cr. R. 142.

—S. 12—Offences contemplated by—Duty of Court.

S. 12 contemplates at least four distinct offences in relation to a common gaming-house, and it should be explained to an accused person the exact charge he is called upon to meet. *Ah Lin v. Emperor*.

24 Cr. L. J. 871 :
75 I. C. 7 : 2 Bur. L. J. 5 :
A. I. R. 1923 Rang. 141.

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—S. 12—Statement of informer.

There is no justification in law for making use of the statement of an informer to the detriment of a person accused under the Act. *Ah Lia v. Emperor*.

24 Cr. L. J. 871 :
75 I. C. 7 : 2 Bur. L. J. 5 :
A. I. R. 1923 Rang. 141.

—Ss. 13, 3 (1) (b)—Raffle, whether offence.

A raffle is a game or a pretended game of the nature of *ti* within the meaning of S. 3 (1) (b) and a person conducting or promoting a raffle is punishable under S. 13. *Kesvaier v. Emperor*.

18 Cr. L. J. 489 :
39 I. C. 329 : 11 U. B. R. 1916 37 :
A. I. R. 1917 U. Bur. 2.

—S. 17—Powers of Magistrate—Order passed by him—Appeal—if lies.

Magistrate receiving information that any person in his jurisdiction earns his livelihood, wholly or in part, by unlawful gaming, has power to deal with him as if the information were of the description mentioned in S. 110 of the Cr. P. C. Therefore there is an appeal against the order and it lies to the District Magistrate, as provided by S. 406 of the Code, and revision on the application of the accused is inadmissible. *Nga Tet Pya v. Emperor*.

2 Cr. L. J. 317 :
11 Bur. L. R. 120.

—S. 17—Persons proceeded against—Under Habitual Offenders' Registration Act does not apply.

The Burma Habitual Offenders' Registration Act does not apply to persons proceeded against under S. 17. *Emperor v. Maung Pa Sein*.

30 Cr. L. J. 755 :
117 I. C. 255 : 7 Rang. 1 :
I. R. 1929 Rang. 191 :
A. I. R. 1929 Rang. 147.

BURMA GHEE ADULTERATION ACT (VI OF 1927).

—S. 2—Whether ghee is adulterated is question of law—Opinion of Chemical Examiner.

The question whether ghee is adulterated within the meaning of the Burma Ghee Adulteration Act is a question of law for the Court to determine and not a matter to be decided by the Chemical Examiner. What the latter has to do is merely to state the result of his analysis. *Narinjan Dass v. Emperor*.

31 Cr. L. J. 1065 :
126 I. C. 535 : A. I. R. 1930 Rang. 51.

—Ss. 11, 12—Sanction for prosecution—Duty of District Magistrate.

A District Judge should not sanction the prosecution of a person, under S. 11 as a matter of course. It is incumbent on him to exercise his powers under S. 11 in a judicial manner after due consideration of the facts of the case. *Narinjan Dass v. Emperor*.

31 Cr. L. J. 1065 :
126 I. C. 535 : A. I. R. 1930 Rang. 51.

BURMA HABITUAL OFFENDERS RESTRICTION ACT (II OF 1919).

—Applicability to persons proceeded against under Gambling Act.

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The Act does not apply to persons proceeded against under S. 17 of the Burma Gambling Act. *Emperor v. Maung Pa Sein*. 30 Cr. L. J. 755 : 117 I. C. 255 : 7 Rang. 1 : I. R. 1929 Rang. 191 : A. I. R. 1929 Rang. 147.

—(I of 1918) Ss. 2, 10—*Area of restriction—Duty of Magistrate.*

An order under the Act confining a person to the four corners of his house is improper. The narrowest limits of restriction should be the village of the person concerned, or the limits of the village to which he is restricted. Before making an order of restriction under the above Act, the Magistrate should satisfy himself that the accused is able to earn his livelihood within the area of restriction. *Nga Ba Sein v. Emperor*. 24 Cr. L. J. 559 : 73 I. C. 175 : 11 L. B. R. 383 : A. I. R. 1923 Rang. 102.

—(II of 1918) Ss. 3, 7—*Burma Excise Act, Ss. 64-A—Restriction of person against whom action under S. 64-A may be taken.*

The fact that proceedings under S. 64-A of the Burma Excise Act may be taken against an accused does not warrant a Magistrate in taking proceedings against him under S. 3 or in making an order under S. 7 of that Act. *Nga Pa v. Emperor*. 28 Cr. L. J. 141 : 99 I. C. 349 : 4 Rang. 455 : 5 Bur. L. J. 186 : A. I. R. 1927 Rang. 98.

—Ss. 3, 7—*Case falling under Burma Opium Law (Amendment) Act, S. 3 does not apply—Order under S. 7 cannot be passed.*

S. 3 (1) does not apply to cases which come under S. 3 of the Burma Opium Law (Amendment) Act. A restriction order under S. 7 cannot, therefore, be passed in such a case. *Emperor v. Nga Kyaw Hlu*. 27 Cr. L. J. 1402 : 98 I. C. 714 : 5 Bur. L. J. 78 : 4 Rang. 123 : A. I. R. 1926 Rang. 182.

—Ss. 3, 7—*Person earning livelihood by unlawful sale of opium, whether can be restricted.*

The effect of S. 3 of the Burma Opium Law Amendment Act is to introduce an additional ground on which S. 110 of the Cr. P. C. may be applied, and a person who falls within the purview of S. 3 of the Burma Opium Law Amendment Act, may, therefore, by virtue of the provisions of S. 3 of the Burma Habitual Offenders' Restriction Act, be dealt with under S. 7 of the latter Act. *Emperor v. Nga Kyaung*. 25 Cr. L. J. 930 : 81 I. C. 546 : 3 Bur. L. J. 17 : 2 Rang. 61 : A. I. R. 1924 Rang. 244.

—Ss. 3, 7, 18—*Order of restriction, when may be passed.*

The Burma Habitual Offenders' Restriction Act provides an alternative to an action under the good behaviour sections of the Cr. P. C., and can be used when it is considered more appropriate or when security cannot be furnished. An order of restriction may also be substituted for an order requiring security for good behaviour, and whether security has been given or not for the unexpired portion of the period. But no order

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can be passed except in those cases in which the Magistrate could have acted under S. 110 of the Cr. P. C. Before a Magistrate decides to pass an order restricting a person to any specified area, he must be satisfied that that person has adequate means of earning his livelihood within that area. *Emperor v. Po Mya*. 22 Cr. L. J. 477 : 61 I. C. 1005 : 13 Bur. L. T. 155 : O. L. B. R. 274.

—S. 3 (1)—*Living by unlawful gambling—Order for restriction.*

S. 3 (1) does not apply to a case arising under S. 17 of the Burma Gambling Act. *Nga Pan E. v. Emperor*. 28 Cr. L. J. 490 : 101 I. C. 666 : 5 Bur. L. J. 228 : 8 A. I. Cr. R. 138 : A. I. R. 1927 Rang. 122.

—Ss. 4, 7—*Criminal Procedure Code, Ss. 110, 112—Preliminary order—Failure to mention period of proposed restriction—Irregularity—Proceedings, legality of.*

A preliminary order passed under S. 4 of the Burma Habitual Offenders' Restriction Act omitted to state the period for which it was proposed to pass an order of restriction. On the same form, however, the Magistrate passed a preliminary order under Ss. 110 and 112 of the Cr. P. C., and in this case a term of three years was duly entered in the order : Held, (1) that the accused must have been aware that the proposed restriction order was for the same term as that mentioned in the order under Ss. 110 and 112 of the Cr. P. C., and that no failure of the justice had in fact been occasioned ; (2) that the proceedings were not vitiated in view of Cl. XV of the Sch. II to the Upper Burma Criminal Justice Regulation, on account of the omission to state the period of restriction in the preliminary order. *Maung Thwa v. Emperor*. 26 Cr. L. J. 1391 : 89 I. C. 527 : 3 Rang. 74 : A. I. R. 1925 Rang. 214.

—(I of 1918) Ss. 6, 7, 10—*Registered offender—Surety bond—Restriction of person to village other than his own—Double report, legality of.*

A person restricted under the Act, should not be made to report himself to the village-headman. A person who is proceeded against under the Act cannot be required to execute a surety bond. In order to justify the restriction of a person to a village other than his own, there must be proof that he is able to support himself at that village. *Emperor v. Nga Kala*. 24 Cr. L. J. 541 : 73 I. C. 157 : A. I. R. 1923 Rang. 68.

—S. 7—*Order of restriction—Procedure.*

The same procedure as laid down in S. 117, Cr. P. C. with necessary modifications and additions must be followed where it is intended to take preventive action under S. 7 of the Burma Habitual Offenders' Restriction Act. *Pasodan v. Emperor*. 26 Cr. L. J. 417 : 85 I. C. 33 : 2 Rang. 524 : A. I. R. 1924 Rang. 69.

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———(II of 1919) S. 7—"General repute," evidence of—Police Officers and headmen, statements of, value.

In order to satisfy himself that the general repute of an accused person is that of an habitual offender, a Magistrate should, as a matter of prudence, require more evidence than that of Policemen and village authorities. But this is not a rule of law, and a Magistrate must, in each case, weigh the evidence and decide as to its sufficiency. No hard and fast rule can be laid down. *Nga Pan Yin v. Emperor*.

25 Cr. L. J. 245 :
76 I. C. 709 : 2 Bur. L. J. 153 : I. R. 447 :
A. I. R. 1924 Rang. 22.

———S. 7—Preliminary orders not mentioning period or Order under S. 7, legality.

If the term during which a proposed restriction is intended to be in force is not specified in preliminary order, no order under S. 7 of the Act can be passed. *Parsodan v. Emperor*.

26 Cr. L. J. 417 :
85 I. C. 33 : 2 Rang. 524 :
A. I. R. 1924 Rang. 69.

———Ss. 7, 13—Order under Cr. P. C., conversion of, to one under S. 7—Duty of Magistrate.

The District Magistrate is the only Magistrate empowered under S. 13 to convert an order under S. 118 of the Cr. P. C. to one under S. 7 of the Act but he has no power to intervene where there has been no proper preliminary order under S. 112 of the Code, and where the original order has not been made under S. 118 of the Code. Even in the case of an order properly made under S. 118 of the Code, it is the duty of the District Magistrate to have some good reason for the change over to the Burma Habitual Offenders' Restriction Act. *Parsodan v. Emperor*.

26 Cr. L. J. 417 :
85 I. C. 33 : 2 Rang. 524 :
A. I. R. 1924 Rang. 69.

———S. 9—Restriction order against old offender—if order set aside, can be considered.

The mere fact that an accused person is an old offender is not a ground on which a restriction order can be passed under S. 9. A Magistrate is not entitled to use an order which has been set aside, on whatever grounds, as proof that an accused person is an old offender. *Nga Po Than v. Emperor*.

26 Cr. L. J. 1344 :
89 I. C. 320 : 3 Rang. 156 :
A. I. R. 1925 Rang. 277.

———Ss. 9, 18—Conviction under S. 18 (1)—Fresh term of restriction can be imposed—Exclusion of period.

S. 9 does not authorize the addition of a term of restriction to the sentence in the case of a conviction under S. 18. S. 18 (2) does not permit the exclusion of any period during which the accused has been absent from his tract in contravention of the order or of any period during which he has been under trial. *Emperor v. Nga Tha Bay*.

26 Cr. L. J. 1359 :
89 I. C. 399 : 3 Rang. 167 :
A. I. R. 1925 Rang. 279.

BURMA LAND REVENUE ACT (II OF 1876).

———S. 8—Rules under—R. 52—Applicability—"Occupying" entering upon available land—Persons so entering—Land made subject of grant—Notice under S. 52 (1)—Failure to comply with—if can be proceeded against under r. 52 (2).

It is not persons who enter upon available land who are subject to eviction, but persons who are actually occupying available land. R. 52 of rules framed under S. 8 of the Act applies to a person to whom a grant had been made but whose grant had been cancelled, and who remains in occupation even after such cancellation. Such a person is a person who entered upon land which was not available. The rule refers to present occupation and the present status of the land. Certain persons entered upon land which was available. Subsequently such land was made the subject of a grant and a notice under r. 52 (1) was issued but the persons failed to comply with it: *Held* that the persons could not be deemed to have occupied available land and therefore, could not be proceeded against under r. 52 (2). *Ma Ngaw Yon v. The King*.

39 Cr. L. J. 140 :
172 I. C. 413 : 10 R. Rang. 247 :
A. I. R. 1937 Rang. 452.

———S. 10.

Where the act of which the person is complaining is also punishable departmentally by the Deputy Commissioner under S. 10, then the sanction of the Deputy Commissioner to the prosecution is necessary. *Maung Ba Shin v. Emperor*.

37 Cr. L. J. 295 :
160 I. C. 477 : 8 Rang. 386 :
A. I. R. 1936 Rang. 11.

———Ss. 44, 45—Issue of process—Arrear—Defaulter—Arrest.

No process for the recovery of revenue can be issued until the amount due has become an arrear under S. 44 by the lapse of ten days from the service of publication of a written notice of demand. *Emperor v. Ramara*.

7 Cr. L. J. 74 :
4 L. B. R. 103.

BURMA MILITARY POLICE ACT (XV OF 1887).

———S. 6 (b)—Offence under—Adjutant of Rangoon Military Police Battalion, jurisdiction of.

In the case of Rangoon, an offence under S. 6 (b) is triable exclusively by the Lower Burma Chief Court, and the Adjutant of the Rangoon Military Police Battalion who is merely a Magistrate of the First Class has no jurisdiction to try such an offence. *Emperor v. Rambahadur Rai*.

25 Cr. L. J. 323 :
81 I. C. 111 : 2 Bur. L. J. 21 :
A. I. R. 1923 Rang. 139.

BURMA MOTOR VEHICLES RULES.

———R. 46—Passing of tram-car on right side, permissibility of—Negligence.

Under r. 46 except for a reasonable cause a tram-car must be passed on the left side, the proviso merely allowing a special exception to the general rule. To pass it, therefore, on

BURMA MUNICIPAL ACT (III OF 1898)

the right is a *prima facie* negligence on the part of the driver. *Ahmed v. Emperor*.

28 Cr. L. J. 484 :
101 I. C. 660 : 6 Bur. L. J. 76 :
A. I. R. 1927 Rang. 149.

BURMA MUNICIPAL ACT (III OF 1898).

—Ss. 2 (6), 142 (d)—*Lodging-house, what is—Receiving lodgers.*

A lodging-house need not be let in lodgings: it is still a lodging-house if it is occupied to any extent in common by members of more than one family. The persons living in the lodging-house are lodgers, whether they pay rent or not and the owner of the lodging-house receives them when he allows them to occupy the building. *Amanath Mistry v. Emperor*.

19 Cr. L. J. 370 :
44 I. C. 674 : 3 U. B. R. 1917 52 :
A. I. R. 1918 U. Bur. 7.

—Ss. 92 (3), (4), 180—*Act of building without permission not punishable—Absence of any notice to the accused regarding his breach of law or bye-law—Appeal—Continuing breach.*

A person proceeded to erect a building in contravention of the plans approved by the Municipality upon which he was ordered by written notice to stop going on with the erection and was prosecuted under S. 180 for building contrary to the plan. The Magistrate found that he did not stop when ordered to do so and that no notice was issued requiring him to pull down or dismantle the extension. He found him guilty of a breach, in contravention of S. 92 (3), (4) and bye-laws framed under the Act and directed that he pay a fine of Rs. 50, and in case of a continuing breach, of a further fine of Rs. 5 a day for every day in which the erection continues to exist after the date of the order: *Held*, there was no continuing breach of any notice issued by the Municipality, as no notice was proved to have been issued under S. 92 (3) or (4) requiring the building to be altered or demolished, and therefore, that portion of the order was meaningless and inoperative and the only proper order was as to fine of Rs. 50 and was thus not appealable. *Emperor v. Maung Po Tok*. 11 Cr. L. J. 745 :
8 I. C. 983 : 3 Bur. L. T. 138.

—Ss. 92 (4), 180—*Wall, whether building—Walls built without sanction—Committee, right of, to demolish.*

Walls built to enable the occupier of house to use the enclosed area as part of his habitation are buildings within the meaning of the Act, and the erection of such walls without the sanction of a Committee, would justify the Committee in directing their demolition. *Kaloo Khan v. M. A. Rahim*. 24 Cr. L. J. 732 :
73 I. C. 972 : A. I. R. 1923 Rang. 65.

—S. 94 (2)—*Decision of Boundary Officer as a bar to subsequent claim—Validity of proceedings—Encroachment—Adverse possession.*

A. was prosecuted for disobedience of a notice requiring him to remove a wall which, according to the decision of a Boundary

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Officer passed five years previously under S. 12 of the Burma Boundaries Act, encroached upon a drainage space. No appeal had been filed against the Boundary Officer's decision. A. claimed a right of the land on which the wall stood, by adverse possession, and also questioned the validity of the Boundary Officer's proceedings: *Held*, that objections to the proceedings of the Boundary Officer, could not be raised as his decision had become conclusive. *Kya Nyun v. Rangoon Municipal Committee*. 7 Cr. L. J. 462 :
4 L. B. R. 153.

—Ss. 99, 100—*Pork exposed for sale—No evidence that pigs were slaughtered in contravention of Ss. 99, 100—No conviction.*

Where the accused was convicted of having exposed for sale the flesh of animals not slaughtered in the manner prescribed by S. 99 or 100 but there was nothing to show that the pork exposed for sale was the flesh of animals not slaughtered in contravention of the provisions of Bye-law No. 9 : *Held*, that the conviction was wrong. *Soon Nah v. Rangoon Municipality*.

1 Cr. L. J. 882 :
10 Bur. L. R. 163.

—Ss. 99, 100, 102 (e)—*Bye-law No. 9—Sale and not mere exposure for sale is prohibited.*

Bye-law No. 9 prohibits the sale and not the mere exposure for sale of the flesh of animals not slaughtered in the manner prescribed by or at a place licensed or fixed under S. 99 or 100 of the Act. *Maung Sa Mi v. Rangoon Municipality*.

1 Cr. L. J. 880 :
10 Bur. L. R. 160.

—Ss. 99, 100, 154—*Slaughtering an animal in an unlicensed place—What should prosecution prove.*

In a prosecution under Ss. 99, 100 and 154, for slaughtering an animal within the limits of a Municipality in a place not licensed for that purpose, it is necessary for the prosecution to prove not only that the animal was slaughtered in such a place, but that it was slaughtered for sale of its flesh. *Ally Hussain v. Emperor*.

1 Cr. L. J. 871 :
U. B. R. 1904 2nd Qr. Municipal :

—S. 102 (e)—*Bye-law No. 9—Uncooked flesh.*

The words "flesh of animals" in bye-law No. 9 does not refer only to uncooked flesh. *Maung Sa Mi v. Rangoon Municipality*. 1 Cr. L. J. 880 :
10 Bur. L. R. 160.

—Ss. 102 (e) and (f), Bye-laws 9, 10 and 11—*Bye-law No. 9 applies to flesh of all animals.*

Bye-law No. 9 of the Burma Municipal Bye-laws, made under S. 102 (e) of the Municipal Act is in general terms and applies to the flesh of all animals and the fact that Nos. 10 and 11 of the same bye-laws expressly exclude pork from their operation does not affect the generality of the application of Bye-law No. 9, Bye-laws Nos. 10 and 11 being made under clause (f) of S. 102. *Maung Sa Mi v. Rangoon Municipality*.

1 Cr. L. J. 880 :
10 Bur. L. R. 160.

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—S. 114 (1)—*The Provisions of S. 114 (1).*

S. 114 (1) as amended in 1931 does not prohibit the newly establishing of a private market which was not in existence at the commencement of the Act, *i.e.*, 1st July 1898, without a licence from the Municipal Committee within whose area the market is established. *Maung Ba Thin v. Pannawantha.*

34 Cr. L. J. 158 :
141 I. C. 81 : 10 Rang. 505 :
I. R. 1933 Rang. 16 (F. B.) :
A. I. R. 1933 Rang. 1.

—S. 121—*Power to demand passage over lands of private owners for scavenging purposes.*

S. 121 empowers a Municipal Committee to require an owner to allow the servants of the Committee reasonable access to or passage over his land for scavenging purposes, whether these purposes concern the land in question or other land, the rights of the residents of the Municipality being protected by the provision that the access to or passage over the land must be reasonable. *Emperor v. Ma Nu.*

28 Cr. L. J. 131 :
99 I. C. 339 : 3 Rang. 423 :
A. I. R. 1927 Rang. 60.

—S. 121—*Right of Municipality to claim passage over a person's land for scavenging other person's land.*

Under S. 121 the Committee has no right to claim a passage over any man's land for scavenging any other man's land. The section only authorises the Committee to require the owner of land to allow access to or passage over his land for the purpose of scavenging it. A person, therefore, cannot be fined for disobeying a notice issued on behalf of the Municipal Committee requiring him to allow reasonable access to or passage over his land for scavenging not only his own property but also that of other people. *Maung Nyein v. Emperor.*

5 Cr. L. J. 190 :
13 Bur. L. R. 25.

—S. 124 (a)—*142 (r) scope of.*

Where fresh bye-laws have not been made under S. 124 (a), a conviction for an offence made punishable by a bye-law made under S. 142 (r), is maintainable. *Karapan v. Emperor.*

35 Cr. L. J. 735 :
148 I. C. 616 : 11 Rang. 532 : 6 R. Rang. 241 :
A. I. R. 1934 Rang. 12.

—Ss. 130, 147, 180—*Order of Municipal Committee—Uninhabitable premises—Prosecution—Challenge of legality of order—Decision as to fitness of premises for use.*

A was ordered under S. 130 to refrain from using certain premises, which were considered to be unfit for human habitation, until the Committee was satisfied of their fitness for use. He carried out some repairs, but let the premises to a tenant before doing all that the Committee considered necessary. He was prosecuted and convicted under S. 180 of disobedience of the order, the Magistrate holding that by virtue of S. 147, the propriety or legality of the order could only be questioned in an appeal to the Commissioner : *Held*, that S. 147 did not debar accused from pleading as a defence to criminal prosecution that the order was *ultra vires*. Further,—that that part of the order which requir-

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ed that the Committee should be satisfied as to the fitness of the premises before their use was *ultra vires*. The question whether the house had been rendered fit for habitation was not a matter for the Committee's decision, but a question of fact to be decided by the Magistrate on the evidence. *J. F. Bretto v. Rangoon Municipal Committee.*

7 Cr. L. J. 441 :
4 L. B. R. 144 : 14 Bur. L. R. 125.

—S. 142—*Bye-laws—Condition restricting rate of interest to be charged by pawnbrokers, validity.*

A condition in pawnbrokers' licences issued under S. 142 limiting the rate of interest chargeable by pawnbrokers does modify and restrict the law which allows freedom of contract, but it is not on that account *ultra vires* of the Municipal Committee inasmuch as the power to limit the rate of interest is reasonably implied in the power to determine the conditions of such licenses. A licensee cannot object to the terms of a license which gives him rights and privileges which he would not enjoy without such licence. *S. C. Paul v. Emperor.*

18 Cr. L. J. 1012 :
42 I. C. 756 : A. I. R. 1918 L. Bur. 110.

—Ss. 142, 180—*Taking of jewels in mortgage is no offence.*

Held, that the taking of jewels in mortgage was not an offence under the bye-law, and as the record did not go beyond that, the conviction and sentence must be set aside, the petitioner discharged, and the fine refunded to him. *Saminathan Chetty v. Rangoon Municipality.*

4 Cr. L. J. 40 :
12 Bur. L. R. 151.

—Ss. 142 (1), 2 (6)—*Lodging house—Building, occupation of, by different families in common—Registration and licence, if necessary.*

If a building or part of a building is let in lodgings or occupied to any extent in common by members of more than one family, that building or that part must be registered and licensed. If a building is divided into separate and independent dwellings or tenements and those dwellings and tenements are such that the occupants of them do not, to any extent, use or occupy the building as a whole in common, then, even if the separate tenements or some of them are actually used as lodging houses, the building as a whole does not thereby become a lodging house and only those separate and independent tenements which are used as lodging houses need to be registered and licensed. *Emperor v. P. D. Seth.*

25 Cr. L. J. 1136 :
81 I. C. 950 : 2 Bur. L. J. 298 :
A. I. R. 1924 Rang. 109.

—S. 142 (d), *By-laws 19, 20 framed thereunder—By-law 19 (c) is not ultra vires.*

Clause (c) of By-law 19 framed by the Rangoon Municipality is not *ultra vires*, as the framing of clause is authorized by Sub-clause (iii) of S. 112 (d), which mentions one of the objects of such By-laws to be to promote cleanliness and ventilation in lodging houses, and rules for promoting ventilation must, by their nature, provide for the necessary structural alterations when the

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purposes of the By-law cannot be attained without them. *Partial Maistry v. Emperor*.

14 Cr. L. J. 484 :

20 I. C. 740 : 6 Bur. L. T. 484 :

—S. 142 (d)—Bye-laws under—Bye-law prescribing licence-fee for lodging houses—Validity.

A bye-law of a municipal body requiring keepers of lodging-houses to pay a licence-fee reckoned on the maximum number of lodgers authorized, although the actual number of lodgers in the house may be less than the authorized number, is not illegal or *ultra vires*. *P. S. Pillay v. Moulmein Municipal Committee*.

22 Cr. L. J. 113 :

59 I. C. 545 : 13 Bur. L. T. 107.

—S. 142 (e).

The omission of S. 142 from Col. 1 of the following table shows that a breach of a Bye-law duly passed under S. 142 (e) is not offence punishable under S. 148. *C. T. Mudaliar v. Maymyo Municipal Committee*.

34 Cr. L. J. 700 :

144 I. C. 159 : 11 Rang. 182 :

I. R. 1933 Rang. 84 : A. I. R. 1933 Rang. 68.

—Ss. 142 (e), 180—Summary trial—How the conviction should be recorded—Duty of Magistrate.

The law requires that the offence complained of and the offence proved should be both entered, in recording a conviction, as in a summary trial the Magistrate is required to make only a very short record, it is all the more incumbent on him to make that record carefully and to omit nothing that the law requires.

4 Cr. L. J. 40.

—S. 142—(r), Bye-law under—'Keep' meaning of

The word 'keep' in the bye-law made by the Rangoon Municipal Committee under S. 142 (r) means the keeping for some lengthened time. Where, therefore, the accused took a goat to a Hindu temple to be sacrificed and tied it up in the temple awaiting the sacrifice ceremony for about two hours and was thereupon convicted for breach of the bye-law : *Held*, that the conviction was bad. *Bojhenj Chandra v. Rangoon Municipality*.

17 Cr. L. J. 342 :

35 I. C. 518 : 8 L. B. R. 328 :

A. I. R. 1917 L. Bur. 148.

—S. 148.

A Chettyar whose business is to lend money on promissory notes and upon security of land cannot be said to be pawn-broker where he advances an isolated loan to another on security of a chattel. *V. A. S. M. Chettyar Firm v. Emperor*.

36 Cr. L. J. 853 :

155 I. C. 889 : 13 Rang. 32 : 7 R. Rang. 354 :

A. I. R. 1935 Rang. 104.

—S. 162-B—Bicycle is vehicle.

The word 'vehicle' includes a bicycle driven by human energy; the words 'drives' includes the application of human energy to the pedals of a bicycle. A man riding a bicycle is guilty of the offence under S. 162-B. when he is found riding his bicycle without light after dark. *Emperor v. Nga Tha Zan*.

12 Cr. L. J. 573 :

12 I. C. 837 : 4 Bur. L. T. 134.

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—S. 180—Erection in contravention of plans, if punishable by itself.

An erection in contravention of plans is not in itself or by itself alone punishable, as there is no bye-law rendering punishable the mere erection of a building in contravention of a plan. *Emperor v. Maung Po Tok*.

8 I. C. 983 :

3 Bur. L. T. 138.

—Ss. 180, 202—Notice must require alterations that are reasonable and possible.

A notice to be valid must be reasonable and possible to comply with. It is not reasonable to require a house-owner to remove the latrines to a site outside and quite separate from the main building when no such site is available, nor to require him to close the latrines without the provision of any others.

Partial Maistry v. Emperor.

14 Cr. L. J. 484 :

20 I. C. 740 : 6 Bur. L. T. 138.

—S. 180 (1)—General order directing disposal of surface water—Disobedience—offence.

There is nothing in Chapter VI of the Act which empowers a Town Committee to pass general orders or directions regarding the disposal of sullage or surface water. The neglect to comply with such an order, therefore, is not an offence under S. 180 (1). *Sohan Singh v. Emperor*.

21 Cr. L. J. 94 (b) :

54 I. C. 494 : 3 U. B. R. 1919 188 :

A. I. R. 1920 All. 357.

—Ss. 180 (1), 195—Complaint, who should make.

A complaint of an offence under the Municipal Act must be made by the Committee or by some person authorized by the Committee. Form at foot of complaint considered. *Emperor v. Po Nan*.

4 L. Bur. R. 44.

—Ss. 180 (1), 195—Order of Municipal Committee—Fine for continuing disobedience of order after conviction.

Accused was ordered under S. 130 to vacate the house he occupied. The order not being complied with, he was prosecuted under S. 180 (1), convicted, and sentenced to pay a fine. He was also ordered to move out within five days, failing which, he was to pay a fine of Rs. 5 for every additional day of disobedience: *Held*, that the Magistrate had no authority to modify the order of the Municipal Committee by allowing the accused to disregard it for five days: *Held also*, that the Magistrate had no power to inflict a fine contingent on future events. In the event of the disobedience of the order continuing after the date of the conviction, the proper course would be for the Committee to prosecute the accused again. If convicted, he could then be fined Rs. 5 for every day the disobedience had continued down to the date of the second conviction.

Emperor v. Po Nan.

6 Cr. L. J. 281 :

4 L. B. R. 44.

BURMA MUNICIPAL REGULATION.

'Re-build' or 're-erect' does not include 'Repair.' *Maung Sein v. Municipal Committee of Pakokku*.

1 Cr. L. J. 1049.

BURMA OPIUM LAW (AMENDMENT) ACT (VII OF 1909).

—S. 3—*Case falling under—Applicability of S. 3 (1) of Act II of 1919.*

S. 3 (1) of the Burma Habitual Offenders' Registration Act does not apply to a case which comes under S. 3 of the Act. *Emperor v. Nga Kyaw Hla.*

27 Cr. L. J. 1402 :
98 I. C. 714 : 5 Bur. L. J. 78 :
A. I. R. 1926 Rang. 182.

—S. 3—*Order requiring security under—Procedure—Appeal, whether lies.*

A Magistrate, in dealing with a person against whom information is received under S. 3, should do so as nearly as possible as if the information whereof the description mentioned in S. 110 of the Cr. P. C., that is to say, he must record an order under S. 112 and proceed in accordance with the following sections of the Code and, if he finds necessary to demand security, he must make an order under S. 118. Against such an order an appeal lies to the District Magistrate under S. 406 of the Cr. P. C. *Law Kaw v. Emperor.*

20 Cr. L. J. 321 :
50 I. C. 657 :

3 U. B. R. (1918) 117 : A. I. R. 1919 U. Bur. 27.

BURMA PREVENTION OF CRIME (YOUNG OFFENDERS) ACT (III OF 1930).

—S. 2 (d).

Local Government has no authority to recognize as a Junior School any place which is not a training school. *Emperor v. Khin Maung.*

35 Cr. L. J. 599 :
147 I. C. 1152 : 6 R. Rang. 1019 :
A. I. R. 1933 Rang. 275.

—S. 13—*Interpretation—Right of appeal under—Nature of.*

S. 13 means that in addition to the right of appeal against an order amounting to a sentence under the Cr. P. C., the accused shall have the right of appeal against any order effecting him except non-final orders as to age, or directing the submission of the case to a Magistrate empowered. *Nga Aung Thin v. Emperor.*

38 Cr. L. J. 483 :
167 I. C. 892 : 14 Rang. 78 : 9 R. Rang. 334 :
A. I. R. 1937 Rang. 80.

—Ss. 14, 15—*Finding of trial Court as to age of accused—High Court, if can consider it for purposes of S. 15—Consideration for purposes of sentence.*

According to S. 14 it is not open to the High Court to re-consider the finding arrived at by the trial Court which is a Court of Session as to the age of the appellant so far as the question as to the applicability of S. 15 is concerned. For the purpose of considering whether the provisions of S. 15 of the Act can be extended to the accused or not, there is nothing to fetter the discretion of the High Court in considering whether he has been really proved to have completed sixteen years of age or not, for the purpose of determining the general question as to what is the appropriate sentence to be passed on him. *Nga Saw Htun v. Emperor.*

38 Cr. L. J. 1022 :
171 I. C. 125 : 10 R. Rang. 131 :
A. I. R. 1937 Rang. 121.

BURMA PREVENTION OF CRIME (YOUNG OFFENDERS) ACT (III OF 1930)

—S. 16 (d).

Act does not recognize custody order committing offender to custody of a home or similar institution. *Emperor v. Khin Maung.*

35 Cr. L. J. 599 :
147 I. C. 1152 : 6 R. Rang. 191 :
A. I. R. 1933 Rang. 275.

—S. 16 (d).

Order under S. 16 (d)—No appeal filed though order is appealable—High Court will not interfere in revision. *Emperor v. Nga Ngun.*

37 Cr. L. J. 94 :
159 I. C. 450 : 8 R. Rang. 267 :
A. I. R. 1935 Rang. 393.

—S. 16 (e)—*Crime by juvenile an isolated one due to his losing self-control under certain circumstances—Accused not subjected in his normal life to undesirable influences, if can be sent to Borstal School.*

Where it appears that the crime which the juvenile has committed is an isolated one due to his losing self-control in a set of special circumstances, and where the juvenile is not shown to be subjected in his normal life to undesirable influences, it is not necessary that he should be detained in a Borstal School. These schools are introduced for the training and care of young persons, who are by their circumstances, likely to enter upon a life of crime. *Maung Tin Hlaing v. Emperor.*

41 Cr. L. J. 22 :
184 I. C. 464 : 12 R. Rang. 147 :
A. I. R. 1939 Rang. 383.

—Ss. 16 (e), 24 (b) (ii)—*Offender between age 15 and 16 years—Proper order in such cases.*

Where an offender, ordered to be detained in the Training School under S. 16 (e), for a period of 4 years, is of age between 15 and 16 years, the order is illegal, since he will have passed his 19th birthday by the time the 4 years' period of detention expires. In such cases, the proper order is to detain him in the Training School till he attains his 19th birthday. *The King v. Unsoose.*

39 Cr. L. J. 697 :
176 I. C. 217 : 11 R. Rang. 36 :
A. I. R. 1938 Rang. 228.

—S. 20 (3).

Order that can be passed is to send offenders to Junior School or custody order for offenders to be kept in custody for any period up to age 16. When there is no Junior School, custody order is the only course. *Emperor v. Khin Maung.*

35 Cr. L. J. 599 :
147 I. C. 1152 : 6 R. Rang. 191 :
A. I. R. 1933 Rang. 275.

—S. 24, cl. (b)—*"Beyond age of 18," meaning of—Order of detention must fix exact age of accused.*

The expression "beyond the age of 18" must mean and include the period up to the nineteenth birthday of the person, under cl. (b), S. 14. A person ordered to be detained at a Senior Training School cannot be detained there beyond the age of 18. The Magistrate

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passing the order under the Act must fix the exact age of the accused. Consequently a person who is just under 16 years of age at the time of passing of the order can be ordered to be detained for a period of three years under S. 21 (b). *Emperor v. Nga Bala*.

37 Cr L. J. 869 :
163 I. C. 1008 : 14 Rang. 327 : 9 R. Rang. 55.
A. I. R. 1936 Rang. 297.

—Ss. 24, 25—"Beyond age of 18," meaning of—*Accused person between 15 and 16—Order of detention—Nature of order to be passed.*

The expression "beyond the age of 18" in the Act must mean and include the period up to the 19th birthday of the person concerned. The duty of the Magistrate in such a case is to fix the age of the accused person as nearly as he can from the evidence. Where the accused is between 15 and 16 years of age and the Magistrate directs him to be detained in a Senior Training School for four years, the proper course is to fix his 15th birthday as a particular date and direct him to be detained till his 19th birthday. The order should be accompanied by a reference to the date upon which the 19th birthday occurs in order that the School Authorities may, with certitude, carry out the duties entrusted to them. *Emperor v. Nga Pyu*. F. B.)

38 Cr. R. J. 33 :
165 I. C. 575 : 4 Rang. 625 :
9 Rang. 215 (F. B.) : A. I. R. 1936 Rang. 485.

—S. 25—Order under—Nature of.

Per *Ba, U. J.*—(In order of reference) the order passed under S. 25 has not the same legal effect as an order passed under S. 562, Cr. P. C., as it affects the offender directly in his person and deprives him of his liberty unlike an order under S. 562, Cr. P. C. It is, therefore, a punishment within the meaning of S. 3, Whipping Act, and S. 53, I. P. C. *The King v. Kyaw Aye*.

41 Cr. L. J. 455 :
187 I. C. 405 : 1939 Rang. 744 :
12 R. Rang. 332 : A. I. R. 1940 Rang. 81.

—S. 25.

When accused is convicted under S. 366-A, Penal Code, sentence of whipping in addition to punishment under the Burma Act is illegal. *Emperor v. Shive Bein*.

35 Cr. L. J. 903 :
149 I. C. 139 (1) : 12 Rang. 349 :
6 R. Rang. 291 : A. I. R. 1934 Rang. 123.

—S. 25 (1)—*Accused 16 years of age found guilty under Ss. 302 and 307, Penal Code—Order sending to Borstal School, is illegal.*

S. 25 (1) only allows an order directing the accused to be sent to Borstal School in a trial against a person between 16 and 19 where a sentence of imprisonment would ordinarily be passed, and since an offence under S. 302, Penal Code, is not punishable with imprisonment, but with death or transportation for life, an order directing the accused aged 16, found guilty under Ss. 302, 307, Penal Code, to be sent to a Borstal School for seven years till he reaches the age of 23, is illegal. *Emperor v. Nga U*.

37 Cr. L. J. 791 :
163 I. C. 118 : 8 R. Rang. 610 :
A. I. R. 1936 Rang. 234.

BURMA RURAL SELF-GOVERNMENT ACT (IV OF 1921)

—Ss. 25 (1), 10—*Order of detention in Borstal School for any period—Whether amounts to enhancement of sentence within Cr. P. C. (Act V of 1898), S. 423 (1), cl. (b), (3).*

An order for detention in a Borstal School for any period permitted by the provisions of the Act, can never amount to an enhancement of sentence within cl. (a) (3), S. 423 (1), Cr. P. C. It is clear from S. 25 that an order of detention in a Borstal School is not a sentence of imprisonment; in fact, it is something which is substituted for a sentence of imprisonment. In considering the proper period of detention in a Borstal School entirely different and, in fact, almost opposite consideration arise to those which arise in considering the sentence of imprisonment to be passed on an adult. Under S. 10 a Court of Session on appeal has jurisdiction to order detention in a Borstal School for any period which is legal under the provisions of Sub-S. (1), S. 25, irrespective of the length of the sentence of imprisonment which has been passed by the Magistrate from whose judgment the appeal is brought; and in ordering such detention, of an enhancement of sentence having been made. *Emperor v. Ah Htwae*.

37 Cr. L. J. 790 :
163 I. C. 74 : 14 Rang. 119 :
8 R. Rang. 609 : A. I. R. 1936 Rang. 227.

BURMA RURAL SELF-GOVERNMENT ACT (IV OF 1921).

—Rules under, r. 55—*Decision of District Judge under—Appeal or revision to High Court, if lies.*

In performing the functions laid upon him by the rules made under the Act, the District Judge does not act as a Court and his proceedings are not subject to appeal or to revision by the High Court because he acts as a *persona designata*. 91 I. C. 550 (1) and 142 I. C. 80 (2), relied on. *U. Aung Myin U. v. District and Sessions Judge, Henzada*.

41 Cr. L. J. 687 :
188 I. C. 795 : 39 R. Rang. 19 :
A. I. R. 1940 Rang. 148.

—S. 77—*Clerk of Circle Board letting out his house to Board—No permission of Commissioner taken—Offence.*

S. 77 does not limit contracts intended to be covered by its penal provision only to such contracts as may be related to the matters mentioned in Ss. 48, 50 and 56 of the Act. Where a Clerk of a Circle Board rents his house to the Board for using it as an office, without the permission from the Commissioner in writing as required by S. 77, he commits an offence under S. 168, Penal Code, read with S. 77, Burma Rural Self-Government Act, as he is interested in the contract made by the Board. *The King v. Maung Saw Han*.

40 Cr. L. J. 248 :
179 I. C. 716 : 11 R. Rang. 343 :
A. I. R. 1939 Rang. 69.

—Sch. II, O. 1, cl. 1, Sub-cl. (1) (b)—*'Have been assessed,' meaning of—Person's name should actually appear in assessment roll as assessee—Proof of.*

The words "have been assessed" in Sch. II,

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O. I, cl. (1), sub-cl. (1) (b) do not merely mean "have paid" land revenue but that the person's name actually appears in the assessment rolls as assessee. To prove that an elector had been assessed to land revenue on not less than ten acres of land for a continuous period of not less than 6 years preceding the financial year, etc., the only method is to produce extracts from relevant assessment rolls. *Maung Tun Gaung (Kaung) v. Emperor*. 38 Cr. L. J. 1015 : 171 I. C. 86 : 10 R. Rang. 128 : A. I. R. 1937 Rang. 318.

BURMA SALT ACT (II OF 1917).

—S. 9 (c)—*Rules under the Act, rr, 41, 42—Unauthorised 'removal' of salt.*

The unauthorised removal of salt is illegal under the provisions of rr. 41 and 42 of the rules under the Burma Salt Act. *Nga Yok Oh v. Emperor*. 28 Cr. L. J. 464 : 101 I. C. 496 : 5 Bur. L. J. 220 : A. I. R. 1927 120.

BURMA SUPPRESSION OF BROTHELS ACT (II OF 1921)

—S. 11 (a)—*Offence under—Proper sentence.*

The proper penalty for the offence of managing a brothel under S. 11 (a), is that the offender should be sent to prison and a sentence of fine, and in default, imprisonment is entirely inadequate for such an offence. The offences of this kind will only be stamped out when a sentence of imprisonment is passed. *Ulla v. The King*. 39 Cr. L. J. 494 : 174 I. C. 885 : 10 R. Rang. 439 : A. I. R. 1938 Rang. 107.

BURMA VACCINATION ACT (I OF 1909)

—Ss. 4, 7—*Vaccination of children under six months—Applicability of S. 7.*

S. 4 applies only if the child to be vaccinated is under six months and has been exposed to certain possibilities of infection. If it is desired to make use of the section, the second paragraph must be complied with and no summary procedure is possible. S. 7 of the Act refers to inmates of lodging houses and persons living under other special conditions. *Emperor v. Nga Po Kan*. 14 Cr. L. J. 420 : 20 I. C. 404 : U. B. R. 1913 162.

BURMA TOWNS ACT (III OF 1907)

—Ss. 9, (2)—*Headman, duties of, whether include conveyance of dak—Refusal to assist headman—Offence.*

It is no part of the ordinary duty of a ward headman to provide coolies to take out a Deputy Commissioner's letters from his headquarters. Therefore, where a person residing within a ward is requested by the headman to convey letters to the Deputy Commissioner's camp and he fails to do so, he is not guilty of an offence under S. 9 (2) of the Burma Towns Act. *Emperor v. Nga Po Sin*. 22 Cr. L. J. 207 : 60 I. C. 63 : 3 U. B. R. 1920 234.

BURMA VILLAGE ACT (VI OF 1907)

—S. 10.

An abuse of a power means that when a person has power to do a certain thing, he exercises that power in a manner in which authority is not given to him to exercise it. *Maung Ba Shin v. Emperor*. 37 Cr. L. J. 295 : 160 I. C. 477 : 8 R. Rang. 386 : A. I. R. 1936 Rang. 11.

—S. 10.

The meaning and effect of Ss. 10 and 28, is that no Court can entertain a complaint against a headman punishable under S. 10 unless the prosecution has been instituted with the sanction of the Deputy Commissioner. *Sein Tha U v. Maung Kyaw Khine*. 36 Cr. L. J. 875 : 156 I. C. 149 : 13 R. 336 : 7 R. Rang. 378 : A. I. R. 1935 Rang. 137.

—Ss. 10, 28—*Village headman—Protection from prosecution.*

A village headman is protected by S. 28 to this extent that he cannot be prosecuted for an act or omission punishable under S. 10 of that Act or for an abuse of his power similarly punishable, even though such act or omission, or such abuse of power is punishable under the Penal Code, or some other law, unless the prosecution is instituted by order of, or under authority from, the Deputy Commissioner. *Nga Tun Lin v. Emperor*. 24 Cr. L. J. 581 : 73 I. C. 325 : 4 U. B. R. 1922 101 : A. I. R. 1923 Rang. 27.

—S. 12—*Person who did not pay thathameda tax directed by village headman to appear at Township Office—Failure to appear, if offence under S. 12.*

The payment of thathameda tax is not a public duty imposed upon a villager by the Village Act, nor is it any part of his public duties to betake himself to any spot which the headman chooses to order him to visit. If, therefore, a person who has not paid his thathameda tax is directed by his headman to appear at a Township Office but fails to do so, he does not commit any offence punishable under S. 12 of the Village Act. *The King v. Maung Kan Tun*. 39 Cr. L. J. 626 : 175 I. C. 512 : 1938 Rang. 119 : 10 R. Rang. 505 (1) : A. I. R. 1938 Rang. 180.

—S. 12—*Refusal to obey requisition of Headman—Offence—Duty of prosecution.*

In Settlement Operation, Headmen have to assist Settlement Officials by turning out villagers for such duties as soil classification, holding-marking, crop reaping, etc., and a villager who refuses to comply with such a requisition by a Headman is guilty of an offence under S. 12. Under S. 12 the prosecution has to prove that the accused was either present at the time when the requisition was made or was informed of it in time to obey it. *Pan Ba v. Emperor*. 25 Cr. L. J. 371 : 77 I. C. 419 : 11 L. B. R. 412 : A. I. R. 1923 Rang. 81.

—S. 19—*Headman's order—Removal to another site in village.*

A villager refusing to obey an order of the

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headman to remove to another site in the village is not guilty of an offence under S. 19. *Emperor v. Nga Sein*. 25 Cr. L. J. 319 :

76 I. C. 1039 : 4 U. B. R. 127 :
A. I. R. 1923 Rang. 132.

———S. 19 (1)—*Evidence to be given.*

To justify a conviction under S. 19 (1), it is necessary to show that the accused had built his house without the permission of the Deputy Commissioner, and later than the year 1908, in which year the Act came into force. *Emperor v. Nga Nyo*. 15 Cr. L. J. 250 :

23 I. C. 203 : U. B. R. 1913 I, 180 :
A. I. R. 1914 U. Bur. 5.

———S. 21 (a)—*Pwe, meaning of—Dramatic performance by amateurs for public entertainment—Notice, absence of—Robbery—Offence.*

For the purposes of the Act a *pwe* ordinarily includes a theatrical or dramatic performance held for public entertainment whether on public or private property. Accused gave a dramatic performance at his house for public entertainment without obtaining a permit for the same. The troupe was composed of local amateurs. During the performance a robbery took place in the neighbourhood : *Held*, that the accused was guilty of an offence under S. 21 (a). *Emperor v. Maung Than Gyaung*.

27 Cr. L. J. 342 :
92 I. C. 954 : 4 Bur. L. J. 145 : 3 Rang. 514 :
A. I. R. 1925 Rang. 375.

———S. 21 (3)—*Pwe, what is.*

An ordinary *anyein*, which is a name given to the playing of soft music, or the beating of drums, or a sing-song, cannot be considered to be a *pwe* within the meaning of S. 21 (3), unless it is performed for profit or by travelling troupes. *Emperor v. Ma Lf*.

22 Cr. L. J. 705 :
63 I. C. 855 : 13 Bur. L. T. 243.

———S. 23 (as amended in 1921)—*Conviction by Magistrate—Deputy Commissioner's power to revise.*

The conviction and sentence of a person for an offence made punishable by the Act or Rules made thereunder is not 'an order made under the Act' within the meaning of S. 23 of the Act, nor is a Magistrate when exercising his jurisdiction as such an authority subordinate to the Deputy Commissioner within the meaning of the said section. A conviction and sentence by a Magistrate for an offence under the Act cannot, therefore, be revised by the Deputy Commissioner.

———S. 20-A—*Money-lenders taking goods in pawn—If Offence.*

Persons genuinely carrying on the business of money-lending and advancing money on a promissory note or other documents are exempted from the operation of the rules made under S. 20-A and cannot be convicted for taking goods and chattels in pawn for loans of money. *Emperor v. Mutu Alagi*. 29 Cr. L. J. 646 :

110 I. C. 102 : 6 Rang. 108 :
10 A. I. Cr. R. 400 : A. I. R. 1928 Rang. 158.

BYE-LAWS

———S. 28.

Deputy Commissioner should not limit his sanction to particular offence. *Maung Po Thit v. Maung Pyre*. 32 Cr. L. J. 938 :

132 I. C. 556 : 8 Rang. 654 : 328 L. J. 938 :
I. R. 1931 Rang. 188 : A. I. R. 1931 Rang. 87.

———S. 28—*Scope of—District Magistrate taking cognisance of case against Headman on his own motion, legality of.*

S. 28 applies only to the entertainment of a complaint and does not impose any restriction upon the prosecution of a Headman if the prosecution is instituted otherwise than on complaint. It does not, therefore, apply to a case in which a Magistrate of his own motion takes cognizance of an offence under the provisions of S. 190 (1) (c) of the Cr. P. C. *Emperor v. Nga Po Win*. 31 Cr. L. J. 863 :
125 I. C. 360 : 8 Rang. 246 :
A. I. R. 1930 Rang. 253.

———S. 28.

It is not the duty of a Magistrate to obtain the requisite sanction to prosecute a person, but it is both his duty and his exclusive right to determine whether sanction is necessary or not. *Sain Tha v. Maung Kyaw Khine*.

36 Cr. L. J. 875 :
156 I. C. 149 : 13 Rang. 336 : 7 Rang. 378 :
A. I. R. 1935 Rang. 137.

———S. 28.

Magistrate receiving complaint requiring sanction of Deputy Commissioner—He should reject complaint and inform the complainant to obtain sanction. *Maung Po Thit v. Maung Pyu*. 32 Cr. L. J. 938 :

132 I. C. 556 : 8 R. 654 : 328 L. J. 938 :
I. R. 1931 Rang. 188 : A. I. R. 1931 Rang. 87.

BURMESE BUDDHIST LAW

———*See Buddhist Law (Burmese.)*

BYE-LAWS.

A statutory power conferred upon a Municipal Council to make bye-laws for regulating and governing a trade does not, in the absence of an express power of prohibition, authorise the making it unlawful to carry on a lawful trade in a lawful manner. *Asa Ram v. Emperor*.

34 Cr. L. J. 647 :
143 I. C. 796 : 1933 A. L. J. 905 :
55 All. 538 :
L. R. 14 All. 4108 : I. R. 1933 All. 339 :
A. I. R. 1933 All. 593.

———*Municipal, validity of—Test—Interpretation, rule of.*

In determining the validity of bye-laws made by public representative bodies under statutory powers, their consideration is approached from a different standpoint from bye-laws of Railway or other Companies, which carry on business for their own profit, although incidentally for the advantage of the public. Courts of Justice are slow to condemn Municipal bye-laws as invalid, on the supposed ground of unreasonableness, and support them, if possible, by a "benevolent" interpretation, and credit those who have to administer them with an

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intention to do so in a reasonable manner. But, on the other hand, if a bye-law necessarily involves that which is unreasonable, it is the duty of the Court to declare it to be invalid. *B. P. S. Pillay v. Moulmein Municipal Committee*. 22 Cr. L. J. 113 : 59 I. C. 545 : 13 Bur. L. I. 107.

Where the rule framed by a Municipal Board forbade the "erection or re-erection of any building" in the civil station except with the previous sanction of the Board: *Held*; that such prohibition could not apply to the inclosing by means of a canvas screen of a certain space adjoining a house. *Kamta Nath v. The Municipal Board of Allahabad*. 2 Cr. L. J. 793 : 2 A. L. J. 676 : 25 A. W. N. 252 : 28 All. 199.

C**CALCUTTA HIGH COURT, CROWN SIDE RULES.**

The second half of Chap. XXXVII, R. 2, Crown Side Rules, Calcutta, is addressed to the same subject-matter as the first half. *Sashadhar Acharjya v. Charles Edna*. 33 Cr. L. J. 219 : 135 I. C. 880 : 35 C. W. N. 1088 : I. R. 1932 Cal. 176 : A. I. R. 1932 Cal. 123.

CALCUTTA HIGH COURT RULES AND CIRCULAR ORDERS, CHAPTER I, RULE 74 (b).

—See Criminal Procedure Code, 1898, Ss. 303, 307, 374. *Sadek Mondal v. Emperor*. (F. B.) 35 Cr. L. J. 496 : 147 I. C. 860 : 38 C. W. N. 254 : 61 C. 256 : 6 R. C. 374 A. I. R. 1934 Cal. 173.

—R. 93—Attachment of movables—Removal of property without giving option, to judgment-debtor to provide place of safe custody, legality of—Taking back such property—Offence—Penal Code, S. 83.

Rule 93 of Chap. I as amended has the force of law. Removal of attached movables by an attaching officer without giving an option to the judgment-debtor of having the attached property kept on his premises or at some other place of safe custody as required by the said Rule, is illegal and a person who takes back property which has been so illegally removed does not commit an offence. *Ahmad Sheikh v. Emperor*. 30 Cr. L. J. 199 : 113 I. C. 572 : 48 C. L. J. 288 : 33 C. W. N. 174 : I. R. 1929 Cal. 140 : 56 Cal. 460 : A. I. R. 1928 Cal. 815.

CALCUTTA HIGH COURT RULES (ORIGINAL SIDE).

—Practice—Taxation—Fees of Junior Counsel should not be taxed on basis of market value but should be two-thirds of fees of Senior Counsel. *In re : Gopalchandra Singha* : 133 I. C. 572 : 58 Cal. 505 : I. R. 1931 Cal. 700 : A. I. R. 1931 Cal. 523.

—R. 951.

Per *S. K. Ghose, J.*—The fine prescribed by R. 953 cannot be realised as a fine imposed by

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the Court in a judicial proceeding. Since the fine cannot be imposed as a judicial fine, the provision relating to it is *ultra vires*. *In re : Ramesh Chandra Sen Gupta, a Pleader, Patnakhali* : 37 Cr. L. J. 590 : 162 I. C. 517 : 40 C. W. N. 377 : 63 C. L. J. 127 : 63 Cal. 855 : 8 R. C. 605 : A. I. R. 1936 Cal. 205.

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—Ss. 154, 160 (c)—Powers of Chairman—Delegation of, under S. 154—If can be condoned under S. 160 (c).

Under S. 154, the right to set the law in motion is vested in the Chairman subject to the control of the Board. Although the Chairman is empowered under S. 35 of the Act to delegate certain of his powers, the functions vested in the Chairman under S. 154, cannot be delegated. If he delegates his authority under S. 154, to institute legal proceedings, such a defect cannot be condoned under S. 160 (c). *Aditendra Amarendra Nath Shaw v. Satya Prokash Sarcar*. 39 Cr. L. J. 962 : 177 I. C. 885 : 42 C. W. N. 894 : 11 R. C. 288 : I. L. R. 1938 2 Cal. 546 : A. I. R. 1938 Cal. 692.

—S. 171—"Re-erect," meaning of.

The word "re-erect" in the absence of any definition, in the Act should be interpreted in its ordinary meaning. *Nath Miller v. Bhupati Bhusan Sen Gupta*. 38 Cr. L. J. 219 : 166 I. C. 457 : 40 C. W. N. 799 : 63 C. L. J. 582 : 9 R. C. 531 : A. I. R. 1936 Cal. 373.

—S. 171—Where more than one person join in erecting building, each can be fined Rs. 500.

Where more than one person join in erecting a building, they are each liable to a fine extending to Rs. 500 and there is, therefore, nothing illegal if the fine imposed on all, amounts in all to an amount exceeding Rs. 500. *Aditendra Nath Miller v. Bhupati Bhusan Sen Gupta*. 38 Cr. L. J. 219 : 166 I. C. 457 : 40 C. W. N. 799 : 63 C. L. J. 582 : 9 R. C. 531 : A. I. R. 1936 Cal. 373.

CALCUTTA MOTOR VEHICLES RULES.

See Motor Vehicles Act, 1914.

31 Cr. L. J. 436.

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—Imprisonment in default of fine—Daily penalty—Sentence.

There is no authority under the Calcutta Municipal Act to impose imprisonment in default of payment of fine, at any rate, for offences to which a daily penalty is assigned in addition to the substantive fine. *Basanta Kumari Devi v. Corporation of Calcutta*. 12 Cr. L. J. 375 : 11 I. C. 143 : 15 C. W. N. 906.

—S. 3 (25)—Masonry wall.

A detached 'masonry wall' does not fall

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within the definition of a 'masonry building' as given by the Act. *In the matter of Corporation of Calcutta v. Jogeshwar Laha.*

1 Cr. L. J. 369 :
8 C. W. N. 487.

—S. 3 (29)—*Nuisance—Putting up posts to prevent wheel traffic passing through busti, if nuisance.*

The owner of a *busti* put up certain posts which had the effect of preventing the wheel traffic passing through the *busti* leaving the opening on to the main road open and free at all times for any cart which had business in the *busti* and could go all over it and all round it and out again by the same passage by which it came in; but the cart could not get in and out of this *busti* by the shortest route as it had to go back by the way it came in: *Held*, that, although it may be inconvenient to the Municipal servants and although it may add to the expense of cleansing the *busti*, the act of the owner cannot, in any way, interfere with the effective cleansing of the *busti*, which it is necessary to establish before it can be held to be a nuisance. *Narendra Nath v. Chairman, Corporation of Calcutta.*

11 Cr. L. J. 556 :
8 I. C. 17.

—Ss. 3 (29), 632—*Nuisance—Building wall to prevent neighbour from acquiring easement, if nuisance—Duty of Court in abating nuisance.*

The building of a wall, however high, on a man's own property for the purpose of preventing his neighbour from acquiring rights of easement over his land, is not in itself a nuisance under the Act. But although the height of the wall may not be a nuisance, yet the accumulation of filth and want of space to clear the drainage between it and the neighbour's house may cause it to be a nuisance. The Court should not pull down the wall to a lesser height, but should consider whether the nuisance may not be abated by some means of clearing the space. *Khangendra Nath v. Bhupendra Narayan.*

11 Cr. L. J. 665 :
8 I. C. 530.

—Ss. 3 (32), 408—"Owner"—*Shebait not in turn, nor in possession of debutter property, whether owner—Liability for non-compliance with directions to improve busti.*

Where certain *shebait*s of a deity worship it and manage the *debutter* properties in turns, one of them, who is out of his turn and, therefore, not in possession of the *debutter* properties and also has no control over the management of the same and does not receive the rents from the tenants of properties, does not come within the definition of the term "owner" under S. 3 (32), and is, consequently, not liable to be punished for non-compliance with the directions contained in a notice under S. 408 of the Act for carrying out certain improvements in a *busti* which is concluded in the *debutter* properties within Calcutta. *Rajendra Lal Mitra v. Corporation of Calcutta.*

14 Cr. L. J. 569 :
21 I. C. 169 : 17 C. W. N. 1084 : 41 Cal. 104.

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—S. 3 (35) (37)—*Sch. XVII, R. 2—Private street—Pathway made by owner—Height of building.*

Where there are four buildings owned by four different persons bearing four different assessment numbers which abut on a passage which is not a public street: *Held*, that it was a pathway made by the owner of a building on his own land to secure access to, or the convenient use of, such building, and that the provisions of R. 2 of Schedule XVII of the Act did not apply. *Hari Mati Dasi v. Corporation of Calcutta.*

11 Cr. L. J. 728 :
8 I. C. 891.

—Ss. 3 (39) (a), 351—*Re-erection—Building—Tin shed with posts.*

Before the building line was laid down, a shed consisting of four posts and a tin roof stood on identically the same spot as they did subsequently. After the building line was laid down, the owner had occasion to take the roof off, and eventually he put up a roof either made of new tin or repaired: *Held*, that this was not a re-erection within the meaning of S. 3 (39) (a), that the roof with four posts was not a building and that the re-placing of the roof upon the same posts did not infringe S. 351, as no portion of any building or wall abutting on any street had been constructed within the building line. *Tripundeshur Mitter v. Corporation of Calcutta.*

12 Cr. L. J. 461 :
11 I. C. 997 : 16 C. W. N. 23 : 39 Cal. 84.

—S. 102 (1) (c)—*Institution of proceedings by Secretary—Validity of.*

Obiter dictum.—Even if the Secretary to the Corporation, who is also the Secretary to the General Committee, has no power to make any application complaining against any person for having erected any building without a valid sanction, the defect or irregularity is covered by S. 102 (1) (c). *Kishori Lal v. Corporation of Calcutta.*

11 Cr. L. J. 256 :
6 I. C. 172.

—S. 198—*Carry on business, meaning of—Mere supply of goods without keeping any place of business, whether 'carrying on business'—Trade license, necessity of.*

A firm who have their place of business within the limits of one Municipality but supply goods to another Municipality without having any place of business in the latter Municipality, cannot be held to 'carry on business' within the latter Municipality and need not, therefore, take out a trade license from the latter Municipality. *S. N. Ranerjee, License Inspector of the Howrah Municipality v. Bengal Paint and Varnish.*

29 Cr. L. J. 786 :
111 I. C. 114 : 48 C. L. J. 54 :
10 A. I. Cr. R. 565 : A. I. R. 1928 Cal. 531.

—Ss. 198, 466 and 574—*Licences under Ss. 198 and 466—Connection between—Taking of one license if excuse for not taking out other.*

The purposes for which the licences under Ss. 198 and 466 are necessary, are widely different, and there is no necessary connection between the two licences. The taking out of

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a licence under S. 108 is itself no excuse for not taking out another licence under S. 466. The scheduled rules that apply to the one have no application to the other. *Bepin Behari v. The Corporation of Calcutta.*

6 Cr. L. J. 148 :
11 C. W. N. 885 : I. L. R. 34 Cal. 913 :
6 C. L. J. 183.

———S. 299—*Drainage*—“Place lawfully set apart,” meaning of.

A place “lawfully set apart,” for the use of the public by the Corporation within the meaning of S. 299 must be a place over which the Corporation have acquired by some procedure under statute a right to make use of private property as a public drain. The private common drain of the landlord cannot be presumed to be a place lawfully set apart for the discharge of drainage within the meaning of S. 299, and a tenant of one of the huts in the *busti* cannot be called upon to alter his connecting drain to suit the convenience of the Corporation, and he cannot be fined for neglecting to do so. *Gobind Chandra v. Corporation of Calcutta.*

11 Cr. L. J. 701 :
8 I. C. 706.

———Ss. 299, 575—*Proceedings under*—*Stay of*—*Revival of, after long delay, effect of.*

Held, that in view of the special circumstances of the case and the very great delay that had occurred, it must be taken that the proceedings had been abandoned, and that the conviction for an offence from the 16th May, 1916, made on 20th November, 1919, was invalid. *Nando Lal Guha v. Corporation of Calcutta.*

21 Cr. L. J. 558 :
56 I. C. 862 : 24 C. W. N. 467 :
31 C. L. J. 342 : A. I. R. 1920 Cal. 345.

———Ss. 325, 574—*Consolidation of cases based on different facts.*

Where two separate prosecutions were started by the Corporation against a licensed plumber for defect in his works in connection with two different premises, and the Municipal Magistrate consolidated the two cases together : *Held*, that such a procedure was irregular. *Manik Lal v. Corporation of Calcutta.*

4 Cr. L. J. 394 :
4 C. L. J. 411.

———Ss. 325, 574—*Liability of plumber for defect in work not absolved by subsequent sanction.*

Where the work of a licensed plumber was found, on inspection after submission of the completion report, to be defective and in contravention of r. 4 of Schedule XV of the Act : *Held*, that the plumber was liable to prosecution notwithstanding that the defects were subsequently remedied and the officers of the Corporation subsequently sanctioned the requisite connections. *Manik Lal v. Corporation of Calcutta.*

4 Cr. L. J. 394 :
4 C. L. J. 411.

———S. 341—“When a fixture has been attached to a building,” meaning of—*Applicability of section*—*Duty of prosecution.*

The words “when a fixture has been attached to a building” in S. 341 mean that the building must first be in existence and the attachment

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of the fixture subsequent to the erection of the building, and the words cannot be applied to a part of a building constructed at the same time as the main building. In order to apply the provisions of the section, it is incumbent on the prosecution to prove the facts upon which its applicability depends. *Mohammed Raziuddin v. Corporation of Calcutta.*

21 Cr. L. J. 768 :
58 I. C. 352 : 23 C. W. N. 752 :
29 C. L. J. 605 : A. I. R. 1920 Cal. 976.

———Ss. 341, 450, 631—*Order for demolition of fixture by Chairman at owner's expense*—*No limitation to institution of proceedings.*

In January 1907, a notice under S. 341 was served on the petitioner calling on him to remove a fixture which was alleged to be an encroachment on a public street. In October 1907, proceedings were instituted against him under S. 450 and the Municipal Magistrate found that the fixture was an encroachment and directed that it should be demolished by the Chairman at the expense of the petitioner : *Held*, that as the Magistrate did not try the petitioner for the offence of failure to comply with the requisition made upon him under S. 341, but applied the special remedy provided by S. 450, the limitation in S. 631 did not apply to the case, and the order of the Magistrate was not illegal. *Sarat Chandra v. Corporation of Calcutta.*

11 Cr. L. J. 183 :
5 I. C. 644.

———Ss. 341, 631—*Street, obstruction of, by blinds*—*Sheets of tin for blinds, whether fixtures.*

Tin sheds which are attached by their side to a shop by hinges and are supported at the other end by props forming a verandah and which, when the props are taken away, hang down straight, are not fixtures within the meaning of S. 341. *Narayan Kissen Sen v. Corporation of Calcutta.*

22 Cr. L. J. 619 :
63 I. C. 155 : 33 C. L. J. 377 :
48 Cal. 602 : A. I. R. 1921 Cal. 385.

———Ss. 372, 383 and 449 (1)—*Demolition of a building erected without sanction*—*Notice under S. 383, whether condition precedent.*

No notice under S. 383 is necessary before an order under S. 449 (1) of the Act directing the demolition of a building erected without sanction in contravention of S. 372, can be passed. *Srimati Susarmoyee Debi v. Corporation of Calcutta.*

7 Cr. L. J. 110 :
12 C. W. N. 271 : 7 C. L. J. 243.

———S. 391—*Sanction to alteration of buildings*—*Sanction to alteration of plan*—*Power of District Surveyor.*

S. 391 applies only to alterations of, and additions to, existing buildings, and a supplementary application proposing an addition to an already sanctioned plan of a contemplated building cannot be held to fall within the scope, and need not be sanctioned by the General Committee, and such an application may be lawfully sanctioned by the District Surveyor under power delegated to him by the Chairman. *Kishori Lal v. Corporation of Calcutta.*

11 Cr. L. J. 256 :
6 I. C. 172.

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———S. 406—Officers who should inspect busti or submit report—Notice—Owners, duty of.

Under S. 406 an inspection of the busti in which the premises belonging to the petitioner are situate, was made and a standard plan was prepared on a report of a Medical Officer, an Officer of the Corporation and an Engineer who was not an officer: *Held*, that the plan was not bad in law. The section does not require that Engineer should be a permanent Municipal Officer. *Srimati Atarmani Dasi v. Corporation of Calcutta*. 8 Cr. L. J. 481 :

8 C. L. J. 507 : 12 C. W. N. 1116.

———Ss. 406, 408, 409—General Committee, powers of—Sub-Committee's power to sanction amendment of original plan.

The law contemplates that all persons interested will be present before the Sub-Committee and will present not merely their own objections to the scheme, but also any objection which they may have to any modification of the scheme on the objections raised by others. It is not impossible that the deflection of the road may be an improvement on the original plan, but that in itself is not sufficient under the law to invalidate the proceedings of the General Committee if the whole scheme was one calculated to effect a necessary improvement in the land covered by the busti. The Calcutta Municipal Act gives the General Committee full discretion to proceed either under S. 406 or under S. 409. The Sub-Committee has power under the Act to sanction any amendment of the original plan even though it be merely to avoid expense and not for the purpose of improving the busti. *Srimati Atarmani Dasi v. Corporation of Calcutta*. 8 Cr. L. J. 481 :

8 C. L. J. 507 : 12 C. W. N. 1116.

———S. 407—"Owner," meaning of.

The word "owner" in S. 407 does not include "owner of huts" so as to make it obligatory on the General Committee to hear the objections of "owners of huts" under S. 407 before the approval of the standard plan. *Corporation of Calcutta v. Muzaffar Hossein Khan*. 11 Cr. L. J. 558 :

8 I. C. 53.

———S. 408—Busti ceasing to be so—Applicability of S. 408.

After huts have been removed from a busti land, the land ceases to be a busti land and the provisions of S. 408 can then no longer have any operation on the owner. *Abinash Chandra Ganguli v. Corporation of Calcutta*. 6 Cr. L. J. 380 :

12 C. W. N. 72.

———S. 408—Notice to improve busti—Owner—Estate vested in Receiver—Direction of Court by whom to be taken.

Where a notice under S. 408 for improving a busti was given to the owner whose estate was in the hands of a Receiver appointed by the High Court: *Held*, that it was incumbent on the owner to request the Receiver to comply with the notice, after taking the directions of the High Court, and on his failure to comply, to apply to the Court making the Receiver a

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party to his application. *Corporation of Calcutta v. Kassim Ariff Bhau*. 12 Cr. L. J. 361 : 11 I. C. 129 : 15 C. W. N. 1002.

———S. 408—Receiver—If Owner, Agent or Trustee.

A Receiver is not the owner of the premises he holds as Receiver within the definition of the term as contained in the Municipal Act, nor is he an agent or trustee in that behalf. *Corporation of Calcutta v. Kassim Ariff Bhau*. 12 Cr. L. J. 361 :

11 I. C. 129 : 15 C. W. N. 1002.

———S. 408—Road, deflection of—Fresh notice.

Under S. 408 a notice was served upon all the owners of land of a busti. One of the owners objected to a certain proposed road in the standard plan going in a certain direction, on which the Sub-Committee decided that the road be deflected and the standard plan thus modified was approved by the General Committee. The petitioner was then served with a notice under S. 408 to carry out the improvements according to the standard plan so modified, but was prosecuted for non-compliance: *Held*, that the petitioner was not entitled to a fresh notice with regard to the deflection of the road in order to urge her objections to the deflection before the General Committee. *Srimati Atarmani Dasi v. Corporation of Calcutta*. 8 Cr. L. J. 481 :

8 C. L. J. 507 : 12 C. W. N. 1116.

———Ss. 408, 407—Notice under S. 408—Standard plan—Copy of plan to be attached to notice.

When the Municipality directs one of several owners of a busti to carry out certain improvements and issues a general notice under S. 408, it is the duty of the Municipality to serve him with a copy of the standard plan approved by the General Committee under S. 407 and point out to him on that plan what work he is to do. *Kanai Lal v. Corporation of Calcutta*. 5 Cr. L. J. 293 :

11 C. W. N. 508.

———Ss. 408, 409, 574—Owner of land—Owner of busti—Notice—Standard plan.

The Municipality does not proceed against anybody under S. 408. They issue notices in three different kinds of cases. If huts belonging to the occupiers have to be removed, a notice need be issued to them; if they disobey, they are liable to prosecution under S. 574. If improvements are to be done which can be exclusively done by the owners of the land, the same rule applies. If the standard plan includes work which has to be done partly by the owners of the huts and partly by the owner of the land, and a notice is issued under S. 408 on either or both of them, and it is disobeyed, the party in default is still liable to be prosecuted under S. 574. If the whole of the work has to be done by the owners of the huts, then the cancelling of the notice on the owner of the land does not oust the jurisdiction of the Municipality under S. 409. If, on the other hand, the Municipality have cancelled the notice on the owner of the busti land but still require him to carry out any portion of the work, it is clear that

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they must serve fresh notice on the owner of the *busti* before they can become vested with any jurisdiction under S. 409. *Corporation of Calcutta v. Muzaffar Hossein Khan*.

11 Cr. L. J. 558 :
8 I. C. 53.

—Ss. 408, 574—*Busti improvement—Power and duty of the Corporation in respect thereof.*

The duty of the Corporation in improving *busti* is a most important one and they have been invested with the most ample power, but when certain penal sections enforced by the Criminal Law are put in motion on the report of the servants of the Municipality, it is incumbent on the Magistrate and the authorities of the Corporation to see that the legal procedure which is a condition precedent to any conviction, is strictly and properly carried out. Where a letter was issued by the Deputy Chairman requiring the petitioners to do certain works, but no notice under S. 408 was issued directing them to specifically carry out the works: *Held*, the conviction of the petitioners under Ss. 574—408 for neglecting to carry out the works, cannot stand. *Kanai Lal v. Corporation of Calcutta*.

5 Cr. L. J. 293 :
11 C. W. N. 508.

—Ss. 408, 574—*Notice pending litigation.*

Directions conveyed in a notice under S. 408 are not lawfully given if at the time the property was the subject-matter of litigation and it was not open to the owners, either individually or collectively, to alter the property by carrying out the improvements they were called upon to make. *Poorna Chand v. Corporation of Calcutta*.

4 Cr. L. J. 47 :
I. L. R. 33 Cal. 699.

—Ss. 408, 574, 419—*Limitation for starting prosecution under Ss. 408 and 574—S. 419, effect of, in enlarging time after the commission of the offence.*

Where a notice under S. 408 was served upon the petitioner, on the 3rd March 1906, requiring her to make certain improvements in a *busti* within 3 months and on her non-compliance with the notice within the time, a reminder was sent by the Corporation on the 21st June 1906, and then on the 2nd July 1906, a notice under S. 419 of the Act was sent by the petitioner to the Chairman, and on the expiry of six months from the date of this notice, prosecution was started against the petitioner on the 23rd January 1907 with the result that she was convicted under Ss. 408 and 574 of the Act and sentenced to a fine of Rs. 25 : *Held*, that the conviction and sentence were bad in law as the prosecution was barred by limitation. That the notice under S. 419 of the Act having been served after the offence of the petitioner under Ss. 408 and 574 had been committed, could not have the effect of enlarging the time by six months. *Sm. Kumud Kumari Dassee v. Corporation of Calcutta*.

6 Cr. L. J. 317 :
11 C. W. N. 1097 : 1 I. L. R. 34 Cal. 909.

—S. 419—*Notice, when to be served.*
A notice under S. 419 of the Act, in order to

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be effectual, must be served before the offence is committed. *Sm. Kumud Kumari Dassee v. Corporation of Calcutta*.

6 Cr. L. J. 317 :
11 C. W. N. 1097 : I. L. R. 34 Cal. 909.

—S. 449—*Angle of 45 degrees—Building height, limit of.*

Where there is an open bathing platform on one side of a road which runs along the whole face of a building on the other side, the line for determining the angle of 45 degrees must be drawn from the street alignment on the side of the street and not from the side of the platform farthest from the street, in order to get at the height limit of the building. *Sheomall Goenka v. Corporation of Calcutta*.

9 Cr. L. J. 302 :
13 C. W. N. 74 : 1 I. C. 415.

—S. 449—*Discretion to make or refuse order of demolition—Improper exercise of discretion—Interference by High Court.*

When an application for demolition is made to the Magistrate, he has a discretion either to make or to refuse the order under S. 449 of the Act. When a Magistrate has not properly exercised his discretion, the order is not a proper order and the High Court has power to set it aside. *Sheikh Abdool Samad v. Corporation of Calcutta*.

3 Cr. L. J. 211 :
3 C. L. J. 90 : 10 C. W. N. 182 :
I. L. R. 33 Cal. 287.

—S. 449—*Order to demolish building—Acceptance of rates—Whether acquiescence in disobedience.*

The petitioner was convicted for disobedience to an order made under S. 449 directing him to demolish a certain building. Since that order, the Municipality had taken rates from the petitioner in respect of that very building : *Held*, that the acceptance of the rates, did not establish that the Municipality had acquiesced in the disobedience of the petitioner to the order, and that the conviction was good. *Lachmi Narain v. Corporation of Calcutta*.

11 Cr. L. J. 406 :
6 I. C. 800.

—S. 449—*Schedule XVII, Rule 17—Demolition of buildings outside sanctioned plan and existing for a long time, illegal.*

What a Magistrate is empowered to direct to be demolished under S. 449 is work which forms part of the plan sanctioned, and which contravenes some provision of the Act or of the bye-laws in force with reference to erection of buildings, and not buildings outside such sanctioned plan and existing for a long time. *Joseph Isaaq Joseph Hyam v. Corporation of Calcutta*.

3 Cr. L. J. 465 :
3 C. L. J. 571 : I. L. R. 33.

—Ss. 449, 450—*Delay in instituting proceedings—Effect.*

Although the Municipal Act does not prescribe any period of limitation for an action under S. 449 or 450 of the Act, the Court in directing demolition should consider how far the delay in the institution of the proceedings has effected the action. *Chunilal Dutt v. Corporation of Calcutta*.

4 Cr. L. J. 408 :
11 C. W. N. 30.

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—Ss. 449, 450, 452, 579—*Demolition of building, order for—Discretion of Magistrate—Analogy to case of mandatory injunction—Difference.*

It is discretionary with the Municipal Magistrate to make or not an order of demolition under S. 449. This discretion is to be exercised after receiving evidence and hearing the defence. The Municipal Magistrate should exercise the discretion vested in him under Ss. 449, 450 and 452 with due regard to those rules which guide Courts of equity in granting injunctions—with this difference that he has also to consider whether or not a building ought to be demolished on the ground of its being a danger or obstruction to the public. *Chunilal Dutt v. Corporation of Calcutta.*

4 Cr. L. J. 408 :
11 C. W. N. 30.

—Ss. 449, 452, 579—*Magistrate, meaning of—Power to order demolition of building irrespective of its value.*

The word "Magistrate" in S. 449 means any Magistrate having jurisdiction in Calcutta and includes a Municipal Magistrate. It is within the province of a Magistrate to order demolition of a building erected in contravention of rules, irrespective of the value of such building. *Sew Prosad v. The Corporation of Calcutta.*

2 Cr. L. J. 1 :
9 C. W. N. 18.

—Ss. 449, 575—*Acquittal under S. 575—Refusal to return a plan to which sanction has been obtained by misrepresentation and fraud—Order precluding accused from building according to such plan—Magistrate not competent to make such order.*

Where in a prosecution under S. 449 the Magistrate acquitted the accused under S. 579 of the Act, but found that the sanction to the plan had been obtained by misrepresentation and fraud, and made an order prohibiting the petitioner from building the second storey on the basis of such plan and directed that the sanctioned plan filed by him be not returned to him: *Held*, that the Magistrate was not competent to make an order of that description. *Nogendra Nath Sadkhan v. Corporation of Calcutta.*

3 Cr. L. J. 215 :
3 C. L. J. 138.

—Ss. 449, 631 (1)—*Application of S. 631 (1) to proceedings under S. 449.*

S. 631 (1) applies only to "complaints" to Magistrate. It has no application to proceedings taken under S. 449 which provides for "applications" to Magistrates by the General Committee and proceedings under which are not instituted on "complaint." *Corporation of Calcutta v. Keshub Chunder Sen.*

1 Cr. L. J. 69 :
8 C. W. N. 142.

—Ss. 449, 632—*Building erected contrary to regulations—Simultaneous proceedings under Ss. 449 and 632.*

Where a building is erected contrary to the building regulations, the Municipality may take action under S. 449 of the Act, but at the same time any person who has been deprived of light and air by the alleged erection may

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complain to the Municipal Magistrate under S. 632. *Bhagwan Das v. Rash Behari.*

11 Cr. L. J. 377 :
6 I. C. 595 : 14 C. W. N. 637.

—Ss. 449, 632—*Partition decree not to override provisions of Act.*

A partition decree under which certain specified easements only were reserved to the portion allotted to the complainant, cannot be held to override the provisions of the Act which is directed to provide for public sanitation among other public considerations. *Bhagwan Das v. Rash Behari.*

11 Cr. L. J. 377 :
6 I. C. 595 : 14 C. W. N. 637.

—S. 452—*Two different proceedings at different times—S. 452, if applies.*

The fact that in respect of the same deviation from the sanctioned plan of a building, the Municipal Corporation instituted two different proceedings at different times, viz., for fine under S. 579 and demolition under S. 449—cannot deprive the Magistrate of his discretion under S. 452 of the Act. That section applies even when the two proceedings are not simultaneous. *Chunilal Dutt v. Corporation of Calcutta.*

4 Cr. L. J. 408 :
11 C. W. N. 30.

—S. 466—*Licence for carrying on carrier's business and for the animals kept—Licence also for premises where animals are kept, if necessary.*

A carrier must, in addition to a trade licence, take out a licence for his animals if he keeps them, and a licence for the premises where he keeps them under S. 466. *Surendra Nath Banerjee v. Manager of W. Lewis & Co.*

21 Cr. L. J. 844 :
58 I. C. 924 : 24 C. W. N. 744 : 47 Cal. 809 :
A. I. R. 1920 Cal. 535.

—Ss. 466, 574—*Calcutta Municipal Act (III of 1923), S. 386—Notification extending old Act to Howrah—Prosecution under old Act after commencement of new Act, legality of.*

The provisions of Ss. 466 and 574 of the Calcutta Municipal Act of 1899 had been extended to Howrah by a Notification under the said Act. The Act of 1899 was repealed and re-enacted but no fresh Notification extending the new Act to Howrah was enacted. The provisions of S. 466 of the old Act were different from the corresponding section of the new Act. A person was prosecuted after the enactment of the new Municipal Act for an offence committed in Howrah, under S. 466 of the old Act: *Held*, that the accused could be prosecuted only under the new Act, and the prosecution under the old Act was misconceived. *Mukherjee v. Manager, H. T. Mohammad and Co.*

30 Cr. L. J. 298 :
114 I. C. 406 : 56 Cal. 1206 : 32 C. W. N. 476 :
I. R. 1929 Cal. 230 : A. I. R. 1928 Cal. 484.

—Ss. 466, 574, 631—*Prosecution for keeping and using unlicensed workshop—Complaint lodged three months after commission of offence—Limitation.*

When the prosecution in making their complaint have selected a definite date on which

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they allege an offence has been committed, the accused cannot be convicted of committing a similar offence on a subsequent date to which no reference has been made in the complaint: *Held*, that the complaint of the offence, committed on the 5th September, 1919, and laid on the 11th May, 1920, was barred by limitation under the provisions of S. 631. *N. K. Sarkar v. Howrah Municipality*.

22 Cr. L. J. 559 :
62 I. C. 575.

—S. 495—'Food,' what is.

The word "food" includes any article which ordinarily enters into or is used in the composition or preparation of food, and includes flavouring matters and condiments. *Chairman of the Corporation of Calcutta v. Pagli*.

20 Cr. L. J. 607 :
52 I. C. 223 : 23 C. W. N. 911 :
30 C. L. J. 130 : 47 Cal. 53 :
A. I. R. 1920 Cal. 567.

—S. 495—Master and servant—Servant at shop selling adulterated article—Liability of owner of shop—Non-connivance of master—Mitigation of punishment.

A servant employed by his master to sell any article, who adulterates it, thereby renders his master liable under the section although there is no connivance of the master. Non-connivance of the master is no defence, though the entire absence of connivance on his part may, in the discretion of the convicting Magistrate, be a ground for mitigation of the penalty. *Sae Karan v. Corporation of Calcutta*.

13 Cr. L. J. 205 :
14 I. C. 205 : 16 C. W. N. 455 :
39 Cal. 682.

—S. 495—Tea-dust, whether article of food or drink.

Tea-dust comes within the purview of the words "article of food or drink" in S. 495. *Chairman of the Corporation of Calcutta v. Pagli*.

20 Cr. L. J. 607 :
52 I. C. 223 : 23 C. W. N. 911 : 30 C. L. J. 130 :
47 Cal. 53 : A. I. R. 1920 Cal. 567.

—Ss. 495, 574—Selling adulterated ghee.

Under S. 495, the beneficial owner of an article is responsible for its purity. Therefore the prohibition is positive against the sale of adulterated articles, and any person who is legally responsible for such a sale comes within the words "no person shall sell, etc.," in S. 495. *Sae Karan v. Corporation of Calcutta*.

13 Cr. L. J. 205 :
14 I. C. 205 : 16 C. W. N. 455 :
39 Cal. 682.

—Ss. 559, 561—Abetment of offence under bye-law—Penal Code, S. 40.

The Calcutta Municipal Act is a local and special law and S. 40 of the Penal Code applies to the abetment of an offence which is thereby made punishable. *Probodh Chandra v. Corporation of Calcutta*.

21 Cr. L. J. 173 :
54 I. C. 781 : 24 C. W. N. 196 :
47 Cal. 547 : A. I. R. 1920 Cal. 321.

—S. 559 (18)—Bye-law under—Motor Vehicles Act (VIII of 1914), S. 11 (2) (f) (i), rule

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under—Repeal by implication—Rule, whether repeals bye-law—Test for determining—Repugnancy.

In order to determine whether a bye-law framed by a local body duly authorised in this behalf by an Act of the Provincial Legislature and sanctioned by Government,—in this case a bye-law made by the Corporation of Calcutta, under S. 559 (18) of the Calcutta Municipal Act, prohibiting the leaving of a cart or carriage in a public street unattended, is repealed by implication by a rule made subsequently by the Local Government under the authority of an Act of the Imperial Legislature,—in this case a rule made under the Motor Vehicles Act, S. 11 (2) (f) (i), prohibiting a motor vehicle from being allowed to stand in a street or public place unattended,—the test is, whether there is a repugnancy between the bye-law and the rule, where, as in this case, it is possible to read the bye-law and the rule together in such a way as to make the one supplement the other, there is no repugnancy and consequently, no repeal by implication. The mere fact that the offences contemplated by the bye-law and the rule are identical, is immaterial. *Manager, Indian Motor Taxi Cab Co., Ltd. v. Corporation of Calcutta*.

22 Cr. L. J. 401 :
61 I. C. 641 : 25 C. W. N. 21 :
33 C. L. J. 19 : A. I. R. 1921 Cal. 107.

—Ss. 559 (52), 561—Bye-laws of Calcutta Corporation regulating hours of closing theatres, whether ultra vires.

The bye-laws of the Municipal Corporation of Calcutta prescribing the hour of closing theatres and the section of the Calcutta Municipal Act providing a penalty for the breach of any bye-law, are not ultra vires. *Probodh Chandra v. Corporation of Calcutta*.

21 Cr. L. J. 173 :
54 I. C. 781 : 24 C. W. N. 196 :
47 Cal. 547 : A. I. R. 1920 Cal. 321.

—S. 561—Bye-laws Nos. 83 and 85, construction—Breach of Bye-law No. 83—Several liability of offenders.

Per Curiam.—Bye-law No. 85 is not ultra vires and by the express terms of that bye-law each of the persons who jointly commit a breach of Bye-law No. 83 is liable to be fined to the extent of Rs. 20 regardless of the number of persons who may have been associated with him in the commission of the breach. *Amrita Lal Bose v. Corporation of Calcutta*.

18 Cr. L. J. 945 :
42 I. C. 305 : 21 C. W. N. 1016 :
26 C. L. J. 215 : 44 Cal. 1025 :
A. I. R. 1917 Cal. 348.

—S. 561—Bye-laws Nos. 88, 85, interpretation of—Persons guilty of breach of bye-law, whether punishable separately.

Per Curiam (Teunon, J., dissenting).—The breach of a bye-law of the Calcutta Corporation by several persons acting in concert is punishable under the Act as a single offence, the individual offenders not being punishable separately. The joint proprietors of a theatre are "a person" for the purposes of Bye-law No. 85 of the Calcutta Corporation. Therefore, for a breach of the bye-law the proprietors are

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not liable to be fined separately or more than Rs. 20 in all. When a theatrical performance is continued later than 1 a. m. in violation of bye-law No. 83 of the Calcutta Corporation, the Calcutta Municipal Act provides a punishment for the offence and not for the individual offenders.

Per *Chitty, J.*—The provisions of the Penal Code have no direct bearing on the question of the interpretation of a bye-law of the Calcutta Corporation. It will be *ultra vires* of the Calcutta Corporation to frame a bye-law under the Municipal Act providing separate punishments for offenders jointly implicated in a breach of the bye-law. Per *Teunon, J.*—Under S. 561 a breach of a bye-law framed by the Calcutta Corporation makes the persons jointly guilty of a breach separately liable to be punished with a fine of Rs. 20 each. *Amrita Lal Bose v. Chairman of the Corporation of Calcutta.*

18 Cr. L. J. 674 :
41 I. C. 322 : 26 C. L. J. 29 : 21 C. W. N. 1009 :
A. I. R. 1918 Cal. 645.

———Ss. 574, 408, 419—*Notice under S. 408, extension of period of, on objection—Negotiation pending notice, whether makes requirements of notice unenforceable—Complaint giving wrong particulars, whether bars prosecution under S. 574 on amended application.*

Held, (1) that the Magistrate's action on the application of the 27th July was not a bar to the prosecution; (2) that the extended period of six months ran from the 3rd January and not from the 20th of March (when the objections were taken); (3) that the negotiations and arrangements relating to the requirements of the notice between the petitioner and the Corporation that were going on pending the notice did not make the requirements of the notice unenforceable. *Nibaran Chandra Kundu v. Chairman of Corporation of Calcutta.*

18 Cr. L. J. 400 :
38 I. C. 960 : A. I. R. 1918 Cal. 214 :

———Ss. 574, 466, Sch. XVIII, cl. 8—*Iron includes steel.*

The petitioner stored *steel* joists, etc., without a licence. He was convicted under S. 574 for not taking out a licence under S. 466 (1): *Held*, that as the term "iron" as used in Sch. XVIII, cl. (8) of the Act includes "steel," the conviction was right. *Ganga Narain Pal v. Corporation of Calcutta.*

11 Cr. L. J. 277 :
4 I. C. 438 : 10 C. L. J. 486.

———S. 578—*Conviction and imposition of fine—Effect.*

Per *Richardson, J.*—Under clause (2) of S. 578 when an offender has once been convicted and has paid the fine imposed upon him, the offence is purged and the payment of the fine is to be taken in full satisfaction of the demand on account of such licence. An offender who has paid his fine is thereafter in the same position as a person who has taken out his licence in proper time. *Chairman of the Howrah Municipality v. Barada Prasanna Pain.*

21 Cr. L. J. 363 :
55 I. C. 731 : 31 C. L. J. 127 :
A. I. R. 1920 Cal. 929.

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———S. 578—*Pleader's profession, carrying on, what constitutes.*

For the purpose of carrying on a Pleader's profession within the meaning of S. 578, it is not necessary that a person should every day conduct a case or attend or address the Court. If he keeps an office for the purpose of receiving his clients or gives them advice or is generally open to engagement as a Pleader, that will constitute the carrying on of a Pleader's profession. *Ghairman of the Howrah Municipality v. Barada Prasanna Pain.*

21 Cr. L. J. 363 :
55 I. C. 731 : 31 C. L. J. 127 :
A. I. R. 1920 Cal. 929.

———Ss. 578, 631—*Pleader's profession carried on without licence—Offence—Limitation for prosecution.*

With regard to an offence under S. 578 for carrying on a Pleader's profession without taking the prescribed Municipal licence, if the profession is exercised for one day only, the prosecution must be commenced within the following three months. If it is exercised on a number of days, whether the offence is a continuing one or not, the prosecution must be commenced within three months of the last of such days. *Chairman of the Howrah Municipality v. Barada Prasanna Pain.*

21 Cr. L. J. 363 :
55 I. C. 731 : 31 C. L. J. 127 :
A. I. R. 1920 Cal. 929.

———Ss. 589, 341, 102—*Notice issued on behalf of General Committee, whether to be signed—Special rule of evidence contained in S. 589, applicability of—Proceedings of Committee how to be proved when not signed by Chairman—Irregularity.*

There being no express provisions in the Calcutta Municipal Act requiring that notices issued under the Act on behalf of the General Committee should be signed at all, S. 589 of the Act does not stand in the way of the Secretary to the Corporation, who is also the Secretary to the General Committee, signing such notices. But unless a notice purports to have been signed by the Chairman of the Corporation, the special rule of evidence contained in the section would not apply. That is to say, if a notice purports to have been signed by the Chairman, it would not have to be proved that a meeting was held or that it was regularly held. Where, however, the special rule contained in S. 589 cannot apply, proceedings of the General Committee can be proved under the general law of evidence. But printed proceedings themselves would not be sufficient legal proof unless they answer the description of a printed book purported to be published by the authority of the Committee as required by S. 78 of the Evidence Act. The mere fact that the Secretary has signed a notice instead of the Chairman does not affect the merits, inasmuch as it is a defect or irregularity which is cured by S. 102. *Corporation of Calcutta v. Promotho Nath Mullick.*

16 Cr. L. J. 659 :
30 I. C. 643.

———Ss. 408, 575, 622 (3)—*Owner—Lessee—Occupier—Property leased in actual occupation of*

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lessee—Lessee refusing to provide facilities to carry out improvements required by notice—Owner's liability if discharged.

The word "occupier" in S. 622 does not mean only the person in actual occupation, and the lessee from the owner who is in possession, is an occupier within the definition of the word in S. 3 (30) of the Act. So long as the lessee refuses to provide reasonable facilities to the owner to carry out improvements required of him by notice, the owner is discharged from liability under S. 622, Sub-S. 3. *Benode Lal Ghosh v. Corporation of Calcutta.* 14 Cr. L. J. 490 : 20 I. C. 746 : 41 Cal. 164.

—S. 631—Bye-law—Obstruction, removal of—Notice—Prosecution barred after three months from notice—Bye-law to conform with enactment under which it is made.

The Chairman of the Corporation gave a notice to the petitioner to remove certain obstructions, but the notice was not obeyed, and criminal proceedings were commenced against the petitioner three months after the date of the notice with the result that the petitioner was convicted for an offence of breach of the Bye-laws: *Held*, that the Bye-law does not create a continuing offence and that the prosecution was barred under S. 631. A Bye-law must conform with the provisions of the enactment under which it purports to be made. *Narayan Chandra v. Corporation of Calcutta.* 10 Cr. L. J. 522 : 4 I. C. 259.

—S. 631—Criminal Procedure Code, S. 344—Complaint within three months—Adjournment—Revival after three years, effect of.

On a complaint charging the accused with selling adulterated ghee under the Act, the accused were summoned and the case was then adjourned for six weeks. No further order was passed in the case and nearly three years afterwards the proceedings were revived on the application of the Food Inspector and fresh summonses were issued to the accused: *Held*, (1) that the order directing the issue of fresh summonses was passed in a pending case of which the Magistrate had taken cognisance on the original complaint and the provisions of S. 631 had not therefore been contravened; (2) that the procedure adopted by the Magistrate could not be approved and that he should have observed the provisions of S. 344 of the Cr. P. C. as to adjournments more strictly. *Shermull v. Corporation of Calcutta.* 25 Cr. L. J. 492 : 77 I. C. 892 : A. I. R. 1923 Oudh 725.

—S. 631—Limitation, when begins to run.

The period of limitation under S. 631 runs from the date of the first commission of the offence, the date when the obstruction or projection was first placed over the street. *Narayan Kissen Sen v. Corporation of Calcutta.* 22 Cr. L. J. 619 : 63 I. C. 155 : 33 C. L. J. 377 : 48 Cal. 602 : A. I. R. 1921 Cal. 385.

—S. 61 (2)—Effect of.

Per Huda, J.—Clause (2) of S. 631 has the effect of extending and not of shortening the period of limitation provided by clause (1) of the

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section. *Chairman of the Howrah Municipality v. Barada Prasanna Pain.* 21 Cr. L. J. 363 : 55 I. C. 731 : 31 C. L. J. 127 : A. I. R. 1920 Cal. 929.

—S. 632—Applicability.

S. 632 applies to a case where the nuisance, if any, affects only an individual and does not affect the public generally. *Bhagwan Das v. Rash Behari.* 11 Cr. L. J. 377 : 6 I. C. 595 : 14 C. W. N. 637.

—S. 632—Building erected in contravention of building Regulations—Nuisance—Person affected can move Magistrate.

If a building, erected whether in contravention of the building regulations or not, or whether with or without sanction, is in fact a nuisance; a person who is affected by it has the right of moving the Magistrate under S. 632 to abate it and it is within the jurisdiction of the Magistrate to pass orders under that section if in his discretion he is so advised. *Bhagwan Das v. Rash Behari.* 11 Cr. L. J. 377 : 6 I. C. 595 : 14 C. W. N. 637.

—S. 645—Discretion exercised by General Committee—Revisional jurisdiction of High Court.

Discretion under S. 645 having been by law vested in the General Committee, the High Court, in the exercise of its criminal revisional jurisdiction, has no power to set aside or question the acts done in the exercise of that discretion, if those acts have otherwise been done in accordance with the provisions of the law. *Shamul Dhone Dutt v. Corporation of Calcutta.* 5 Cr. L. J. 137 : I. L. R. 34 Cal. 30 : 11 C. W. N. 671.

—S. 645—General Committee, power of—Owner, determination of.

By S. 645 the legislature has given power to the General Committee of the Calcutta Municipal Commissioners to determine in a case, where there are gradations of owners of persons, who may be regarded as owners or where there is a doubt as to who is the owner bound to perform any duty imposed by the Act, which of such owners shall be deemed to be bound to perform such duty. *Shamul Dhone Dutt v. Corporation of Calcutta.* 5 Cr. L. J. 137 : I. L. R. 34 Cal. 30 : 11 C. W. N. 671.

—(III of 1923) Ss. 3, 363, 488, 536—Proceedings for demolition of buildings—Criminal Procedure Code, whether applies—Administration of oath to party.

Proceedings held by a Magistrate in which the question is whether certain sheds erected by a person are new or old and so liable to be demolished, are not governed by the provisions of the Cr. P. C. So long as there is no disobedience by a party to an order of demolition passed by a Magistrate, he commits no offence. A party to a proceeding under the Act relating to demolition of an unauthorised structure is not an accused person, and as such,

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exempted from administration of oath. *Krishan Dayal Jalan v. Corporation of Calcutta*.

28 Cr. L. J. 407 :
101 I. C. 183 : 31 C. W. N. 506 :
45 C. L. J. 469 : 8 A. I. Cr. R. 35 :
54 Cal. 532 : A. I. R. 1927 Cal. 509.

—S. 175 (as extended to Howrah)—
“Trade,” meaning of.

The word “trade” is used in the section in its ordinary meaning, i. e., to mean an exchange of goods for money, or for goods, with the object of making profits. *Burmah Shell Oil Storage and Distributing Co. of India, Ltd. v. Sudhansu Bhusan Chatterjee*.

38 Cr. L. J. 203 :
166 I. C. 402 : 40 C. W. N. 766 : 9 R. C. 513 :
63 Cal. 1203 : A. I. R. 1936 Cal. 477.

—S. 175, Sch. VI, Item 18—Motor vehicle carrying only passengers for hire—Necessity of licence—Carrier, meaning of.

A motor-bus owner who carries passengers for hire is a ‘carrier’ within the meaning of S. 175 read with Sch. VI, Item No. 18 of the Act, and as such, he is liable to take out a licence and the fact that he does not carry goods will not relieve him from this liability. *S. M. Chaudhuri v. Corporation of Calcutta*.

32 Cr. L. J. 19 :
127 I. C. 672 : 34 C. W. N. 452 :
51 C. L. J. 577 : I. R. 1930 Cal. 880 :
A. I. R. 1930 Cal. 368.

—Ss. 175, 492, Sch. VI, rr. 12, 13, 14—Notice calling upon accused to take out licence—Stage for availing of rr. 13, 14—Magistrate’s duty.

When a person to whom notice issued for taking out licence, upon his representation for cancellation of the notice, is informed that his representation is receiving attention, he is under no obligation to avail himself of the provisions of rr. 13 and 14 of Sch. VI of the Act. Before a Magistrate can convict an accused for not taking out licence, he is under an obligation to satisfy himself that the accused is legally liable to take out a licence. *Umesh Chandra Mitra v. Corporation of Calcutta*.

27 Cr. L. J. 549 :
93 I. C. 1045 : 43 C. L. J. 231 :
A. I. R. 1926 Cal. 614.

—S. 271—‘Premises’, if means building or land—Requisition under S. 271, on whom to be served—Service of requisition only on owner of land—Owner of land, if can be convicted for non-compliance.

The word ‘premises’ in S. 271 means the building and not the land. Where, therefore, the owner of the land is not the owner of the structures standing thereon, the requisition under S. 271 should be served in the first instance upon the owner of the structures built upon the land and not upon the owner of the land. Hence when the requisition is served only on the owner of the land, he cannot be convicted for non-compliance. *Khairunnessa Bibi v. Corporation of Calcutta*.

37 Cr. L. J. 1087 :
165 I. C. 130 : 40 C. W. N. 797 : 9 R. C. 345.

—Ss. 271, 527—Notice to construct privies—Pendency of proceedings between owner and tenant as to possession, effect of—Liability of owner to be convicted for non-compliance.

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The pendency of a suit in ejectment against the tenant or the existence of an injunction against taking possession of the premises or the mere filing of an application under S. 527 would not relieve a person upon whom a requisition has been served under S. 271 from liability for a conviction for non-compliance with such requisition. But the existence of such proceedings can be considered in order to determine the gravity of the offence and the sentence to be imposed. *Juman Sadagar v. Corporation of Calcutta*.

30 Cr. L. J. 1026 :
149 I. C. 369 : I. R. 1929 Cal. 785 :
A. I. R. 1929 Cal. 490.

—S. 278 (1) (b)—Construction of privies—Corporation, power of, to object to mode or insufficiency of access.

The words ‘take such other order’ in S. 278 (1) (b) do not empower the Municipal Corporation to object to the mode of access to privy constructed by a landlord for the use of his tenants, on the ground that it is too inconvenient to the tenants. The Corporation is only entitled under the Act to see that the privy is in a sanitary condition. *Bishnu Pada Dey v. Corporation of Calcutta*.

31 Cr. L. J. 1224 :
127 I. C. 552 : 51 C. L. J. 469 :
A. I. R. 1930 Cal. 285.

—Ss. 291, 533—Criminal Procedure Code (Act V of 1898), S. 200 (b)—Complaint for Municipal offence—Duty of Magistrate to examine complainant—Non-appearance of accused, effect of.

The Municipal Magistrate of Calcutta is a Presidency Magistrate, and in cases of complaints to him, he is, as Presidency Magistrate, required to examine the complainant subject to the provisions of S. 200 (b), Cr. P. C. The provision contained in S. 533 of the Calcutta Municipal Act which empowers a Magistrate to decide the case *ex-parte* where the accused does not appear, does not do away with the necessity of examining the complainant under S. 200 (b), Cr. P. C. *Ambica Prosad Das v. Corporation of Calcutta*.

30 Cr. L. J. 231 :
114 I. C. 82 : 32 C. W. N. 1091 :
48 C. L. J. 160 : I. R. 1929 Cal. 187 :
A. I. R. 1928 Cal. 483.

—Ss. 299 (1), 364—Structure attached to building encroaching on public road—Power of Municipality to remove.

Under S. 299 (1) the Municipality may, by written notice, require the owner or occupier of a building to remove a structure attached to a building, which encroaches upon a public road, irrespective of whether the structure complained of came into existence after the building to which it was attached or before. *Purna Chandra Dut v. Corporation of Calcutta*.

31 Cr. L. J. 424.
122 I. C. 549 : A. I. R. 1929 Cal. 440.

—Ss. 346, 359—Requisition to carry out improvements, failure to obey—Conviction—Notice to Corporation that owner wishes to remove all huts—Corporation, whether bound to accept notice.

Under S. 359 it is obligatory upon the Cor-

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poration to accept a notice given under that section and the owner of the *busti* giving the notice is entitled to six months' time allowed by the section within which he has to effect the removal of all the huts standing on the land; it is immaterial whether the *busti* owner has already been prosecuted and fined for neglect to carry out a requisition under S. 346 of the Act. No doubt, it would be open to the Corporation, if on the expiry of the six months from the date of the notice the huts have not been removed, to revive proceedings under S. 346, but the Corporation is not entitled to prosecute the owner within six months from the date of the notice. *Barada Prosad Roy v. Corporation of Calcutta*. 28 Cr. L. J. 197 :

99 I. C. 933 : 44 C. L. J. 579 :

7 A. I. Cr. R. 330 : A. I. R. 1927 Cal. 218.

—S. 363—*Alteration—Re-construction—Demolition, when can be ordered.*

Alterations in a building suggest change of its character or position. The mere fact that there has been a re-construction does not give the Magistrate a right to order demolition unless there has been erection of a new building or alteration of or addition to the existing building and the case clearly falls under S. 363. *Badli Meah v. Corporation of Calcutta*.

40 Cr. L. J. 528 :

180 I. C. 824 : 68 C. L. J. 478 :

11 R. C. 756 : A. I. R. 1939 Cal. 289.

—S. 363—*Alteration of structure before 1923 without sanction—Proceedings under new Act, legality of—Dismissal of previous proceedings for want of sanction—Fresh proceedings after sanction, if barred.*

The new procedure prescribed by the Act of 1923 is applicable to proceedings relating to contravention of the old Act of 1899 and an order can be made under S. 363 of the Act of 1923 directing the demolition of additions and alterations to premises even though such additions and alterations were made while the Act of 1899 was in force. The mere fact that proceedings to obtain an order for demolition were held to be nugatory for want of sanction of the Municipal Committee, does not prevent new proceedings being started for the same relief after obtaining the necessary sanction. *Ram Gopal Goenka v. Corporation of Calcutta*.

29 Cr. L. J. 509 :

109 I. C. 237 : 47 C. L. J. 208 :

32 C. W. N. 454 : 10 A. I. Cr. R. 174 :

55 Cal. 964 : A. I. R. 1928 Cal. 207.

—S. 363.

Before private land can become a public street or passage, it must be made so by Statute or be dedicated specifically or there must be circumstances from which such dedication can be presumed. *Jatindra Nath Borat v. Corporation of Calcutta*. 32 Cr. L. J. 590 :

130 I. C. 870 : 35 C. W. N. 397 :

58 Cal. 1124 : I. R. 1931 Cal. 390 :

A. I. R. 1931 Cal. 433.

—S. 363—*Complaint by Municipal Officer—Examination of complainant, if necessary.*

Where proceedings under S. 363 are initiated on the complaint of the Building Surveyor of

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the Calcutta Corporation, it is not necessary to examine the surveyor inasmuch as his complaint assuming it to be such, is a complaint made by a public servant acting in the discharge of his duties. *Ram Gopal Goenka v. Corporation of Calcutta*. 31 Cr. L. J. 670 :

124 I. C. 488 : 50 C. L. J. 527 :

A. I. R. 1930 Cal. 222.

—S. 363—*Erection of wall without sanction—Order for demolition—Discretion of Magistrate, exercise of.*

A person raised the height of a boundary wall without obtaining sanction of the Corporation. The Municipal Magistrate ordered the demolition of the newly-erected portion of the wall mainly on the ground that it was constructed without sanction. It was not shown that the wall was a nuisance or an obstruction to the public in any way: *Held*, Per Buckland, J. (*agreeing with Graham, J.*)—That the Magistrate had power to make the order which he had made and had exercised his discretion in the matter correctly. Per *Graham, J.*—Equitable considerations ought not to be invoked on behalf of a party who has put himself in the wrong by wilfully disregarding the law. Per *Suhrawardy, J. (Contra)*.—The power under S. 365 is similar to the power exercised by a Court of Equity in granting mandatory injunctions and should be exercised with due regard to the rules which guide Courts of Equity in granting such injunctions. The Municipal Magistrate should not have passed his order only on the fact that these walls were raised without the sanction of the Corporation. If there was no special objection to the walls remaining in their raised condition, he should not, as a Court of Equity, have ordered their demolition. *Sham Lal Khetry v. Corporation of Calcutta*. 31 Cr. L. J. 912 :

125 I. C. 740 : 33 C. W. N. 777 :

A. I. R. 1929 Cal. 781.

—S. 363.—*Highway cul de sac.*

A *cul de sac* may be a public highway, but its dedication will not be presumed from mere public user without evidence of expenditure on the place in dispute for repairs. *Jatindra Nath Borat v. Corporation of Calcutta*.

32 Cr. L. J. 590 :

130 I. C. 870 : 35 C. W. N. 397 :

58 Cal. 1124 : I. R. 1931 Cal. 390 :

A. I. R. 1931 Cal. 433.

—S. 363—'New building', meaning of—*Building completed before new Act—Magistrate's power to take action under S. 363 of new Act—Notices served under S. 449, old Act, effect of.*

A building completed prior to the commencement of the Act of 1923 is not a 'new building' within the meaning of the said Act. A Magistrate cannot take action under S. 363 in respect of a building completed before commencement of the Act even though notices had been served on the owner before the passing of the new Act, by a Sub-Committee to show cause under S. 449 of the old Act and the owner had been summoned on several occasions, after the new Act came into force, to appear before the Committee of the new Cor-

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poration. *Satish Chandra Bose v. Corporation of Calcutta.* 27 Cr. L. J. 1146 :

97 I. C. 666 : 44 C. L. J. 37 :
53 Cal. 974 : A. I. R. 1926 Cal. 1138.

———S. 363.

Power of Corporation to revoke license is absolute in the sense that no other authority can reverse it. Court has discretion in making order for demolition and must go into exact circumstances under which revocation was made or extent of misrepresentation, if any, in granting permission. *Basante Kumar Das v. Corporation of Calcutta.*

149 I. C. 1193 : 38 C. W. N. 280 :
61 Cal. 356 : 6 R. C. 733 :
A. I. R. 1934 Cal. 389.

———S. 363—*Proceedings for demolition of structure—Burden of proof.*

Under S. 363 (2) the burden of proving that the structure which is sought to be demolished was erected more than five years before the institution of the proceedings under the said section is on the owner. *Ram Gopal Goenka v. Corporation of Calcutta.*

31 Cr. L. J. 670 :
124 I. C. 418 : 50 C. L. J. 527 :
A. I. R. 1930 Cal. 222.

———S. 363—*Provisions of S. 449, old Act cannot be carried out by procedure under new Act.*

The provisions of S. 449 of the old Act cannot be carried out by means of the procedure set forth in S. 363 of the new Act. *Satish Chandra Bose v. Corporation of Calcutta.*

27 Cr. L. J. 1146 :
97 I. C. 666 : 44 C. L. J. 37 : 53 Cal. 974 :
A. I. R. 1926 Cal. 1138.

———S. 363—*Word and phrases.*

'Sadharaner' means that which is common as a common property, and does not mean 'public' or anything approximating to it. *Jatindra Nath Borat v. Corporation of Calcutta.*

32 Cr. L. J. 590 :
130 I. C. 870 : 35 C. W. N. 397 :
58 Cal. 1124 : I. R. 1931 Cal. 390 :
A. I. R. 1931 Cal. 433.

———S. 363.

The word 'proceedings' means proceedings before a Magistrate and does not contemplate proceedings before a Committee of the Corporation, which precede the application to the Magistrate. *Jatindra Nath Borat v. Corporation of Calcutta.*

32 Cr. L. J. 590 :
130 I. C. 870 : 35 C. W. N. 397 :
58 Cal. 1124 : I. R. 1931 Cal. 390 :
A. I. R. 1931 Cal. 433.

———Ss. 363, 364—*Criminal Procedure Code (Act V of 1898), S. 6—Unauthorised building—Proceedings by Corporation—Owner, if must be heard—Municipal Magistrate, order of—High Court, interference by.*

Failure to give the owner of an unauthorised building an opportunity of being heard, which he is entitled to under S. 364 before he is proceeded against, is a material irregularity vitiating the trial of the owner before the

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Municipal Magistrate. A Magistrate appointed for trial of offences against the Act is a Criminal Court within the meaning of S. 6 of the Cr. P. C. An order passed by the Municipal Magistrate is a judicial order, and the High Court has jurisdiction to interfere by way of revision. *Ram Gopal Goenka v. Corporation of Calcutta.* 26 Cr. L. J. 1533 :

90 I. C. 317 : 29 C. W. N. 898 :
52 Cal. 962 : A. I. R. 1925 Cal. 1251.

———Ss. 363, 364.

'Proceedings', meaning of—Highway—Proof of dedication—User by public, effect of—*Cul de sac*, whether public highway—Words and phrases—'Sadharaner', meaning of. *Jatindra Nath Borat v. Corporation of Calcutta.*

32 Cr. L. J. 590 :
130 I. C. 870 : 35 C. W. N. 397 :
58 Cal. 1124 : I. R. 1931 Cal. 390 :
A. I. R. 1931 Cal. 433.

———Ss. 363, 364, 493—*Building rules, infringement of—Corporation, if can apply under S. 363 or S. 364 and also under S. 493—Case under S. 363—Magistrate, whether can order fine under S. 493 in addition to or in lieu of demolition—Notice to party affected.*

Where there is an infringement of the Building Rules, the Corporation may make an application either under S. 363 (or S. 364) or under S. 493 but not under both: in other words, it may ask either for demolition or for a fine and not for both. This does not and cannot, however, affect the Magistrate's jurisdiction merely because the Corporation, if it proceeds under S. 363 may not make an application under S. 493. It does not follow that if in a proceeding under S. 363 the Magistrate is satisfied on the facts that a case exists for imposing a fine under S. 493, he may not make such a penal order, either in lieu of or in addition to an order for demolition. The Magistrate, however, should not do so without giving the party affected reasonable opportunity of showing cause against the proposed order. *Corporation of Calcutta v. Bangeshidhar Bidasava.*

173 I. C. 303 : 41 C. W. N. 1373 :
10 R. C. 496 : A. I. R. 1938 Cal. 36.

———S. 363 (2), 364.

Ss. 363 (2) is applicable to S. 364 *mutatis mutandis*, namely, by substituting for "any work which has been done", the words "any non-compliance with a notice which expired." *Jatindra Nath Borat v. Corporation of Calcutta.*

32 Cr. L. J. 590 :
130 I. C. 870 : 35 C. W. N. 397 :
58 Cal. 1124 : I. R. 1931 Cal. 390 :
A. I. R. 1931 Cal. 433.

———S. 364.

The applicability of S. 364 is not confined to cases of emergency where there is danger to the public. Under S. 364, the Magistrate has a discretion to make an order directing the removal of a structure or not. *I. N. Silas v. Corporation of Calcutta.* 34 Cr. L. J. 521 :

143 I. C. 122 (2) : 56 C. L. J. 578 :
I. R. 1933 Cal. 337 : A. I. R. 1933 Cal. 341.

———Ss. 365 (1), 363—*Order under S. 365 (1), when can be issued.*

An order to stop the progress of work under

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S. 305 (1), can only be issued in cases in which work is proceeding unlawfully in the manner indicated in S. 366 of the Act. *Hrishikesh Datt v. Municipal Commissioner, Howrah.* 41 Cr. L. J. 689 :

188 I. C. 865 : 44 C. W. N. 561 :
I. L. R. 1940 (2) Cal. 69 : 13 R. C. 50 :
A. I. R. 1940 Cal. 292.

—Ss. 385 (1), 488 (1) (2)—Offence under S. 385 (1)—Intention to use electricity, necessity of—Continuing to work mill after conviction, whether continuance of offence—Second conviction, legality of.

The petitioner set up a flour mill in a room intending to work it by electricity without the previous permission of the Corporation and was convicted under S. 385 (1) read with S. 488 (1) on the 30th March, 1927. He continued to work the mill from the 1st April onwards, and for this, he was prosecuted for having committed an offence under S. 385 (1) read with S. 488 (2) of the Act and was sentenced to a daily fine of Rs. 10 : *Held*, that the working of the mill from the 1st April onwards did not amount to a continuance of the offence mentioned in S. 385 (1) inasmuch as matters had passed beyond the stage of intention to use electricity and that the conviction was, therefore, illegal. *Murli Dhar Ram Narayan v. Corporation of Calcutta.*

29 Cr. L. J. 361 :
108 I. C. 241 : 32 C. W. N. 591 :
10 A. I. Cr. R. 7 : A. I. R. 1928 Cal. 387.

—S. 386.

Where in a summons to answer a charge under S. 386 (1) (a) of Act, the place of the occurrence is not mentioned, such omission in itself is a material irregularity which would seriously mislead the accused. *Ganesh Chandra Khan v. Corporation of Calcutta.* 34 Cr. L. J. 250 (2) :

141 I. C. 864 : 36 C. W. N. 132 :
I. R. 1933 Cal. 207 : A. I. R. 1933 Cal. 117.

—S. 386 (1) (a).

Storing *dal* without taking out a licence is not an offence under S. 386 (1) (a). *Surendranath Datta v. Corporation of Calcutta.*

32 Cr. L. J. 1235 :
134 I. C. 914 (a) : 58 Cal. 955 :
I. R. 1931 Cal. 914 : A. I. R. 1932 Cal. 705.

—S. 386 (1) (c).

When vacant land is leased out, use of the land without licence by sub-tenants for purpose requiring licence does not make the lessee liable. *Nanda Lal Roy v. Corporation of Calcutta.*

32 Cr. L. J. 326 :
129 I. C. 320 : I. R. 1931 Cal. 160 :
58 Cal. 204 : 34 C. W. N. 930 :
53 C. L. J. 65 : A. I. R. 1931 Cal. 5.

—S. 387.

Publication under S. 387 of declaration prohibiting user of premises for certain purposes—Fact of user for such purposes long before declaration is immaterial—Person using

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after publication is liable under S. 488. *Chuni Lal v. Corporation of Calcutta.*

34 Cr. L. J. 1228 :
146 I. C. 177 : 37 C. W. N. 737 :
60 Cal. 892 : 6 R. C. 188 :
A. I. R. 1933 Cal. 732.

—S. 391.

A conviction under S. 391 cannot be upheld where the summons has not been properly served on the accused. *Man Mohan v. Corporation of Calcutta.* 33 Cr. L. J. 264 :

136 I. C. 135 : 35 C. W. N. 868 :
I. R. 1932 Cal. 183 : A. I. R. 1932 Cal. 62.

—S. 391.

Authority of Corporation to refuse licence can be questioned by way of defence in Criminal Court. *S. R. Varma v. Emperor.*

34 Cr. L. J. 693 :
144 I. C. 198 : 37 C. W. N. 344 :
60 Cal. 689 : I. R. 1933 Cal. 525 :
A. I. R. 1933 Cal. 243.

—S. 391.

Corporation has discretion to refuse licence. *S. R. Varma v. Emperor.* 34 Cr. L. J. 693 :

144 I. C. 198 : 37 C. W. N. 344 :
60 Cal. 689 : I. R. 1933 Cal. 525 :
A. I. R. 1933 Cal. 243.

—S. 391.

Lessee and not owner has to take out licence. *U. K. Mitra v. Corporation of Calcutta.*

33 Cr. L. J. 303 :
136 I. C. 465 : 58 Cal. 1293 :
35 C. W. N. 865 : I. R. 1932 Cal. 193 :
A. I. R. 1932 Cal. 63.

—S. 391.

Sentence of imprisonment in default of payment of fine is legal. *U. K. Mitra v. Corporation of Calcutta.* 33 Cr. L. J. 303 :

136 I. C. 465 : 58 Cal. 1293 :
35 C. W. N. 865 : I. R. 1932 Cal. 193 :
A. I. R. 1932 Cal. 63.

—S. 391.

Ss. 391 and 175 are quite different and one has nothing to do with other. *S. R. Varma v. Emperor.* 34 Cr. L. J. 693 :

144 I. C. 198 : 37 C. W. N. 344 :
60 Cal. 689 : I. R. 1933 Cal. 525 :
A. I. R. 1933 Cal. 243.

—Ss. 391, 498 (2)

Fees may be charged under S. 408 (2) for a licence under S. 391. *U. K. Mitra v. Corporation of Calcutta.* 33 Cr. L. J. 303 :

136 I. C. 465 : 58 Cal. 1293 :
35 C. W. N. 865 : I. R. 1932 Cal. 193 :
A. I. R. 1932 Cal. 63.

—S. 406.

Potassium nitrate supplied by accused firm for sodium citrate—Accused held guilty under S. 406 read with S. 488. *Davis Haelet & Co. v. Emperor.* 34 Cr. L. J. 836 :

144 I. C. 877 : 6 R. C. 51 :
A. I. R. 1933 Cal. 598.

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—Ss. 406, 407—Ss. 406 and 407 cover case of person storing oil in transit as broker.

Even if the accused was storing the oil in transit as a broker, that would not take him out of the provisions of Ss. 406 and 407. Sub-S. (1) of these two sections is wide enough to cover such a case. *Rameshwar Marwari v. Amar Nath Sinha*. 41 Cr. L. J. 460 :

187 I. C. 425 : 12 R. C. 594 :
A. I. R. 1940 Cal. 76.

—Ss. 406, 488, 424—Compulsory sale of adulterated goods—Punishment, legality of—'Sale', whether includes compulsory sale.

A compulsory sale made under the provisions of S. 424 (1) does not constitute a sale within the meaning of S. 406 of the Act and cannot make a person amenable to the punishment provided for under S. 488 of the Act. *Akhoy Kumar Ghose v. Corporation of Calcutta*.

30 Cr. L. J. 139 :
114 I. C. 139 : 32 C. W. N. 842 :
I. R. 1929 Cal. 203 : A. I. R. 1928 Cal. 320.

—S. 418—Order directing destruction of article—Onus of proving that article is intended for human consumption.

S. 418, cl. (2) puts the burden upon the accused to prove that the article is not intended for human consumption in a case of prosecution under the chapter, but it does not indicate that in all other cases the onus will be upon the Corporation to prove that it is intended for human consumption. Court is entitled to take for granted, when it is not denied, that *ghee* is an article intended for human consumption. The ordinary presumption that *ghee* is intended for human consumption is not a presumption of law but a supposition based on common sense when there is no assertion to the contrary. *Daulat Ram Bishan Das v. Corporation of Calcutta*.

31 Cr. L. J. 280 :
121 I. C. 561 : 49 C. L. J. 502 :
A. I. R. 1929 Cal. 283.

—S. 418—Tea stalks and fluff, whether articles of human food.

Tea or tea-dust is an article of human food, but tea stalks and fluff, obviously is something very different. Merely because tea leaves yield an article of human food, it does not follow that every part of a tea shrub may be put to similar use. *Gangadhar Nathmull v. Corporation of Calcutta*.

39 Cr. L. J. 259 :
172 I. C. 954 : 41 C. W. N. 1344 :
10 R. C. 481 : I. L. R. 1938 1 Cal. 558 :
A. I. R. 1938 Cal. 15.

—Ss. 418, 412—S. 418, when can be invoked—Burden of Proof—Presumption from the mere fact of prosecution.

Before S. 418 can be invoked, it is necessary for the prosecution to prove that what was charged as unwholesome food was "food". Unless this is established, S. 412 cannot, in fact, be infringed at all. In a prosecution for an offence under this section, the burden of proving that what was being sold is "food" intended for human consumption must rest on the prosecuting authority. Once it is shown that the article is an article of human food, if

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the party charged says it was not intended for human consumption, the onus of proving this will be on him. Merely because the Corporation decide to commence a prosecution under S. 412, the law will not and cannot raise a presumption in their favour that it cannot necessarily be in respect of an article mentioned in the section. *Gangadhar Nathmull v. Corporation of Calcutta*.

39 Cr. L. J. 259 :
172 I. C. 954 : 41 C. W. N. 1344 : 10 R. C. 481 :
I. L. R. 1938 1 Cal. 558 :
A. I. R. 1938 Cal. 15.

—Ss. 418, 421—Prosecution, meaning of.

Per *Graham, J.*—*Ghee* comes within the definition of food as given in S. 3 (31), and is ordinarily used for human consumption. The word "prosecution" used in S. 418, Sub-S. (2), does not necessarily connote prosecution for an offence. Prosecution in its wider or more general sense means a proceeding by way of indictment or information, and as used in S. 418 (2), it may include such proceedings as those taken under S. 421 of the Act. *Daulat Ram Bishan Das v. Corporation of Calcutta*.

31 Cr. L. J. 280 :
121 I. C. 561 : 49 C. L. J. 502 :
A. I. R. 1929 Cal. 283.

—S. 424—Scope.

Where the procedure prescribed by S. 424 of the Act was not followed, conviction under S. 412 was set aside. *Lalji Ram v. Emperor*.

A. I. R. 1928 Cal. 243.

—S. 478 (29)—Bye-law (5).

Where land is let to a tenant, and such tenant allows offensive matter to accumulate on the land, the landlord cannot be convicted under S. 478 (29), Bye-law (5) of the Calcutta Municipal Act. *Nanda Lal Roy v. Corporation of Calcutta*.

32 Cr. L. J. 680 :
131 I. C. 272 : 34 C. W. N. 931 :
58 Cal. 204 : 53 C. L. J. 65 :
I. R. 1931 Cal. 448 :
A. I. R. 1931 Cal. 337 (1).

—S. 488—Conviction cannot be based on alleged plea of guilty at previous trial.

The magistrate is in error in referring to an alleged plea of guilty at the previous trial. A conviction cannot be based on such an alleged plea of guilty. *Remeshwar Marwari v. Amar Nath Sinha*.

41 Cr. L. J. 460 :
187 I. C. 425 : 12 R. C. 594 :
A. I. R. 1940 Cal. 76.

—Ss. 488, 534—Necessity of prompt action—Delay in starting proceedings—Effect—Corporation must establish that they are within prescribed period.

The provisions of S. 534 indicate the necessity for prompt action and delay in prosecuting an offence under the Act is as little to the interest of the Corporation as to that of the rate-payers. Where, therefore, Corporation seeks to prosecute certain persons under S. 488 and there is no evidence whatever on the record to show when the offence was first brought to its notice, it is the duty of the Corporation to establish that the

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proceedings although begun at a late stage are still within the period prescribed by the law.

Corporation of Calcutta v. Ganesh Chandra Dhar.

A. I. R. 1936 Cal. 20.

—S. 488 (2), Sch. XVII, r. 7 (1)—*Conviction of constructing roof of inflammable materials—Failure to pull down such roof, whether continuation of offence.*

Failure to pull down or alter a roof of inflammable materials for constructing which a person has been convicted under Sch. XVII, r. 7 (1) of the Act, does not amount to a continuation of that offence within the meaning of S. 488, Cl. (2) *Corporation of Calcutta v. Ananta Dhar.*

30 Cr. L. J. 296 :

114 I. C. 402 : 32 C. W. N. 606 :

I. R. 1929 Cal. 226 : 56 Cal. 126 :

A. I. R. 1928 Cal. 336.

—S. 492—*Company trading in oil—Store in Howrah—Orders negotiated in Calcutta—Oil distributed from Howrah—Held, licenses should be taken from both Municipalities.*

Where a company which is a trader in oil receive oil from various places and store it in their Howrah premises and distribute it to their customers from there, the transactions being negotiated in Calcutta they must be said to be carrying on their trade both in Howrah and in Calcutta within the meaning of S. 175 and although their Headquarters are, in Calcutta and although it is in Calcutta, that the business is arranged, the evidence being that deliveries are made from Howrah on delivery orders which are sent from the Calcutta office. The trade being carried on partly within one and partly within another Municipality, they are liable to take a separate licence in each, and on failure to do so, they are liable under S. 492. *Burma Shell Oil Storage and Distributing Co. of India, Ltd. v. Sudhansu Bhushan Chatterjee.*

38 Cr. L. J. 203 :

166 I. C. 402 : 40 C. W. N. 766 :

9 R. C. 513 : 63 Cal. 1203 :

A. I. R. 1936 Cal. 477.

—Ss. 498 (2), 391.

Quære.—Whether licence fees should be annual or once for all. *U. K. Mitra v. Corporation of Calcutta.*

33 Cr. L. J. 303 :

136 I. C. 465 : 58 Cal. 1293 : 35 C. W. N. 865 :

I. R. 1932 Cal. 193 : A. I. R. 1932 Cal. 63.

—S. 533—*Scope—Adjournment of case though accused present—Failure of accused to appear on adjourned date—Magistrate, if can hear case in absence of accused.*

The terms of S. 533 cannot be so extended as to entitle the Magistrate to hear the case of the accused (who had appeared on date fixed in the summons) in their absence on the ground that they failed to appear on the date to which the case was adjourned. In the absence of any provision to the contrary in the Calcutta Municipal Act, the provisions of the Cr. P. C. will apply, and, therefore, the Magistrate is not entitled to hear and determine the case in their absence on the subsequent date. *Kusum Kumari Debi v. Corporation of Calcutta.*

38 Cr. L. J. 632 :

168 I. C. 698 : 9 R. C. 872 :

A. I. R. 1937 Cal. 218.

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—S. 535 (2) (a) (c)—*Order of abatement of nuisance—Order of costs.*

There is nothing in S. 535 or in any other section of the Act to prevent a Magistrate from taking into consideration, on a date subsequent to the date of an order under S. 535 (2) (a), the question of awarding costs and compensation under S. 535 (2) (c). *Corporation of Calcutta v. T. H. E. Edwards.*

31 Cr. L. J. 1014 :

126 I. C. 412 : 57 Cal. 497 :

A. I. R. 1930 Cal. 487.

—S. 537—*Criminal Procedure Code, S. 248—Withdrawal of complaint—Sufficient ground, whether necessary.*

S. 537 is merely an enabling section and the powers given thereunder to the Corporation to do the various acts specified therein can only be exercised in accordance with the provisions of the Cr. P. C. S. 537 of the Calcutta Municipal Act, therefore, does not confer an absolute power of withdrawal upon the Corporation, and before a withdrawal can be permitted under that section, there must be sufficient grounds for the withdrawal to the satisfaction of the Magistrate according to S. 248, Cr. P. C. *Sishir Kumar Mitter v. Corporation of Calcutta.*

27 Cr. L. J. 984 :

96 I. C. 648 : 30 C. W. N. 598 : 43 C. L. J. 369 :

53 Cal. 631 : A. I. R. 1926 Cal. 786.

—S. 557-A (as amended in 1926)—*Scope and meaning.*

Clause (4) of S. 557-A only means that if under the Act or any other law a legal proceeding between August, 1926, and August, 1927, would have been barred, it is not to be barred till August, 1927. *Ram Gopal Goenka v. Corporation of Calcutta.*

31 Cr. L. J. 670 :

124 I. C. 488 : 50 C. L. J. 527 :

A. I. R. 1930 Cal. 222.

—Sch. VII, r. 35.

Party should be given opportunity to put his case before withdrawing permission already granted. *Basanta Kumar Das v. Corporation of Calcutta.*

149 I. C. 1193 : 38 C. W. N. 280 : 61 Cal. 356 :

6 R. C. 733 : A. I. R. 1934 Cal. 389.

—Sch. XVI, r. 2 (6).

The Corporation is not entitled to demand fees where a road has not vested in the Corporation. *J. N. Silas v. Corporation of Calcutta.*

34 Cr. L. J. 521 :

143 I. C. 122 (2) : 56 C. L. J. 578 :

I. R. 1933 Cal. 337 :

A. I. R. 1933 Cal. 341.

—Sch. XVII, rr. 56, 57—*Requisition to person to expose foundations—Nature—Whether relating to objection.*

A requisition by Commissioners to the petitioner to expose his foundations sought to be erected by him, is a requisition for information with regard to the nature of the building and cannot be regarded as relating to an objection raised by the Commissioners with reference to

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the building application. *Hrishikesh Dutt v. Municipal Commissioner, Howrah.*

41 Cr. L. J. 689 :
188 I. C. 865 : 44 C. W. N. 561 :
I. L. R. 1940 (2) Cal. 69 : 13 R. C. 50 :
A. I. R. 1940 Cal. 292.

———Sch. XV, rr. 56, 57—Rr. 56, 57, *object of*—They are mandatory and must be strictly construed.

The intention in enacting rr. 56 and 57 was to ensure that all business connected with applications for the erection of new buildings should be transacted expeditiously and it is necessary that these rules should be strictly interpreted. It could not have been intended merely by holding an inspection before the expiry of the statutory period of fifteen working days without the issue of any requisition for further information, that the Commissioners should acquire a right to an extension of the time within which they must issue the prescribed written order under the latter part of r. 37 (1). *Hrishikesh Dutt v. Municipal Commissioner, Howrah.*

41 Cr. L. J. 689 :
188 I. C. 865 : 44 C. W. N. 561 :
I. L. R. 1940 (2) Cal. 69 : 13 R. C. 50 :
A. I. R. 1940 Cal. 292.

———Sch. XVII, R. 56 (1)—R. 56 (1) to be read with other sub-rules.

Sub-rule (1) of r. 56 is clearly intended to be read with the remaining sub-rules of r. 56 for the purpose of prescribing certain general conditions which must govern all requisitions and objections which it may be found necessary to make in connection with applications for the erection of new buildings. It cannot be read separately from the remaining sub-rules of r. 56 for the purpose of conferring upon the Commissioners a general residuary power to issue requisitions at any time when they may require further information to enable them to reach a decision. *Hrishikesh Dutt v. Municipal Commissioner, Howrah.*

41 Cr. L. J. 689 :
188 I. C. 865 : 44 C. W. N. 561 :
I. L. R. 1940 (2) Cal. 69 : 13 R. C. 50 :
A. I. R. 1940 Cal. 292.

———Sch. XVII, r. 57—"Fifteen days," meaning of.

The period of fifteen days mentioned in r. 57 must be used as meaning "working days" in the same sense in which this expression has been used in r. 56. *Hrishikesh Dutt v. Municipal Commissioner, Howrah.*

41 Cr. L. J. 689 :
188 I. C. 865 : 44 C. W. N. 561 :
I. L. R. 1940 (2) Cal. 69 : 13 R. C. 50 :
A. I. R. 1940 Cal. 292.

———Sch. XVII, r. 65.

Notice of revocation proceedings under r. 65, Sch. XVII, must be given to the application though the rule does not expressly mention it. *Basanta Kumar Das v. Corporation of Calcutta.*

149 I. C. 1193 : 38 C. W. N. 280 :
61 Cal. 356 : 6 R. C. 733 :
A. I. R. 1934 Cal. 389.

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See Admiralty.

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———Investigation—Inherent powers of Police.

There are no inherent powers possessed by the Police. All investigations by the Police in the *mofussil* must be controlled by the Cr. P. C., and in Calcutta, by the Police Act itself or by any Circular Orders issued. *Satya Charan Miller v. Emperor.*

27 Cr. L. J. 602 :
94 I. C. 266 : 30 C. W. N. 427 :
53 Cal. 650 : 45 C. L. J. 15 :
A. I. R. 1926 Cal. 586.

———S. 3—Common gaming-house—Necessary requisites—Slips of papers for recording bets whether instruments of gaming—Mere chance of winning, whether a gain.

To make a house, room, place, etc., a common gaming-house, two things are necessary : namely : (i) instruments of gaming must be kept or used there, and (ii) such instruments must be kept or used for the purpose of gain of the person owning, occupying, using or keeping such house, room, place, etc. Slips of paper used for the purpose of facilitating betting operations, *e. g.*, papers on which bets had been recorded are to be instruments of gaming. To satisfy the second element, the intended gain must result to the person owning, occupying, using or keeping the place otherwise than as a result of betting by him. The chance of profit of, or the actual profit made by the successful gambler, is not such gain as the section contemplates. An entrance fee charged by a person owning, occupying or using the place would be gain within the meaning of the section. A commission charged by such a person from persons winning wagers as a result of betting in that place is such gain. A person running a proprietary club where, he allows gaming or betting, would be the keeper of a common gaming-house, whether he himself takes part in betting or not. Such a person makes profit or intends to make profit from his establishment which profit is not the direct result of betting in which he himself may have taken part. The chance of winning wagers is not the gain which the section contemplates. *Dr. Ranga Lal Sen v. Emperor.*

38 Cr. L. J. 449 :
167 I. C. 771 : 41 C. W. N. 123 :
9 R. C. 759 : I. L. R. 1937 (1) Cal. 610 :
A. I. R. 1936 Cal. 788.

———S. 3—'Common gaming-house', what is—Fixed charge on profit must accrue regularly.

Premises occupied and kept by a person are not strictly "common gaming-house" within the meaning of the language of the Act, unless some fixed charge or profit accrues regularly to the person who is occupying or keeping the premises quite apart from any fluctuating point which may occur from time to time bet-

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ween the gamblers themselves as a result of the gambling. *Beattie v. Emperor*.

38 Cr. L. J. 706 :
169 I. C. 87 : 9 R. C. 895 :
A. I. R. 1937 Cal. 84.

—S. 3—*Slips used for facilitating betting, if instruments.*

As gaming includes wagering or betting, the slips, if they are used for the express purpose of facilitating betting operations, would certainly come within the mischief of the definition of 'instrument of gaming' under S. 3. *Abdul Latif v. Emperor*.

39 Cr. L. J. 500 :
174 I. C. 974 : 67 C. L. J. 82 :
10 R. C. 741 : I. L. R. 1938 1 Cal. 672 :
A. I. R. 1938 Cal. 237.

—Ss. 3, 13-C—*Officer under suspension—Commissioner of Police, if can detain him.*

An Officer of the Calcutta Town Police when placed under suspension ceases to be a Police Officer, and the Commissioner of Police has no authority to order his detention in custody. *Pramatha Nath Barat v. P. C. Lahiri*.

21 Cr. L. J. 15 :
54 I. C. 63 : 46 Cal. 581 : A. I. R. 1920 Cal. 45.

—Ss. 3, 45—"Common gaming-house"—*S. 45—Found in gaming house, or present in gaming house for purpose of gaming, what is.*

Where an accused who is proved to have accepted a marked five rupee note, is found with two others and no incriminating articles except a racing book is discovered, the evidence is totally insufficient to show that the accused are found gaming in a common gaming-house or present during any gaming or playing therein or are found present in the gaming-house for the purpose of gaming within the meaning of S. 3. The mere acceptance of the marked currency note is not sufficient to find the accused guilty under S. 45. *Hari Charan Banerjee v. Emperor*.

37 Cr. L. J. 851 :
163 I. C. 152 : 8 R. C. 697 (2) :
A. I. R. 1936 Cal. 355.

—Ss. 7, 76—*Detention in Police custody—Deputy Commissioner, power of.*

It is not the duty of the Deputy Commissioner of Police, Calcutta, who is a Justice of the Peace, to place an offender forthwith before a Magistrate inasmuch as there is no period mentioned in the Act within which this must be done, and as a Justice of the Peace, the Deputy Commissioner is entitled to take such steps as may be necessary to complete an investigation before placing the matter before a Magistrate. *Srilal Agarwala v. Emperor*.

27 Cr. L. J. 1185 :
97 I. C. 945 : 44 C. L. J. 134.

—S. 44—*Association for carrying on wagering transactions—Charge for keeping common gaming-house—Onus of proof.*

Where the members of an association ostensibly formed for the purpose of dealing in jute, were charged under S. 44 on the ground that the transactions entered into by them were really wagering: *Held*, that the question whe-

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ther the transactions were wagering transactions was one of fact and it was for the prosecution to show that in these transactions the intention of the parties was, in no circumstances, either to take or give delivery. *Thakurdas Mundra v. Emperor*.

32 Cr. L. J. 144 :
128 I. C. 330 : 34 C. W. N. 522 :
I. R. 1931 Cal. 90 : A. I. R. 1930 Cal. 637.

—S. 44—*Conviction under—Essentials.*

A conviction under S. 44 for owning and keeping a common gaming-house, cannot, be maintained, where there is no evidence to prove that the house was kept for gain or profit of the persons owning or keeping the house and that the accused were the owners or keepers of the house. *Gour Mohan Gossain v. Emperor*.

28 Cr. L. J. 871 :
104 I. C. 711 : 46 C. L. J. 186 :
9 A. I. Cr. R. 25 : A. I. R. 1927 Cal. 801.

—S. 44.

Dart game—Staking something valuable on thrower hitting a certain mark is betting. *S. R. Varma v. Emperor*.

35 Cr. L. J. 1021 :
149 I. C. 827 : 38 C. W. N. 82 :
6 R. C. 633 (2) : A. I. R. 1934 Cal. 271.

—S. 44—*Offence of keeping or using room as common gaming-house—"Profit or gain," necessity of establishing.*

"Profit or gain" is the cardinal constituent of the definition of a "common gaming-house." Therefore, unless there is sufficient evidence on the record to make out this element of "profit or gain" against the accused, a conviction for keeping or using a room as a common gaming-house under S. 44 cannot be had. *Puran Mull Biwani v. Emperor*.

31 Cr. L. J. 376 :
122 I. C. 218 : 33 C. W. N. 658 :
A. I. R. 1929 Cal. 644.

—S. 44.

Slips of paper found—Inner rooms used for facilitating betting—Slips, held, instruments of gaming. *M. A. Adams v. Emperor*.

36 Cr. L. J. 1513 :
158 I. C. 1095 : 39 C. W. N. 1114 :
62 Cal. 1093 : 8 R. Rang. 249 :
A. I. 1935 Cal. 466.

—S. 44.

The essence of the definition of a "common gaming-house," is a place in which instruments of gaming are kept or used. *M. A. Adams v. Emperor*.

36 Cr. L. J. 1513 :
158 I. C. 1095 : 39 C. W. N. 1114 :
62 Cal. 1093 : 8 R. C. 249 :
A. I. R. 1935 Cal. 466.

—S. 44—*Wagering transactions.*

It was held on the facts that the transactions carried on by the Bengal Jute Association, Ltd., were wagering transactions and the members of the association were convicted under S. 44, Calcutta Police Act, for keeping a common gaming-house. *Thakurdas Mundra v. Emperor*.

32 Cr. L. J. 144 :
128 I. C. 330 : 34 C. W. N. 522 :
I. R. 1931 Cal. 90 :
A. I. R. 1930 Cal. 63 7.

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—Ss. 44, 47—*Search of room alleged to be used as gaming-house—Accused not present at search—S. 47, if applies to him—No evidence that he was owner of room or that he took commission for its use—Only betting material found in room—If sufficient for conviction.*

Where a person is charged for keeping a common gaming-house and also for permitting his room to be used as a common gaming-house and he is not present in the room at the time of the search, the provisions of S. 47 do not apply to him personally, and when there is no evidence at all to show that the person is the owner or occupier of the room or that he realizes commission for allowing other persons to use the room for the purpose of carrying of the business of betting, the mere fact that some betting slips and racing literature was found in the room is not sufficient to convict the person under S. 44. *Ranjit Singha Roy v. Emperor.*

39 Cr. L. J. 493 :
174 I. C. 845 : 10 R. C. 731 :
A. I. R. 1938 Cal. 273.

—S. 45—*Onus to prove that house in which accused was found was common gaming-house.*

In a case under S. 40, the onus lies upon the prosecution to show that the house in which the accused was found was a common gaming-house as defined in S. 3 of the Act. In order to satisfy the requirements of this section, it would be for the prosecution to show that instruments of gaming were kept or used in that house for the profit or gain of the person owning, occupying, using or keeping such house. *Sudhir Kumar Roy v. Emperor.*

40 Cr. L. J. 724 :
182 I. C. 986 : 12 R. C. 123 (2) :
A. I. R. 1939 Cal. 326.

—Ss. 45, 46—*Bengal Public Gambling (Amendment) Act, S. 2—Material sufficient to justify Magistrate in taking action.*

Section 45 must be read having regard to the definition of "gaming" given in section 2 of Bengal Act IV of 1913.

Where a petition presented to the Chief Presidency Magistrate, stated that for some time past at certain place, cotton figure gambling had been carried on and it also stated exhaustively the ways and methods by which such gambling was carried on and prayed that the offenders might be brought to book : *Held*, that the allegations in the petition did disclose an offence within the meaning of section 45 having regard to the definition of "gaming" in Act IV of 1913, and that there were sufficient materials before the Magistrate which justified him in taking such steps as were necessary for the purpose of an enquiry in the usual way into the question whether the accused had or had not committed an offence under the Act. *Bajranga Lal v. Emperor.*

22 Cr. L. J. 599 ;
62 I. C. 87 : 33 C. L. J. 287 : 25 C. W. N. 428 :
A. I. R. 1921 Cal. 719.

—Ss. 45, 46, 47—*Search warrant—Presumption under, when arises.*

In order that the presumption laid down by S. 47, may arise, it is necessary that the search as a consequence of which the find takes place

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must be of the place in respect of which the search warrant was issued. *Ah. Yung v. Emperor.*

31 Cr. L. J. 1152 :
127 I. C. 58 : 57 Cal. 457 : 34 C. W. N. 197 :
A. I. R. 1930 Cal. 369.

—S. 46—*Presumption—Arrest without warrant.*

The presumption referred to under S. 46 of the Calcutta Police Act cannot arise in a case where the arrest is not made on a warrant. *Abdool Karim v. Emperor.*

4 Cr. L. J. 71 :
4 C. L. J. 92.

—S. 46—*Search-warrant—Non-compliance with S. 46—Presumption under S. 114, illus. (e).*

Section 114, illus. (e) of the Evidence Act cannot be relied upon where a search-warrant has not been proved to have been issued after due compliance with S. 46, Calcutta Police Act. *Walvekar v. Emperor.*

27 Cr. L. J. 920 :
53 Cal. 718 : 30 C. W. N. 713 :
96 I. C. 264 : A. I. R. 1926 Cal. 996.

—Ss. 46, 47—*Search warrant—Issue on suspicion—Presumption under S. 47, if arises.*

A search-warrant purporting to be issued under S. 46 must be proved to have been issued after strict compliance with the preliminaries prescribed by the section. Where in a search-warrant it is stated that the issuing officer has "cause to suspect", and not "reason to believe" as specified in the S. 46, that the premises in question are used and kept as and for a common gaming-house, the search-warrant is invalid, and no presumption arises under S. 47, in favour of the prosecution. *Walvekar v. Emperor.*

27 Cr. L. J. 920 :
96 I. C. 264 : 53 Cal. 718 : 30 C. W. N. 713 :
A. I. R. 1926 Cal. 966.

—Ss. 46, 47—*Search-warrant, proper form of—Defective warrant—Presumption under S. 47, whether arises.*

A warrant issued under S. 46 which states merely that 'there is cause to suspect' and does not state that 'there is reason to believe', is defective and the finding of articles of gaming in a house in a search under such a warrant does not, therefore, raise a presumption under S. 47 of the Act. *Gour Mohan Gossain v. Emperor.*

28 Cr. L. J. 871 :
104 I. C. 711 : 46 C. L. J. 186 :
9 A. I. Cr. R. 25 : A. I. R. 1927 Cal. 801.

—Ss. 46, 74—*Existence of a warrant which has been executed against other persons who have since been convicted and tried, hardly a justification for arrest, when the arrest is not really made under it.*

When a person is arrested for an offence not really under a warrant, the mere fact that a warrant had been issued for his arrest which warrant had been executed against other persons who have since been convicted, can hardly be put forward as a justification for the arrest. Where an arrest of a person who was gambling in an open place in view of the Police is sought to be justified as having been made under S. 74, it must be found that the place where the gambl-

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ing was taking place was a common gaming-house. *Abdool Karim v. Emperor*.

4 Cr. L. J. 71 :
4 C. L. J. 92.

—Ss. 46, 47—Applicability—Essentials.

Per *Henderson, J.*—In order to determine whether S. 47 applies, it is necessary to see whether there was a proper search within the provisions of S. 46. Unless the provisions of these sections are strictly interpreted and complied with, there can be no doubt that persons will be improperly convicted. *Ranga Lal Sen v. Emperor*.

38 Cr. L. J. 449 :
167 I. C. 771 : 41 C. W. N. 123 :
9 R. C. 759 : I. L. R. 1937 1 Cal. 610 :
A. I. R. 1936 Cal. 788 :

—S. 47—Special rule of evidence—Creation of—"It shall be evidence, until contrary is made to appear" meaning of.

The words "it shall be evidence, until the contrary is made to appear" in S. 47, mean that the finding of certain things shall be evidence that the place is a common gaming-house. It would be transparently absurd to say that the finding of a pack of cards in a house would be evidence that that house is a common gaming-house. The section was intended to create a special rule of evidence because in view of the preliminary provisions there is not this absurdity in a case when there had been a proper search under S. 46. The section only raises a presumption of fact, and so a rebuttable presumption. If a search warrant is issued under S. 46 and if on a search made on the basis of the said warrant, instruments of gaming are found at the place or on the person of men found there at the time of the search, the fact that such instruments of gaming are found would be evidence of the further fact that the place is a common gaming-house. The fact of such evidence may be nullified by other evidence on the record. *Ranga Lal Sen v. Emperor*.

38 Cr. L. J. 449 :
167 I. C. 771 : 41 C. W. N. 123 :
9 R. C. 759 : I. L. R. 1937 Cal. 610 :
A. I. R. 1936 Cal. 788.

—S. 47—Search warrant under S. 47, proper in form—Presumption under S. 114, Evidence Act, whether arises.

Where a warrant under S. 47 issued by a competent authority recites the fact that an information on oath had been received and that an enquiry had been made, and then states that that authority had reason to believe that the place sought to be searched is a common gaming-house, the presumption attaching to the regularity of official acts would be attracted and it would not be incumbent on the Crown to lead evidence on the point indicated above. *Ranga Lal Sen v. Emperor*.

38 Cr. L. J. 449 :
167 I. C. 771 : 41 C. W. N. 123 :
9 R. C. 759 : I. L. R. 1937 1 Cal. 610 :
A. I. R. 1936 Cal. 788.

—S. 47—Slips seized while betting was not going on, whether evidence under S. 47 to show that room was used as common gaming room.

Where slips of paper were seized at a time when

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betting operations were not going on, but it was clear from these documents that they were written records of illegal betting and it did not appear that these documents were written for facilitating betting operations in any place other than the room where they were seized : *Held*, that they were evidence under S. 47 to show that the room in question was being used as a common gaming-house and that the slips were the instruments of betting. *Phani Bhusan Kumar v. Emperor*.

39 Cr. L. J. 89 :
172 I. C. 146 : I. L. R. 1937 1 Cal. 471 :
10 R. C. 347 : A. I. R. 1937 Cal. 637.

—Ss. 47, 44—Search under S. 47—Effect—Court cannot presume guilt.

The result of a search under S. 47, is that there is evidence before the Magistrate which would entitle him as a Court of fact to find that these premises were in fact a common gaming-house ; but it would not entitle him to presume anything whatsoever with regard to the guilt of a person charged with a specific offence under S. 44. *J. B. Beattie v. Emperor*.

38 Cr. L. J. 706 :
169 I. C. 87 : 9 R. C. 895 :
A. I. R. 1937 Cal. 84.

—Ss. 47, 3—Presumption—Significance of absence of words 'shall presume' or 'may presume' in S. 47—S. 47, explained.

Though the words "until the contrary is made to appear" are rather appropriate to a presumption in the technical sense of the word, the absence of any word like "may presume" or "shall presume" in the section is very much significant, and the discovery of the instruments of gaming in the place on a proper search which is contemplated by the Act, would be an evidence not only to prove the existence of these instruments in that place, as an element to constitute a common gaming-house, but it would be an evidence on the other point also, as regards the making of profit or gain by the owner or occupier, etc., of the place, although according to the ordinary law, it cannot be treated as an evidence of the other fact. When the prosecution relies upon S. 47, the accused can certainly explain away the whole circumstances and "show the contrary" as the section lays down. If the explanation is sufficient, the evidence practically loses its force, and if, on the other hand, no explanation or evidence to the contrary is coming from the side of the accused, a duty is cast upon the Court, to weigh and appraise the evidence in the best manner possible, and he may, if it thinks proper, convict the accused on this evidence, though he is not bound to do so. *Abdul Latif v. Emperor*.

39 Cr. L. J. 500 :
174 I. C. 974 : 67 C. L. J. 82 : 10 R. C. 741 :
I. L. R. 1938 1 Cal. 672 :
A. I. R. 1938 Cal. 237.

—S. 48.

S. 48 does not, in terms, provide for the forfeiture of the money found upon the persons arrested in a common gaming-house. *M. A. Adams v. Emperor*.

36 Cr. L. J. 1513 :
158 I. C. 1095 : 39 C. W. N. 1114 :
62 Cal. 1093 : 8 R. C. 249 :
A. I. R. 1935 Cal. 466.

CALCUTTA POLICE ACT (IV OF 1866)

—S. 50-A.

A game of "mere" skill should be taken to mean one in which a person playing it, as far as possible in any human affairs, has complete control over the result which he sets out to attain, provided he is sufficiently expert in performance. *Saligram Khetry v. Emperor*.

34 Cr. L. J. 168 :
141 I. C. 593 : 37 C. W. N. 24 :
I. R. 1933 Cal. 140 : A. I. R. 1933 Cal. 8.

—S. 50-A.

Dart game held to be game of skill. *Saligram Khetry v. Emperor*

34 Cr. L. J. 168 :
141 I. C. 593 : 37 C. W. N. 24 :
I. R. 1933 Cal. 140 : A. I. R. 1933 Cal. 8.

—S. 50-A.

The question of whether or not the game is one of mere skill for the purpose of invoking the protection of S. 50-A is a question of fact. *Saligram Khetry v. Emperor*.

34 Cr. L. J. 168 :
141 I. C. 593 : 37 C. W. N. 24 :
I. R. 1933 Cal. 140 : A. I. R. 1933 Cal. 8.

—S. 54-A—Charge for theft—Misappropriation—Acquittal of theft and misappropriation but conviction under S. 54-A—Legality of.

Held, by Buckland, J. (agreeing with Mukerji, J., and disagreeing with Graham, J.), that possession of the cash certificate and deposit receipt did not amount to possession of the monies covered thereby within the meaning of S. 54-A of the Calcutta Police Act and the conviction of the accused and the order to return the documents to the complainant were illegal. *Radha Krishna Gupta v. Jamunadas Fatepuria*.

31 Cr. L. J. 59 :
120 I. C. 250 : 33 C. W. N. 477 :
49 C. L. J. 506 : A. I. R. 1929 Cal. 401.

—S. 54-A—Offence under—Findings necessary for conviction.

The preliminary condition which must be fulfilled before effect can be given to S. 54 (a) is that there must be reason to believe that the property found in the accused's possession is stolen property. The Court has first to find on sufficient materials that there is reason for such belief, and it is not until it has come to such a finding that it can consider whether the accused has been able to account for possession of the property. *Sukhu Kakwar v. Emperor*.

19 Cr. L. J. 933 :
47 I. C. 657 (2) : 22 C. W. N. 936 :
28 C. L. J. 262 : A. I. R. 1918 Cal. 687 (1).

—S. 54-A—Person tried under S. 379, Penal Code—Conviction under S. 54-A, without charge.

Per Mukerji and Graham, JJ.—A person tried on a charge under S. 379, Penal Code, may be convicted of an offence under S. 54-A of the Calcutta Police Act though not separately charged with it. *Radha Krishna Gupta v. Jamunadas Fatepuria*.

31 Cr. L. J. 59 :
120 I. C. 250 : 33 C. W. N. 477 :
49 C. L. J. 506 : A. I. R. 1929 Cal. 401.

—S. 54-A—Prosecution for possession of stolen goods—Condition for conviction.

CALCUTTA POLICE ACT (IV OF 1866)

The first condition necessary for a conviction under S. 54-A is for the prosecution to show that the goods had been stolen or fraudulently obtained. The mere evidence of a Sub-Inspector of Police that the goods were recovered from the house of the accused, would not warrant the conclusion that they had been stolen or fraudulently obtained. *Rasik Lal Das v. Emperor*.

24 Cr. L. J. 151 :
71 I. C. 503 : 26 C. W. N. 712 :
A. I. R. 1922 Cal. 492.

—S. 54-A—Requisites for conviction under—Possession of old chuddar, if sufficient to arouse suspicion.

To justify a conviction under S. 54-A, there must be reason to believe that the article in possession of the accused has been stolen or fraudulently obtained. The possession of an old chuddar is not enough in itself to arouse suspicion that the article was stolen or fraudulently obtained. *Bai Das v. Ali Bux Khan*.

22 Cr. L. J. 122 (b) :
59 I. C. 554 : 23 C. W. N. 1053 :
A. I. R. 1921 All. 123.

—S. 54-A—Scope—If limited to actual physical possession.

Per Graham, J.—S. 54-A is not limited to actual physical possession but applies also to cases of potential possession derived from the possession of documents entitling the holder to possession. *Radha Krishna Gupta v. Jamunadas Fatepuria*.

31 Cr. L. J. 59 :
120 I. C. 250 : 33 C. W. N. 477 :
49 C. L. J. 506 : A. I. R. 1929 Cal. 401.

—S. 54-A—Scope, and interpretation.

Per Mukerji, J.—S. 54 is revolutionary in character relieving, as it does, the prosecution of its ordinary burden of proof in a criminal case beyond what is necessary to create a reasonable suspicion, and throwing the entire onus on the accused of removing that suspicion. A penal provision of this character should be strictly construed. *Radha Krishna Gupta v. Jamunadas Fatepuria*.

31 Cr. L. J. 59 :
120 I. C. 250 : 33 C. W. N. 477 :
49 C. L. J. 506 : A. I. R. 1929 Cal. 401.

—S. 54-A.

There must be reasonable belief and not reasonable suspicion before accused may be called upon to account for his possession. *Chand Khan v. Emperor*.

33 Cr. L. J. 643 :
138 I. C. 636 : 36 C. W. N. 512 :
55 C. L. J. 96 : I. R. 1932 Cal. 476 :
A. I. R. 1932 Cal. 489.

—S. 62-A—Carrying kirpan, more than nine inches long.

The carrying of a kirpan more than nine inches long in the town or suburb of Calcutta without special license or permit is an offence under S. 62-A. *Kirpal Singh v. Emperor*.

25 Cr. L. J. 1116 :
81 I. C. 940 : 50 Cal. 912 :
A. I. R. 1924 Cal. 231.

—S. 62-A (1).

A Police Officer issuing an order under S. 62-A (1) need not be armed with a previous

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sanction of the Commissioner of Police.
Jagadish Narain Taccary v. Emperor.

34 Cr. L. J. 36 :
140 I. C. 550 : 36 C. W. N. 722 :
56 C. L. J. 231 : I. R. 1933 Cal. 8 :
A. I. R. 1933 Cal. 36.

—S. 62-A (1).

Public meeting—Member of audience sounding bugle—Order by Police to stop—Disobedience—Omission by President to order stopping of bugle—No evidence of conspiracy—Charge of abetment against President : *Held*, could not be maintained. *Jagadish Narain Taccary v. Emperor.*

34 Cr. L. J. 36 :
140 I. C. 550 : 36 C. W. N. 722 :
56 C. L. J. 231 : I. R. 1933 Cal. 8 :
A. I. R. 1933 Cal. 36.

—S. 62-A (4)—As amended in 1910—*Forbidding person from taking part in procession when it is not itself prohibited.*

S. 62-A (4) as amended does not enable the Commissioner of Police to forbid individuals to join any procession or public assembly which may be formed or held. It is illegal, when a procession itself is not prohibited, to prohibit a person from taking part in it. *Leakat Hussain v. Emperor.*

14 Cr. L. J. 125 :
18 I. C. 685 : 40 Cal. 470 : 17 C. W. N. 505.

—S. 62-A (4)—

Commissioner is the Judge of the necessity of an order prohibiting a procession or an assembly on a particular day. *Ramendra Chandra Ray v. Emperor.*

32 Cr. L. J. 844 :
132 I. C. 174 : 35 C. W. N. 716 :
58 Cal. 1303 : I. R. 1931 Cal. 558 :
A. I. R. 1931 Cal. 410.

—Ss. 62-A (4), 102-A—As amended in 1910—*Public notice of order, when to be given.*

S. 102-A, as amended, only lays down the procedure to be followed when public notice is required to be given by some other provision in the Act. Clause (4) of S. 62-A requires that an order made thereunder should be in writing but does not require that public notice should be given of it. *Leakat Hussain v. Emperor.*

14 Cr. L. J. 125 :
18 I. C. 685 : 40 Cal. 470 :
17 C. W. N. 505.

—S. 66 (4) (a)—*Offence under—Calcutta Municipal Act, S. 559 (18), Bye-laws framed under, breach of.*

A building contractor who, under a license of the Corporation under Bye-law 2 of the bye-laws framed under the provisions of S. 559, Sub-S. (18) of the Calcutta Municipal Act, was authorised to make an enclosure on a portion of the public street for the purpose of depositing mortar, bricks, etc., thereon, on condition of his fencing off the portion to be occupied with a temporary fence, unloaded and deposited during the course of his building operations, bricks on a foot-path without fencing it off by a temporary fence, and thereby caused obstruction in the foot-path for about six hours : *Held*, that he had not only committed a breach of the bye-law under which his license was granted, but had also committed an offence

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under S. 66 (4) (a) of the Police Act. *Charles Henry Brooke v. Emperor.*

18 Cr. L. J. 753 :
41 I. C. 129 : 26 C. L. J. 610 :
22 C. W. N. 455 : A. I. R. 1918 Cal. 201.

—S. 76—*Deputy Commissioner of Police—Detention of person arrested without warrant longer than is necessary to bring him before Magistrate, legality of—Detention for Police investigation, power to order.*

Held by the Full Bench.—A Deputy Commissioner of Police of Calcutta, cannot, by virtue of his powers as a Justice of the Peace or otherwise, lawfully order the detention in Police custody of a person arrested without a warrant, for any longer time than is necessary to enable such person to be brought before a Presidency Magistrate. Nor can he lawfully order that the detention of any such person as aforesaid at a Police Station or in Police custody shall continue until the Police investigation shall have been (a) further advanced, or (b) completed, notwithstanding that the time within which such person might have been brought before a Presidency Magistrate has elapsed. *Muhammad Suleman v. Emperor.*

27 Cr. L. J. 1201 :
97 I. C. 961 : 30 C. W. N. 985 : 44 C. L. J. 138 :
54 Cal. 218 : A. I. R. 1926 Cal. 1121.

—S. 78-A—*Applicability of Ss. 162, 172, Cr. P. C.*

Ss. 162 and 172, Cr. P. C., are not applicable to the Calcutta Police Act and there is no provision corresponding to them in the Calcutta Police Act. *Panchanan Mukherjee v. Emperor.*

30 Cr. L. J. 577 :
116 I. C. 161 : 33 C. W. N. 203 :
I. R. 1929 Cal. 448 : A. I. R. 1929 Cal. 275.

—S. 78-A—*Criminal Procedure Code, whether applicable—Notice under S. 78-A after issue of chalan—Validity.*

Provisions of Criminal Procedure Code, regarding investigation by the Bengal Police, do not apply to investigations by Calcutta Police. The Calcutta Police Act itself does not contain any rules of procedure regarding the conduct of investigations by the Calcutta Police. Hence where after the commencement of trial of some accused, notice under S. 78-A, Calcutta Police Act is issued, the notice is not *ultra vires* because the investigation cannot be supposed to have come to an end the moment a *chalan* is put up. *Dicarka Nath v. Emperor.*

39 Cr. L. J. 842 :
177 I. C. 171 : 11 R. C. 212 :
A. I. R. 1938 Cal. 545.

—S. 78-A—*Record of examination under, whether privileged.*

The record of the examination of the complainant under S. 78-A is not a privileged document and should not be withheld without sufficient justification. *Panchanan Mukherjee v. Emperor.*

30 Cr. L. J. 577 :
116 I. C. 160 : 33 C. W. N. 203 :
I. R. 1929 Cal. 448 :
A. I. R. 1929 Cal. 275.

—S. 79-A—*Procedure in Police investigation.*

Attendance and questionings of any person

CALCUTTA RENT ACT (III OF 1920)

during Police investigation under S. 79-A, are intended to take place within the Presidency Town itself. But if information is to be obtained from a person outside the Presidency whose attendance cannot be procured for some reason in the Presidency Town, the procedure laid down in cl. 3 of the section is to be followed. *Satya Charan Mitter v. Emperor*.

27 Cr. L. J. 602 :
94 I. C. 266 : 30 C. W. N. 427 : 53 Cal. 650 :
45 C. L. J. 15 : A. I. R. 1926 Cal. 586.

CALCUTTA PORT ACT (III OF 1890).

—S. 83—*Adding to existing stage in bed of river, whether an erection under S. 83.*

Where a person adds to an existing stage, jetty, platform or *bandh* in the bed of the Hooghly river, within the limits of the Port of Calcutta, such addition is an erection within the meaning of S. 83. *Benode Behari Bagchi v. Hook*.

22 Cr. L. J. 504 :
62 I. C. 328.

—S. 84—*Conviction under—Order to remove stage, legality—Procedure.*

An accused who has been convicted under S. 84 for making an erection in the bed of the Hooghly, cannot, at the same time, be directed to remove such erection within a specified time. The proper course in such a case is for the Port Commissioners to themselves remove the obstruction under the provisions of the first clause to S. 84. *Benode Behari Bagchi v. Hook*.

22 Cr. L. J. 504 :
62 I. C. 328.

—S. 84—*Original wall itself illegal erection—Addition to it, if comes within S. 84.*

Where the original wall itself is an illegal erection, the making of additions or re-erecting part of it brings the case within S. 84. *Gangeya Narothan Shastri v. Emperor*.

38 Cr. L. J. 666 :
168 I. C. 972 : 9 R. C. 887 :
I. L. R. 1937 1 Cal. 603 :
A. I. R. 1937 Cal. 45.

—Ss. 84, 83, 2 (5)—*Land below high water mark—Erection of structures, whether punishable.*

S. 83 prohibits the erection of certain structures on private land below high water mark within the Port. This clearly is an interference within the rights of the owners within the meaning of S. 2 (5) of the Act. Therefore, a construction of such structures is an offence under S. 84. *Radha Kissen Chamaria v. Emperor*.

26 Cr. L. J. 397 :
84 I. C. 941 : 51 Cal. 1030 :
A. I. R. 1925 Cal. 404.

CALCUTTA RENT ACT (III OF 1920).

—Rules under, R. 4—*Whether 'enactment'—If ultra vires.*

R. 4 of the rules framed by the Local Government under the Act, is not an "enactment" within the meaning of S. 5 (2) of the Cr. P. C., and is *ultra vires* of the rule-making power conferred on that Government. *Gobordhone Das v. Doolichand*.

22 Cr. L. J. 354 :
61 I. C. 210 : 25 C. W. N. 661 :
33 C. L. J. 551 : A. I. R. 1921 Cal. 708.

CALCUTTA SUPPRESSION OF IMMORAL TRAFFIC ACT (XIII OF 1923).

—S. 20—*Acts enumerated in, if 'offence'.*

The acts enumerated in S. 20 of the Act come within the definition of "offence" contained in S. 4 (o) of the Cr. P. C., and create new criminal offences. *Gobordhone Das v. Doolichand*.

22 Cr. L. J. 354 :
61 I. C. 210 : 25 C. W. N. 661 :
33 C. L. J. 551 : A. I. R. 1921 Cal. 708.

—S. 20—*S. 20, whether ultra vires, and whether creates new criminal offence.*

S. 20, because it invests the President of the Tribunal with a summary power to try criminal offences and because it thereby constitutes a new Criminal Court, is not *ultra vires* of the Legislature of the Governor-in-Council of Bengal. *Gobordhone Das v. Doolichand*.

22 Cr. L. J. 354 :
61 I. C. 210 : 25 C. W. N. 661 :
33 C. L. J. 551 : A. I. R. 1921 Cal. 708.

CALCUTTA SUBURBAN POLICE ACT (II OF 1866).

—S. 18—*Stall on which soda-water is sold not for consumption on premises.*

A stall on which soda-water is sold not for consumption on the premises cannot be held to be a place of public resort within the meaning of S. 18. *Hemanta Kumar Sen v. Emperor*.

22 Cr. L. J. 561 (a) :
62 I. C. 577 : 34 C. L. J. 198 : 26 C. W. N. 56 :
A. I. R. 1923 Cal. 135.

CALCUTTA SUPPRESSION OF IMMORAL TRAFFIC ACT (XIII OF 1923).

—S. 4—*'Girl', meaning of—Married girl under sixteen years, whether within Act—Scheme of Act—Bengal Children Act (II of 1922); S. 31—Scheme of Act—Protection of minor females.*

There is no limitation placed on the meaning of the word 'girl' as used in S. 4. Therefore, the Act applies whether the female in question is married or unmarried. The whole matter turns not on the status of the female from the point of view of marriage or not marriage but on the question of age. *Panchu Gopal Shaw v. Emperor*.

30 Cr. L. J. 440 :
115 I. C. 266 : 48 C. L. J. 586 :
33 C. W. N. 198 : I. R. 1929 Cal. 346 :
56 Cal. 750 : A. I. R. 1929 Cal. 99.

—S. 4—*Scheme of Act—Protection of minor females.*

The Calcutta Suppression of Immoral Traffic Act and the Bengal Children Act are really part and parcel of a scheme of legislation designed for the protection of children and particularly for the protection of female minors. Both these Acts apply to females under the age of sixteen years whether they have gone through the ceremony of marriage and become legally married or not. *Panchu Gopal Shaw v. Emperor*.

30 Cr. L. J. 440 :
115 I. C. 266 : 48 C. L. J. 586 :
33 C. W. N. 198 : I. R. 1929 Cal. 346 :
56 Cal. 750 : A. I. R. 1929 Cal. 99.

—S. 4 (2)—*"Lives in," meaning—Residence for four days, whether sufficient.*

A residence in a brothel for about four days

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before rescue comes within the meaning of the words "lives in" in S. 4 (2). The whole purpose of the Act would be frustrated if a girl has to be an ordinary resident before the section can come into operation. *Hemangini Dasi v. Emperor*. 27 Cr. L. J. 1066 : 97 I. C. 42 : 30 C. W. N. 768 : A. I. R. 1926 Cal. 944.

—S. 5—Girl attaining age of 16, whether can be kept under charge.

Under S. 5 the Police has no power to continue to keep a girl under their charge after she has attained the age of 16 years. *Maharani Dassi v. Commissioner of Police*. 27 Cr. L. J. 159 : 91 I. C. 895 : 30 C. W. N. 72 : A. I. R. 1926 Cal. 339.

—S. 6—Landlord letting premises to prostitutes—Interviewing visitors and collecting rent daily at gate of brothel—Offence.

The accused who had sub-let his premises to certain prostitutes used to go to the premises at night and sit at the gate and collect his rent daily from the visitors. There was evidence to show that his men were engaged in interviewing the people who visited the prostitutes and the rent he collected daily was also such as to give him a large profit : *Held*, per *Graham and Duval, JJ.* (*Cammiade, J.*, dissenting) that the accused was in part, at all events, living on the earnings of prostitution and that he was liable to the penalty provided in S. 6. Per *Cammiade, J.*—That the facts did not bring the case within the purview of S. 6 though the accused's calling was clearly loathsome. *Kambhoo Bera v. Emperor*. 29 Cr. L. J. 917 : 111 I. C. 725 : 32 C. W. N. 195 : 11 A. I. Cr. R. 68 : A. I. R. 1928 Cal. 381.

—S. 6 (1).

Though female cannot be guilty of committing substantive offence under S. 6 (1), yet she can be guilty of abetting such offence. *Padmamoni Dassi v. Emperor*. 33 Cr. L. J. 68 : 138 I. C. 661 : 36 C. W. N. 615 : 55 C. L. J. 435 : 59 Cal. 1260 : I. R. 1932 Cal. 490 : A. I. R. 1932 Cal. 457.

—S. 8.

Carrying profession of singer and dancer by woman does not necessarily connote business of prostitution. *Parbati Dassi v. Emperor*. 35 Cr. L. J. 722 : 148 I. C. 597 : 58 C. L. J. 1 : 6 R. C. 472 : A. I. R. 1934 Cal. 198.

—S. 8.

S. 8 is wide enough to include any person, either stranger or relative of woman brought for immoral purposes. It is immaterial whether woman brought is minor girl or woman. *Parbati Dassi v. Emperor*. 35 Cr. L. J. 722 : 148 I. C. 597 : 58 C. L. J. 1 : 6 R. C. 472 : A. I. R. 1934 Cal. 198.

CANADIAN STATUTE (23 and 24 GEO. V. C. 53 Amending Criminal Code).

—S. 17—Validity of—Petition from judgment of King's Bench Court (Appeal Side) of Province of Quebec, whether prohibited.

Held, that S. 17 of the Canadian Statute amending the Criminal Code was valid. Consequently petition to the King in Council from the judgment of the King's Bench Court (Appeal Side) of the Province of Quebec in criminal cases is prohibited. *British Coal Corporation v. The King*. 157 I. C. 571 P. C. : 8 R. P. C. 38 : A. I. R. 1935 P. C. 158.

CANALS ACT (VIII OF 1873).

—S. 70—Accused severely injured by complainant—Maximum sentence is unnecessary.

In revenge for the offence committed by the accused, he was attacked by certain persons, one of whom used a *kahi*, and the bone of his nose was severed into several fragments: *Held*, that under such circumstances the maximum sentence of one month's rigorous imprisonment was not necessary but that 15 days' rigorous imprisonment was enough. *Guran Ditta v. Emperor*. 6 L. L. J. 620 : A. I. R. 1925 Lah. 279.

—S. 70—Cutting through bank of canal distributary—Offence.

Certain persons having been found to have cut through the bank of a canal distributary and irrigated their own fields therefrom, it was *held* that they would be more properly convicted of an offence under S. 70 of Canal Act than of an offence under S. 430, Penal Code, in the absence of evidence that by the act done a diminution of the supply of water for agricultural purposes had been caused. *Emperor v. Taj-ud-Din*. 7 Cr. L. J. 296 : 28 A. W. N. 55 : 5 A. L. J. 159.

—S. 70 (4)—Authorised distribution, meaning—Private arrangement of water, disturbance of—Offence—Civil remedy.

The 'authorized distribution' in S. 70 (4), refers only to such distribution as has been expressly made by the Canal Authorities, and any further distribution between a landlord and his tenant is a matter of private contract which merely entitles the tenant to bring a Civil claim. *Basan v. Emperor*. 14 Cr. L. J. 281 : 19 I. C. 713 : 217 P. L. R. 1913 : 21 P. W. R. 1913 Cr. : 19 P. R. 1913 Cr.

CANTONMENT.

Held, that it was not possible to place implicit reliance upon General Land Register of Rawalpindi Cantonment without corroborative evidence. *Maman Singh v. Emperor*. 36 Cr. L. J. 1475 : 158 I. C. 858 : 37 P. L. R. 236 : 8 R. L. 317 : A. I. R. 1935 Lah. 588.

CANTONMENT CODE, 1899.

—Practice—Conviction under particular section—Section not justifying conviction—Conviction maintainable on other grounds—Benefit to

CANTONMENT CODE, 1899

It is no part of the duty of the superior Courts to search through a voluminous enactment like the Cantonment Code in order to ascertain whether convictions are maintainable otherwise than under the precise sections quoted by the Magistrate as his authority. Where, therefore, a Magistrate convicts under a wrong section of the Code, whether by inadvertence or otherwise, the accused is entitled to benefit of the mistake and the Magistrate's orders are liable to be set aside as illegal. *Emperor v. Sita Ram*.

12 Cr. L. J. 371 :

11 I. C. 139 : 20 P. L. R. 1911.

—————*Proceedings under—Procedure.*

Where a Cantonment Magistrate institutes a prosecution, under the Cantonment Code, against the accused, he ought to inform him that the latter is entitled to have his case tried by another Magistrate, and his not doing so, is an irregularity which will vitiate the proceedings. *Mohib Ali v. Emperor*.

4 Cr. L. J. 374 :

3 A. L. J. 694 : 26 A. W. N. 303.

—————*Strict construction.*

The penal sections of the Cantonment Code are of so rigorous a nature that they must be construed strictly in favour of an accused as well as against him. *Emperor v. Sita Ram*.

12 Cr. L. J. 371 :

11 I. C. 139 : 206 P. L. R. 1911.

—————*Ss. 22, 282—No offence for not paying in time license fees for hackney carriages.*

A proclamation purporting to be under S. 282 was issued in the Cantonment that license fees for hackney carriages were to be paid by the 15th of each month, accused who failed to pay the fees in time, were convicted under Ss. 22, 282: *Held*, that the conviction was erroneous; and the mere fact, that a tax-collector had the trouble of making repeated demands did not constitute an offence under S. 22. *Jamala v. Emperor*.

5 Cr. L. J. 23 :

1 P. W. R. Cr. 42 : 8 P. L. R. 69.

—————*S. 66 (1)—Carrying meat exposed to public view—Servant's offence—Master's liability.*

The offences aimed at by S. 66 (1) are personal offences and not offences which can be committed by delegation. Hence, a master cannot be punished under the section for an act of his servant in carrying meat in a bullock cart exposed to public view, which is not proved to be committed with his knowledge or authority. *Emperor v. Jaffar Haji Ismail*.

9 Cr. L. J. 182 :

10 Bom. L. R. 1052.

—————*S. 66 (1), (g)—Gambling—Common gaming-house. Use of.*

Held, that persons found gambling in a common gaming-house cannot be said to be using the house as a common gaming-house within the terms of S. 66 (1), (g). *Madho v. Emperor*.

3 Cr. L. J. 78 :

6 P. L. R. 578.

—————*Ss. 79, 96—Notice—Power delegated to two members—Notice by one.*

Where the Cantonment Committee delegated

CANTONMENT CODE, 1899.

the power to issue notices on a sub-committee of two members, any single member had no power to issue a notice to a house-owner to repair his house. *Ram Saran Das v. Emperor*.

6 Cr. L. J. 348 :

4 A. L. J. 694 : 27 A. W. N. 275.

—————*S. 83—Notice for repairs of building—"Insanitary state and 'defects' meaning—Notice for general repairs, legality.*

The phrase "insanitary state" in S. 83, does not mean an insanitary state generally, but an insanitary state as qualified by the preceding words, that is, an insanitary state resulting from the ill-construction or dilapidation of the building. The word 'defects' in that section means 'sanitary defects,' and the repairs which the notice may require the owner to execute must, therefore, be such repairs as are necessary to remove the sanitary defects resulting from the ill-construction or dilapidation of the building. The Cantonment authority is not authorised by the provisions of S. 83 to issue a notice for general repairs. *G. T. Jackson v. Emperor*.

1 Cr. L. J. 160 :

7 O. C. 51.

—————*Ss. 83, 85—Prosecution under—Presumption as to issue of notice by duly constituted authority.*

For the purposes of a prosecution under S. 85 read with S. 83, it is not necessary for the prosecution to begin by proving that the authority which issued the notice was duly constituted, and the Court ought to presume, until some evidence is given to destroy the presumption, that the Cantonment authority used the regular and lawful procedure, and that the common course of business was followed in its procedure, and it is for the person raising the objection to give some evidence to show that it would not be safe to make such a presumption. *G. T. Jackson v. Emperor*.

7 O. C. 51 :

1 Cr. L. J. 160.

—————*Ss. 89, 283—Officer-Commanding—Cantonment Committee—Building without permission.*

Held, that the Officer Commanding a regiment is not the Cantonment authority whose permission to build within Cantonment limits is sufficient under S. 5. Building a hut with the permission of the Officer-Commanding but without the permission of the Cantonment Magistrate, who is the proper authority, is an offence under Sections 89 and 283. *Nathu v. Emperor*.

1 Cr. L. J. 979 :

1 A. L. J. 608.

—————*Ss. 92, 107—Magistrate ordering prosecution, whether can try case himself.*

Where on a report being made by a Cantonment official, the Cantonment Magistrate wrote "A is to blame. Prosecute A," and then proceeded to try the case himself and convicted the accused: *Held*, that the Magistrate should have informed the accused that he was entitled to have the case tried by another Magistrate and should not have tried the case himself. *Anandi Parshad v. Emperor*.

21 Cr. L. J. 394 :

55 I. C. 1002 : 124 P. L. R. 1920 :

2 U. P. L. R. Lah. 78 : A. I. R. 1920 Lah. 203.

CANTONMENT CODE, 1899.

———S. 94—*Notice not specifying nature and extent of repairs, whether legal.*

A notice under S. 94 which does not state at all what kind of repairs the Cantonment authority requires the owner to make to the houses specified in the notice, is illegal. *Emperor v. Qadir Baksh.*

13 Cr. L. J. 17 :
3 P. R. 1912 Cr. : 56 P. L. R. 1912 :
9 P. W. R. 1912 Cr. : 13 I. C. 209.

———S. 94—*Notice to repair buildings in private bungalow—Public safety—Jurisdiction of Civil and Criminal Courts to interfere with discretion of Cantonment authority.*

Under S. 94 a Cantonment authority has power to order any building, &c., to be repaired in such manner as in the opinion of that authority the public safety may require. The Civil and Criminal Courts have no jurisdiction to interfere with the orders passed by Cantonment authority in the exercise of discretion under the said clause, unless it is exercised corruptly or maliciously. The mere fact that building directed to be repaired is situate within the compound of a private bungalow is insufficient to establish that its repair is not necessary in the interests of public safety. *Emperor v. Miran Bakhsh.*

1 Cr. L. J. 1093 :
19 P. R. Cr. of 1904.

———S. 94—*Option of removing or repairing to be given.*

A notice under S. 94 must give the owner the option of removing the building or making adequate repairs.

3 Cr. L. J. 301 :
6 P. L. R. 581 : 23 P. R. Cr. 1905.

———S. 94—*Safety of tenant, his guests or servants, if public safety—Revision—Criminal cases—Jurisdiction of Criminal Courts to enquire into the legality of notice.*

It is only such repairs as may be necessary for the public safety that can be ordered by a notice under r. 94. The safety of the tenant of a bungalow or of his guests, servants and animals does not fall within the meaning of public safety. *Wazir Ullah v. Emperor.*

3 Cr. L. J. 346 :
7 P. L. R. 142 : 1 P. R. Cr. 1906.

———Ss. 94, 104, 291—*Notice—Validity of notice under S. 94 issued by a Cantonment Magistrate on his own authority—Material defect.*

A notice purported to be under S. 94 and issued by a Cantonment Magistrate on his own authority and not in pursuance of any order or resolution of the Cantonment Committee being altogether illegal, a person cannot be convicted under S. 104 for non-compliance therewith. The authority to issue notices under S. 94 being vested by the Code in a constituted committee or sub-committee, the defect is not merely one of form curable by S. 291 but an illegality. *Gopal Sahai v. Emperor.*

5 Cr. L. J. 493 :
3 P. R. Cr. 1907 : 47 P. L. R. 1907.

———S. 96—*Orders for removal and re-building of walls—Effect of a standing order of the Committee.*

CANTONMENT CODE, 1899.

The only authority that can require the owner of land to remove a boundary wall and re-build it is the Cantonment Committee, and before an order can legally be issued by that body, the members thereof must form the opinion that the wall is unsuitable, unsightly or otherwise objectionable. A standing order of the Cantonment Committee, that all the walls fronting the road should be re-built with brick as they fell into dis-repair, cannot be construed as vesting in the Cantonment Magistrate the discretionary power of the Committee to decide whether or not any particular wall was unsightly and should be removed. *Emperor v. Detaram Watanmal.*

9 Cr. L. J. 447 :
1 I. C. 940 : 3 S. L. R. 11.

———S. 96—*Power of Cantonment Magistrate.*

A Cantonment Magistrate, being only the Executive Officer of the Cantonment has no authority of his own initiative, to issue an order under S. 96. *Emperor v. Detaram Watanmal.*

9 Cr. L. J. 447 :
1 I. C. 940 : 3 S. L. R. 11.

———S. 104—*Ignorance of amendment, conviction, if can be set aside.*

A conviction under amended S. 104 cannot be set aside merely on the ground that the accused did not know of the amendment of the section, especially where the accused deliberately disobeyed the orders given to him. *Emperor v. Sita Ram.*

12 Cr. L. J. 371 :
11 I. C. 139 : 20 P. L. R. 1911.

———S. 104—*Legality of notice under S. 94 must be decided.*

When a person is accused of not complying with a notice issued under S. 94, it is the duty of the Magistrate to decide, whether the notice was proper and legally issued. Where in a case the Magistrate had not done so, and the notice was found to be illegal, the Chief Court on revision set aside the order of conviction. *Wazir Ullah v. Emperor.*

3 Cr. L. J. 346 :
7 P. L. R. 142 : 1 P. R. Cr. 1906.

———S. 104—*Notice under S. 94, not giving option—Conviction under S. 104.*

A conviction under S. 104 for not obeying a notice issued under S. 94 which merely required removal of the building is illegal. *Emperor v. C. Bevan-Petman.*

3 Cr. L. J. 301 :
6 P. L. R. 581 : 23 P. R. Cr. 1905.

———S. 104—*Prospective fine.*

A prospective fine under cl. 104 of the Code is illegal. *Emperor v. Miran Bakhsh.*

1 Cr. L. J. 1093 :
19 P. R. Cr. 1904.

———Ss. 104, 89—*Future daily fine—Failure to carry out directions—Proper course.*

An order directing a person, who has erected structure without sanction, to remove the structure within a certain time, or in default, to pay thereafter a daily fine is improper. If the Magistrate's directions are not carried out, then the proper course is to institute a further

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prosecution and allow the accused an opportunity of defending himself before the further fine is imposed. *Emperor v. Sita Ram*.

12 Cr. L. J. 371 :
11 I. C. 139 : 205 P. L. R. 1911.

—Ss. 167, 168, 173—*Aerated waters. License for sale of conditions of license—Breach of ultra vires conditions.*

A licensee for sale of aerated waters in a Cantonment cannot be convicted of the breach of conditions of the license which are *ultra vires*. The Cantonment Committee has no power to select manufacturers as such. *Emperor v. Prabh Dial*.

3 Cr. L. J. 131 :
6 P. L. R. 655 : 47 P. R. Cr. 1905.

—S. 167 (j)—*Article of 'perishable nature'—Brown sugar.*

Brown sugar is not an 'article of food which is of a perishable nature' within the meaning of S. 167, cl. (j), and the person selling it within the Cantonment is not guilty of any offence. *Mohib Ali v. Emperor*.

4 Cr. L. J. 374 :
3 A. L. J. 694 : 26 A. W. N. 303.

—S. 203—"Prima facie grounds for believing"—*Information forwarded by Medical Officer of one Cantonment to another.*

Information forwarded by the Medical Officer of one Cantonment to the authorities of another, to the effect that a woman is believed to have a venereal disease, amounts to "prima facie grounds for believing" within the meaning of S. 203. The vague and general wording employed in the section seems intended to cover all such matters as would justify an executive officer in taking action. *Emperor v. Phushki*.

11 Cr. L. J. 199 :
4 I. C. 1157 : 3 S. L. R. 184.

—S. 283—*Conviction, for failure to comply with notice under S. 83, legality of.*

A penalty for failure to comply with a notice under S. 83 being expressly provided for in S. 85, the conviction under S. 283 for such failure is illegal. *Rai Narain Das v. Emperor*.

1 Cr. L. J. 215 :
7 O. C. 68.

—S. 283.

Fine cannot be imposed for breach of conditions of license.

11 Cr. L. J. 17.

—Ss. 283, 83, 85—*Notice for general repairs—Conviction under S. 283 on failure to comply—Procedure—Validity.*

Where the Cantonment Magistrate, by a notice purporting to have been issued in accordance with S. 83, directed the accused to carry out certain general repairs in a house but the accused having failed to comply with the notice, was convicted under S. 283 : *Held*, that the procedure adopted was not authorised by S. 83, and also that the repairs ordered were not contemplated by S. 83, and that the notice under that section was bad and invalid in law. *Rai Narain Das v. Emperor*.

1 Cr. L. J. 215 :
7 O. C. 68.

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—Ss. 283, 131—*Recovery of rent by Cantonment authority by applying Criminal Law.*

Failing to pay rent for a stall which the accused had rented from the Cantonment authority under S. 131 (1), he was served with a notice to pay the rental in 18 hours. Failing to comply with the notice, he was fined Rs. 5 and a recurring fine of annas four per day was also imposed under S. 283 : *Held*, that the notice to pay rent or stallage was not a notice under the Code, and failure to pay such stallage, or rent, was not a breach of any provision of the Code within the terms of S. 283. *Emperor v. Maghi Ram*.

5 Cr. L. J. 87 :
15 P. R. Cr. 1906.

—Ss. 92, 107—*Scope of—Occupier, if can be made liable.*

The word 'whoever' in Section 107 cannot be confined in its application to the owner or lessee merely, but refers also to the occupier and an offence against Section 92 may also be committed by the occupier or even a trespasser. *Anandi Parshad v. Emperor*.

21 Cr. L. J. 394 :
55 I. C. 1002 : 2 U. P. L. R. Lah. 78 :
124 P. L. R. 1920 :
A. I. R. 1920 Lah. 203.

—S. 97—*Building in ruinous condition—Removal or repairs—Owner, whether has choice.*

The option given by Rule 97 of the Cantonment Code of deciding, when any building is in a ruinous condition or in any way dangerous to the occupier, whether the owner shall be required to remove the same, or be required to cause repairs to be made, is an option given to the Cantonment Authority and not to the owner of the building. *Byramji Pudumji v. Emperor*.

20 Cr. L. J. 697 :
52 I. C. 665 : 21 Bom. L. R. 76 :
43 Bom. 838 : A. I. R. 1919 Bom. 172.

—Ss. 97, 107-A—*Order directing repairs to be carried out, failure to obey—Sentence in respect of future default, legality of.*

An order under Rule 107-A of the Cantonment Code inflicting a fine for persistent failure to carry out an order under Rule 97 of the Code must, in order to be legal, refer to a failure as regards the past. It is illegal to convict a person, under this rule, of a failure in regard to the future. *Byramji Pudumji v. Emperor*.

20 Cr. L. J. 624 :
52 I. C. 288 : 21 Bom. L. R. 759 : 43 Bom. 836 :
A. I. R. 1919 Bom. 28.

—S. 103-B—*Proceedings under—written notice necessary.*

Proceedings under S. 103-B are illegal if the accused has not had written notice as required by the section. *Gur Din v. Emperor*.

20 Cr. L. J. 384 :
50 I. C. 992 : 17 A. L. J. 603 :
A. I. R. 1919 All. 158.

—S. 103-B, 288—*Bond for appearance to answer charge.*

A Magistrate is entitled to require a person charged with an offence to give a bond for his

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attendance and the accused person, whether guilty or not, is bound to obey the terms of the bond and to appear to answer the charge. *Gur Din v. Emperor*. 20 Cr. L. J. 384 :

50 I. C. 992 : 17 A. L. J. 503 :
A. I. R. 1919 All. 158.

—S. 231 (2)—“Absence,” of nine days from Cantonment—Offence.

An absence of nine days from a Cantonment is such absence as is contemplated by S. 231 (2) of the Code and would render the delinquent liable to conviction and punishment under the section. *Hotchand v. Emperor*.

19 Cr. L. J. 974 :
47 I. C. 874 : 12 S. L. R. 40 :
A. I. R. 1918 Sind 47.

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—S. 2 (37)—Space having gates on both sides : Held, it was not a street. *Momun Singh v. Emperor*. 36 Cr. L. J. 1475 :

158 I. C. 858 : 37 P. L. R. 236 :
8 R. L. 317 : A. I. R. 1935 Lah. 588.

—S. 13—Intoxicating drug—Supply—Interpretation.

The word “supply” in S. 13 has a restricted meaning. It has the same idea underlying it in common with the words preceding it. It relates to a transaction between two persons dealing at arm’s length and therefore independent of each other for its purposes. Hence, the servant of a soldier who buys liquor on his master’s behalf and gives it to his master, cannot be said to have “supplied” the liquor to his master within the meaning of S. 13. *Emperor v. Shimau*. 6 Cr. L. J. 67 :

9 Bom. L. R. 703 : I. L. R. 1931 Bom. 523.

—S. 106 (c)—S. 106 (c), whether ultra vires the then Indian Legislature—Even if it had related to Provincial and not Central subject, it could not be challenged by virtue of S. 84 (2), Government of India Act, 1919.

No doubt fines imposed by Criminal Courts in the Province would be properly credited to provincial revenues as receipts accruing in respect of the administration of justice, but only if not otherwise appropriated by competent authority, and entry No. 30 in the list of central subjects, contained in Sch. I of Government of India Act of 1919, “Criminal Law, including criminal procedure,” clearly includes the power to legislate for the destination of fines for any criminal offences with respect to which it was competent for the Indian Legislature to legislate. The Devolution Rules of 1920, in making Criminal Law a central subject, gave the then Indian Legislature power not only to create criminal offences but also to provide for the destination of fines imposed in respect of such offences. Thus the Indian Legislature had power under the Devolution Rules to legislate with respect to Cantonments and with respect to Criminal Law and the latter power included a power to legislate with respect to the destination of fines imposed for breaches of the Criminal Law. The Indian Legislature had, therefore, power to enact S. 106 of the Cantonments Act, 1924. S. 106 was not, therefore,

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ultra vires the then Legislature. Even if S. 106 of the Cantonments Act, 1924, had related to a provincial and not a central subject, the Act once passed could not be successfully challenged in any Court of law by virtue of S. 84 (2), of Government of India Act of 1919. Accordingly, it was a law in force in British India immediately before the commencement of Part III of the Constitution Act of 1935, and by reason of S. 292 of that Act it continued in force in British India until altered or repealed or amended by a competent Legislature or other competent authority. *United Provinces v. Governor-General-in-Council*.

40 Cr. L. J. 403 (F. C.) :

180 I. C. 863 : 11 R. F. C. 44 (2) :

5 B. R. 554 : 1939 O. L. R. 246 :

1939 M. W. N. 750 : 1939 2 M. L. J. 1 Sup. :

50 L. W. 209 : 1939 F. C. R. 124 :

1939 Kar. (F. C.) : 98 (F. C.) :

A. I. R. 1939 (F. C.) 58.

—S. 118.

A verandah of a private house accessible to a public street is not a public place. *Jagne v. Emperor*. 33 Cr. L. J. 345 :

136 I. C. 720 : 33 P. L. R. 448 :

I. R. 1932 Lah. 256 : A. I. R. 1931 Lah. 576.

—S. 118 (1) (a) (iii)—Ingredients of offence.

The giving of offence by exposure of one’s person is not a necessary ingredient of the offence under S. 118 (1) (a) (iii). The offence is complete if the exposure is wilful or indecent and in a public place. *Bahri v. Emperor*.

27 Cr. L. J. 107 :

91 I. C. 539 : A. I. R. 1926 All. 263.

—Ss. 118 (1) (c)—Takht posh, whether included.

A takht posh or wooden moveable platform is not “earth or material of any description or any offensive matter or rubbish” within the meaning of cl. (c) of S. 118 (1). *Sri Ram v. Emperor*. 28 Cr. L. J. 683 :

103 I. C. 411 : 9 A. I. Cr. R. 24 :

A. I. R. 1927 Lah. 647.

—S. 141 (1).

Offences under S. 141 (1) read with S. 268, Cantonments Act, and offences under S. 141 (2), Cantonments Act, are not specified in Sch. IV of the Act, and, therefore, no Court can proceed with the trial of any of these offences except on the complaint of or upon information received from the Cantonment Authority concerned or a person authorised by such authority. *Lachman Prasad v. Emperor*.

36 Cr. L. J. 1493 :

158 I. C. 1010 : 8 R. A. 359 :

A. I. R. 1935 All. 905.

—S. 184.

S. 184 provides no penalty for a continuing failure or contravention, although such a penalty is provided in S. 208. *Gokul Chand Roy v. Emperor*. 35 Cr. L. J. 666 :

148 I. C. 420 : 11 O. W. N. 156 :

6 R. O. 396 : A. I. R. 1934 Oudh 29.

—S. 184 (b).

S. 184 (b) does not provide a punishment for

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mere non-compliance with a direction made under Sub-s. (1) of S. 181. *Gokul Chand Roy v. Emperor*. 35 Cr. L. J. 666 :

148 I. C. 420 : 11 O. W. N. 156 :
6 R. O. 396 : A. I. R. 1934 Oudh 29.

—S. 185.

Building erected without notice before Act of 1924—Notice for demolition after Act—Offender can be prosecuted under Act, 1924, for disobedience. *Parma Nand v. Emperor*.

33 Cr. L. J. 336 :
136 I. C. 713 : 33 P. L. R. 380 :
I. R. 1932 Lah. 249 :
A. I. R. 1932 Lah. 370.

—S. 185.

Under Act of 1924 notice need not be given within reasonable time. *Parma Nand v. Emperor*.

33 Cr. L. J. 336 :
136 I. C. 713 : 33 P. L. R. 380 :
I. R. 1932 Lah. 249 :
A. I. R. 1932 Lah. 370.

—S. 187.

Illegal notice—Compliance, is not necessary—Qualified sanction to proceed with construction—Subsequent notice to demolish 'unauthorised construction'—Non-compliance—Prosecution is not proper—Dispute between parties, is of civil nature. *Cantonment Board, Agra v. Kashi Ram*.

34 Cr. L. J. 1191 :
146 I. C. 2 : 6 R. A. 261 :
A. I. R. 1933 All. 486.

—S. 187.

Officer ordinarily authorized to communicate sanction, writing to applicant and conveying sanction—Applicant is entitled to act on it. *Gopi Chand v. Emperor*.

35 Cr. L. J. 700 :
155 I. C. 273 : 35 P. L. R. 414 : 7 R. L. 682 :
A. I. R. 1934 Lah. 570.

—Ss. 210, 213, 216—'Butcher', definition of—Importation of meat in excess of that required for personal use and distribution—Presumption—Absence of license, effect of—Conviction.

The term 'butcher' includes not only a man who kills animals for human consumption, but also a man who deals in meat. If a person who is by trade a butcher imports meat in large quantities far more than could be required for his personal use, and distributes it, it may be presumed that he carries on the trade of a butcher and imports meat for sale and has sold it and in the absence of evidence to rebut the presumption, he may be convicted under Ss. 213 and 216 if he does so without a license. *Mahomeddin v. Emperor*.

30 Cr. L. J. 906 :
118 I. C. 223 : I. R. 1929 Sind 191 :
A. I. R. 1929 Sind 150.

—Ss. 210 (g), 213—Notice prohibiting person from selling fruit—On representation he allowed to continue business—He applying for license but not paying prescribed fee—No issue of license—Summary trial and conviction—Procedure, legality of.

The Cantonment Authority served a notice upon certain person prohibiting him from selling fruit in his shop in Cantonment area, but on representation he was allowed to

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continue his business. Whether the Cantonment Authority required him then to take out a license or not, was not clear but he subsequently applied to the Cantonment Authority for a license. The person did not pay the prescribed fee for the license and therefore no license was issued to him. He was tried summarily and convicted under Ss. 210 (g) and 213 : *Held*, that the person could not take advantage of S. 210 (3) owing to his own conduct in applying for a license and not taking it out subsequently and his conviction could not be interfered with in revision : *Held*, also that this was not a case which should have been tried summarily by the Magistrate as the question of compensation might have arisen under certain contingencies and it would have been difficult to ascertain it without sufficient record. *Naru Ram v. Executive Officer, Cantonment Board, Multan Cantonment*. 39 Cr. L. J. 653 :
175 I. C. 544 : 10 R. L. 742 :
A. I. R. 1938 Lah. 427.

—S. 236 (1).

Person importuning need not importune commission of sexual immorality with himself. *Narain v. Emperor*. 37 Cr. L. J. 372 :
160 I. C. 884 : 1936 A. L. J. 193 :
8 R. A. 670 (2) : A. I. R. 1936 All. 129.

—S. 236 (1), (2).

Regimental Provost Sergeant sending complaint under S. 236 to Sub-Inspector—Latter forwarding original to Magistrate—Sergeant member of Military Police and authorised to make complaint under S. 236—Complaint held proper. *Narain v. Emperor*. 37 Cr. L. J. 372 :
160 I. C. 884 : 1936 A. L. J. 193 :
8 R. A. 670 (2) : A. I. R. 1936 All. 129.

—S. 236 (2).

A person can be legally convicted under S. 236 only when the prosecution is instituted strictly in accordance with the provisions of S. 236, Sub-s. (2). *Abdul Karim v. Emperor*. 35 Cr. L. J. 609 :
147 I. C. 1200 : 35 P. L. R. 284 :
6 R. L. 499 : A. I. R. 1933 Lah. 590.

—S. 247.

Four hours' notice is not necessary for entry with implied consent. *Kallan Khan v. Emperor*. 36 Cr. L. J. 356 :
153 I. C. 469 : 1935 A. L. J. 175 :
7 R. A. 505 : A. I. R. 1935 All. 160.

—S. 266.

There was upon the record a letter purporting to be signed by the Executive Officer of the Cantonment. It was not proved that it was signed by the Cantonment Authority nor that the officer was authorised by the Cantonment Authority : *Held*, that S. 266 was not complied with and the proceedings held on that letter and orders were invalid. *Lachhman Prasad v. Emperor*.

36 Cr. L. J. 1493 :
158 I. C. 1010 : 8 R. A. 359 :
A. I. R. 1935 All. 905.

CASE-LAW

—S. 266—Offence under the Act—Prosecution—Procedure.

Under S. 266 no Court can proceed to the trial of any offence under the Cantonments Act unless moved by the persons mentioned therein; and if such persons initiate the proceedings as provided in the section, the Court must follow the procedure laid down in the Cr. P. C. *Surajdeen v. Emperor*. 29 Cr. L. J. 591 : 109 I. C. 607 : 10 A. I. Cr. R. 365.

—S. 268—Valid notice, what is.

A conviction cannot be sustained for disobedience of a notice issued by the Executive Officer of a Cantonment when the notice was not issued by or with the approval of the Cantonment Authority. Subsequent confirmation by the Board is of no avail. *Muhammad Ali Khan v. Emperor*.

35 Cr. L. J. 612 :
148 I. C. 56 : 6 R. L. 501 :
A. I. R. 1933 Lah. 545 (1).

—S. 268.

Bamboo being an inflammable wood, a person selling bamboos, *ballics*, *takhats* and *karies* within the Cantonment without license is guilty under S. 268. *Sri Ram v. Emperor*.

36 Cr. L. J. 261 (2) :
153 I. C. 131 (2) : L. R. 16 All. 20 (1) Cr. :
7 R. A. 447 : A. I. R. 1934 All. 987 (1).

—S. 268.

It is not proper to substitute a conviction under S. 268 for one under S. 184 (b). *Gokul Chand Roy v. Emperor*.

35 Cr. L. J. 666 :
148 I. C. 420 : 11 O. W. N. 156 :
6 R. O. 396 : A. I. R. 1934 Oudh 29.

—S. 271.

Where what was built had been completed more than six months before the date of complaint, trial for an offence under S. 271, is not proper. *Gokul Chand Roy v. Emperor*.

35 Cr. L. J. 666 :
148 I. C. 420 : 11 O. W. N. 156 : 6 R. O. 396 :
A. I. R. 1934 Oudh 29.

—S. 236—Prostitution, loitering for—Male, conviction of.

A male can be convicted of an offence of loitering for purpose of prostitution under S. 236 (1) *Emperor v. Maridas Lazar*. 27 Cr. L. J. 555 : 93 I. C. 1051 : 28 Bom. L. R. 298 : A. I. R. 1926 Bom. 227.

CAPITAL CASE.

—Evidence in, nature of.

To suggest that in capital cases stronger evidence or a higher degree of certainty is required than in other criminal cases is wrong. *Superintendent and Legal Remembrancer of Legal Affairs, Bengal, v. Lalit Mohan Singha Roy*.

22 Cr. L. J. 562 :
62 I. C. 578 : 25 C. W. N. 788 :
A. I. R. 1921 Cal. 111.

CASE-LAW.

See Practice—Precedent.

CATTLE TRESPASS ACT (I OF 1871).

—S. 10—Cattle leaving land trespassed—Right of seizure.

Obiter—Where notice of trespass by the cattle is taken at once, the mere fact that the cattle had left the land before they could be seized does not deprive the owner of the land of the right of seizure conferred upon him by S. 10. *Waryami v. Emperor*. 30 Cr. L. J. 627 : 116 I. C. 463 : I. R. 1929 Lah. 527 : A. I. R. 1928 Lah. 692.

—S. 10—Damage, grazing.

Grazing is sufficient within the meaning of S. 10. *Eerappa v. Thippiah*. 9 Cr. L. J. 519 : 13 M. C. C. R. 40.

—S. 10—Right to seize cattle, extent of.

The right to seize cattle under S. 10 subsists only while the cattle are on the land and does not continue even after they have left the land trespassed upon, and the owner of the land has no right to go to the owner of the cattle and demand the delivery of the cattle in order that he may take them to the cattle pound. *Bhagwantrao v. Champat Rao*.

25 Cr. L. J. 1004 :
81 I. C. 716 : A. I. R. 1925 Nag. 50.

—S. 10—Right of seizure—extent.

Right of seizure extends to chasing cattle even outside field trespassed before they have definitely made their escape from the spot. *Jagannath Singh v. Emperor*. 36 Cr. L. J. 361 : 153 I. C. 427 : 31 N. L. R. 139 : 7 R. N. 133 : A. I. R. 1934 Nag. 258.

—S. 10—Seizure of cattle for coercing owner to pay rent for grazing, whether offence—Theft.

Teunon, J.—A lessee of grazing land is entitled, under S. 10 to impound cattle whose owners, while obstinately refusing to come to any arrangement with the lessee or to pay the customary or any fee, insist on grazing their cattle on the lessee's pasture. The fact that the lessee may hope that in order to prevent the impounding, the owners will make a payment, does not make the lessee's conduct unlawful nor converts the seizure of the cattle into an attempt at distraint. *Per Huda, J.*—Such seizure by the lessee without any intention to take the cattle to a pound for the purpose of coercing the owners of the cattle to pay the arrears of rent for grazing is clearly illegal and amounts to an attempt of theft, which the owners are entitled to resist by use of force. *Wazuddi v. Rahimuddi*. 18 Cr. L. J. 849 : 41 I. C. 817 : A. I. R. 1918 Cal. 701.

—S. 10—Trespass—Watchman seizing cattle—legality of.

Under S. 10 a watchman watching crops on the land on behalf of the cultivator or occupier is entitled to seize cattle trespassing on the land under his charge, when he is given general instructions to seize them while so trespassing. *In re : Subbaraya Pillai*. 16 Cr. L. J. 772 : 31 I. C. 372 : A. I. R. 1916 Mad. 786.

—S. 11.

Straying cattle may be seized and impounded before damage is caused—Person responsible

CATTLE TRESPASS ACT (I OF 1871)

for their staying can also be convicted. *Ahmad Usman v. Emperor*. 35 Cr. L. J. 830 :

148 I. C. 982 : 28 S. L. R. 73 : 6 R. S. 212 :
A. I. R. 1934 Sind 34 :

———S. 10—Who may seize.

Where an indigo factory supplies to the *raiya*s the seed and pays for the labour of sowing indigo on the land of the *raiya*s, but no advance in cash is proved to have been made by the factory, the factory may have an interest in the crops grown but it has not an interest which comes within S. 10 and a seizure of the buffaloes of the *raiya*s damaging the crops by a peon of the factory is not a seizure by any person authorised to make it. *Ram Karan Thakur v. Emperor*. 2 Cr. L. J. 345 :
9 C. W. N. 624.

———Ss. 10, 24—Occupier, whether entitled to seize cattle trespassing on his land—Claim by owners of cattle to ownership of land, effect of.

A person who is in exclusive possession of a plot of land is an occupier thereof within the purview of S. 10, and as such, is entitled to seize, or cause to be seized, any cattle trespassing on the land in his possession. The fact that the owners of the cattle claim to be owners of the land as well does not affect his right, and if they resist the removal of the cattle they make themselves liable to a conviction under S. 24. *Emperor v. Saudagar*. 17 Cr. L. J. 63 :
32 I. C. 655 : 3 P. R. 1916 Cr. :
A. I. R. 1916 Lah. 281.

———S. 20—Criminal Procedure Code, Ss. 4 (o), 29—Offence under S. 20—Jurisdiction of Magistrate—Special authorisation, whether necessary.

The inclusion in S. 4 (o) of the Criminal Procedure Code in the definition of an offence of an "act in respect of which a complaint may be made under S. 20 of the Cattle Trespass Act" renders it unnecessary for a Magistrate who is generally empowered under the Criminal Procedure Code to receive complaints of offences, to be specially authorised by the District Magistrate to receive complaints under that section of the Cattle Trespass Act. *Deenadayulu Naidu v. Ratna Padayachi*. 28 Cr. L. J. 301 :
100 I. C. 381 : 52 M. L. J. 251 :
25 L. W. 282 : 1927 M. W. N. 167 :
50 Mad. 841 : A. I. R. 1927 Mad. 396.

———S. 20—Joinder of charge under S. 20, and S. 504, Penal Code, legality of—'Same transaction.'

A joinder of charges for offences under S. 20 of the Cattle Trespass Act and S. 504 of the Penal Code is not illegal, where the acts constituting the offences formed part of the same transaction. *Deenadayulu Naidu v. Ratna Padayachi*. 28 Cr. L. J. 301 :
100 I. C. 381 : 52 M. L. J. 251 :
25 L. W. 282 : 1927 M. W. N. 167 :
50 Mad. 841 : A. I. R. 1927 Mad. 396.

———S. 20—Jurisdiction—Illegal seizure of cattle—"Offence"—Power of District or specially authorized Magistrate to transfer such case—Sub-

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ordinate Magistrate, power of, to try—Criminal Procedure Code, Ss. 4 (o), 192.

The illegal seizure or detention of cattle, referred to in S. 20, is an "offence" under S. 4 (o) of the Cr. P. C. and is, by virtue of the last clause of Sch. II thereof, triable by any Magistrate; and though, under S. 20 of the Cattle Trespass Act, a complaint of such illegal seizure or detention must be entertained by a District Magistrate or one specially authorized as required by the section, such Magistrate has power, under S. 192, to transfer such cases, after taking cognizance, to any Subordinate Magistrate for trial. *Budhan Mahto v. Issur Singh*. 6 Cr. L. J. 363 :
I L. R. 34 Cal. 926.

———S. 20—Refund of complaint and process fees—Complaints of illegal seizure of cattle—Court Fees Act, 1870, S. 31.

The direction contained in S. 31, Court Fees Act, for the refund of complaint and process fees in case of conviction applies to complaints made under S. 20, Cattle Trespass Act, of the illegal seizure or detention of cattle. *Emperor v. Tha Nyo*. 6 Cr. L. J. 122 :
4 L. B. R. 11.

———S. 20—Agent personally acquainted, what is.

The expression 'agent personally acquainted' in S. 20, may mean an agent or servant who could be said to have acted as an agent, such as a *kamdar*, who, if not present at the time of the seizure, had received information of it shortly after the event and was in a position to verify the information given to him. *Hamirmal v. Vinayakrao*. 32 Cr. L. J. 896 :
132 I. C. 457 : 27 N. L. R. 167 :
I. R. 1931 Nag. 105 :
A. I. R. 1931 Nag. 98.

———S. 20—Time bar.

Where the occurrence is alleged to have taken place on September 29, 1933, but the complaint is not filed till October 10, 1933, the complaint is barred by time under S. 20. *Hemodhar Sarmah v. Anandiram Saikia*. 36 Cr. L. J. 495 :
154 I. C. 197 : 38 C. W. N. 1072 :
7 R. C. 440 (1) : A. I. R. 1935 Cal. 116 (1).

———S. 21—Complaint by Agent—Agent's knowledge.

In order to entitle an agent to file a complaint of the illegal seizure of cattle under the Cattle Trespass Act, it is not necessary that the agent must know all about the matter from what he has seen himself and not from what he has been told by others. *Tukaram v. Ganpat*. 26 Cr. L. J. 327 :
84 I. C. 551 : A. I. R. 1923 Nag. 156.

———S. 21—Illegal seizure of cattle—Complaint by grazier, validity of.

The grazier entrusted with the charge of cattle during the period the cattle are with him for the purpose of grazing must be presumed to be an agent of the owner of the cattle during the time they are in his charge and comes, therefore, under the category of an agent personally acquainted with the circumstances mentioned in S. 21 and is entitled to file a complaint

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under that section for illegal seizure of the cattle in his charge. *Manohar v. Ramdularey*.

30 Cr. L. J. 633 :
116 I. C. 224 : I. R. 1929 Nag. 36 :
A. I. R. 1929 Nag. 152.

—S. 20—*Illegal seizure of cattle—Complaint filed on 11th day—10th day Sunday—Complaint whether barred.*

The principle underlying S. 10 of the General Clauses Act applies to complaints under S. 20 of the Cattle Trespass Act, even though the section will not cover in terms an Act like the Cattle Trespass Act. A complaint filed on the 11th day from the date of seizure will not be barred by limitation if the 10th day was a Sunday. *Mahadeo Ganpati Patil v. Nabha Vishwanath*.

30 Cr. L. J. 125 :
113 I. C. 285 : I. R. 1929 Nag. 32 :
A. I. R. 1929 Nag. 96.

—S. 21—*Complaint by agent—Compensation under S. 22 to owner, legality.*

Where the complaint is lodged by an agent under S. 21 of the Act, the Magistrate can award reasonable compensation which will be paid to the owner of the cattle and not to the agent who filed the complaint. *Manohar v. Ramdularey*.

30 Cr. L. J. 633 :
116 I. C. 224 : I. R. 1929 Nag. 36 :
A. I. R. 1929 Nag. 152.

—S. 22—*Awarding of compensation, consideration.*

In awarding compensation under S. 22, fees paid by the complainant to his Counsel in prosecuting the application should not be considered. *Kotakonda Venkatesulu Naidu v. Golla Chittappa*.

39 Cr. L. J. 956 (a) :
177 I. C. 896 (1) : 48 L. W. 214 :
1938 M. W. N. 831 : 1938, 2 M. L. J. 285 :
11 R. M. 390 : A. I. R. 1938 Mad. 820.

—S. 22—*C. P. Land Revenue Act, S. 188 (2) (b)—Wrongfully impounding cattle—Licensing cattle to graze—Lambardar, discretion of—Consent of co-sharer, whether necessary.*

Under S. 188 (2) (b) of the C. P. Land Revenue Act, the lambardar is entrusted with the management of the village including the grazing lands and should be allowed discretion in petty matters such as licensing cattle to graze in the village grazing lands with the consent of every individual co-sharer. Therefore, when a person detains cattle licensed to graze by the lambardar, he is guilty of wrongfully impounding cattle under the Cattle Trespass Act, even though the license was given by the lambardar without the consent of all the co-sharers in the village. *Parasram v. Kanhaya*.

26 Cr. L. J. 382 :
84 I. C. 862 : 6 N. L. J. 193 :
A. I. R. 1923 Nag. 336.

—S. 22—*Compensation, granting of, without being claimed in complaint.*

It is competent to a Magistrate to award compensation under S. 22 even where it has not been claimed in the complaint. *Kolandai Chetti v. Perumal Karundan*.

29 Cr. L. J. 325 :
108 I. C. 80 : A. I. R. 1928 Mad. 360.

—S. 22—*Compensation—Illegal seizure and detention—Order of compensation—Person respon-*

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sible for detention being Forest Officer—Incident having nothing to do with forest.

Where the seizure and detention of the cattle belonging to the complainant were wrongful and illegal, it makes no difference to the jurisdiction of the Magistrate to grant compensation under S. 22, if the person who is responsible for the wrongful or illegal detention happens to be a Forest Officer who claims to act under colour of the Forest Act, if as a matter of fact, the seizure and detention had nothing to do with any forest. *Kotakonda Venkatesulu Naidu v. Golla Chittappa*.

39 Cr. L. J. 956 (a) :
177 I. C. 896 (1) : 48 L. W. 214 :
1938 M. W. N. 831 : 1938, 2 M. L. J. 285 :
11 R. M. 390 : A. I. R. 1938 Mad. 820.

—S. 22—*Compensation not claimed—Magistrate, jurisdiction of, to grant.*

Where compensation is not claimed in the petition of complaint, the Magistrate is not justified in awarding compensation under S. 22. *Pat Baijnath Saha v. Emperor*.

24 Cr. L. J. 311 :
72 I. C. 71 : 1923 Pat. 96 :
4 P. L. T. 231 : 1 P. L. R. 34 Cr. :
A. I. R. 1923 Pat. 292.

—S. 22—*Compensation, when can be awarded—Sentence of imprisonment in default of payment of compensation.*

Under S. 22, compensation is to be awarded, but no compensation can be awarded for loss caused by the seizure of cattle unless the complainant makes the specific claim for it. The Magistrate is not competent to pass a sentence of imprisonment under S. 22 in default of payment of the compensation. *Baijoo v. Emperor*.

40 Cr. L. J. 141 :
178 I. C. 722 : 1938 O. W. N. 1130 :
1938 O. L. R. 512 : 11 R. O. 125 :
14 Luck 325 : A. I. R. 1939 Oudh 37.

—S. 22—*Compensation, when no specific claim made.*

No compensation can be awarded under S. 22 for loss caused by seizure of cattle unless the complainant makes a specific claim about it. *Ramdularey v. Manohar*.

31 Cr. L. J. 278 :
121 I. C. 665 : 26 N. L. R. 158 :
A. I. R. 1930 Nag. 149.

—S. 22—*Illegal seizure—Duty of Court.*

If the Court is of opinion that the seizure was illegal and that loss has been caused to the complainant thereby, it is its duty to award compensation for such loss to the complainant. *Bhujharat v. Emperor*.

37 Cr. L. J. 29 :
159 I. C. 154 : 1935 A. L. J. 1113 :
1935 A. L. R. 1075 : 8 R. A. 395 (1) :
A. I. R. 1935 All. 925.

—S. 22—*Illegal seizure of cattle—Compensation.*

Accused, servants of a Municipality, seized and impounded cattle belonging to the complainant which had not done any damage to Municipal trees : *Held*, that the seizure was illegal and unjustified and that the accused

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were liable to pay compensation under Section 22. *Satola v. Emperor*. 19 Cr. L. J. 368 : 44 I. C. 592 : 16 A. L. J. 148 : A. I. R. 1918 All. 267.

—S. 22.

Order for compensation under S. 22, is a conviction within the meaning of Cr. P. C. *Emperor v. Mi Hasi Ma*. 6 Cr. L. J. 121 : 4 L. B. R. 10.

—S. 22—Compensation—Pleader's fee.

S. 22 is not wide enough to enable a Magistrate to award Pleader's fees to a successful complainant especially when the cattle had been released long before the complainant engaged a Pleader. *Pottella Ragadu v. Poondla Lakshminarappa Reddy*. 34 Cr. L. J. 676 (1) : 144 I. C. 154 (1) : 37 L. W. 736 : 1933 M. W. N. 549 : 65 M. L. J. 24 : I. R. 1933 Mad. 38 (1) : A. I. R. 1933 Mad. 502 :

—S. 22—Sentence in default of payment of compensation.

A Magistrate is not competent to pass a sentence of imprisonment under S. 22 in default of payment of compensation. *Ramdularey v. Manohar*.

31 Cr. L. J. 278 : 121 I. C. 665 : 26 N. L. R. 158 : A. I. R. 1930 Nag. 149.

—S. 22, 20—U. P. Village Panchayat Act (VI of 1920), S. 17—Jurisdiction of Panchas to entertain complaint under S. 22—Such complaint filed within 10 days as required by S. 20—Case sent to proper Court—Limitation expiring—Court, if can entertain it—Defect, if curable.

Under S. 17 of the U. P. Village Panchayat Act, 1920, the Court of the Panchas have no jurisdiction to entertain the complaint under S. 22, though in the complaint Ss. 323 and 504, Penal Code, are casually mentioned. Where therefore, the complaint is made to the Panchas within ten days as required by S. 20, but is subsequently transferred to the proper Court by which time the limitation has already expired, the complaint is out of time and cannot be entertained. S. 537, Cr. P. C. does not cure the defect. *Mehdi Hussain v. Emperor*.

39 Cr. L. J. 827 : 175 I. C. 662 : 1938 C. W. N. 596 : 1938 O. L. R. 303 : 11 R. O. 2 : A. I. R. 1938 Oudh 183 :

—Penal Code, S. 23, Seizure and detention of cattle doing damage, whether offence—"Wrongful loss," meaning of.

When an animal is found doing damage to a person's field, it is no offence for that person to seize and detain it for less than twenty-four hours, instead of taking it to a cattle-pound and to restore it to the owner on receipt of compensation which does not exceed the amount the owner would have to pay if the animal had been impounded, as such detention, being authorised by the Cattle Trespass Act, would not amount to causing "wrongful loss" to the

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owner, within the meaning of S. 23 of the Penal Code. *Ramratan v. Emperor*.

23 Cr. L. J. 511 : 68 I. C. 47.

—S. 24—Cattle pound—Illegal seizure of cattle—Rescue—Offence.

Before a conviction under S. 24 can be sustained, it is necessary to prove that the cattle which had been rescued for the cattle pound was liable to be seized under the Act. *Babu v. Emperor*.

27 Cr. L. J. 313 : 92 I. C. 697 : 24 A. L. J. 280 : L. R. 7 All. 40 Cr. A. I. R. 1926 All. 276.

—S. 24—Charge only under S. 379, Penal Code—Conviction under S. 24, legality.

Where a charge under S. 379, Penal Code, is framed and the attention of the accused is directed only to the defence of the charge framed against him, he cannot be convicted for an offence under S. 24 of the Cattle Trespass Act without framing a charge under that section as well and without giving him an opportunity to produce evidence in rebuttal thereof. *Pat Bhow Anathi Singh v. Emperor*.

19 Cr. L. J. 202 : 43 I. C. 618 : 4 P. L. W. 40 : A. I. R. 1918 Pat. 628.

—S. 24—Conviction under—Damage, proof of, if necessary.

In order to maintain a conviction under S. 24, it must be proved that damage was caused to the complainant. *Pat Dassi Goala v. Sardar Mahton*.

21 Cr. L. J. 640 : 57 I. C. 464 : 1 P. L. T. 176 : A. I. R. 1920 Pat. 832.

—S. 24—Conviction under—Essentials.

A clear finding of damage done by the trespassing cattle is essential to a conviction under S. 24. *Chokat Ahir v. Suraj Singh*.

41 Cr. L. J. 257 : 186 I. C. 182 : 6 B. R. 301 : 21 P. L. T. 627 : 12 R. P. 474 : A. I. R. 1940 Pat. 299.

—S. 24—Conviction under, essentials.

For a conviction under S. 24 of the Cattle Trespass Act, there must be a finding as to trespass or damage as contemplated by S. 40. *Pat Sukhnaodan Rai v. Emperor*.

19 Cr. L. J. 157 : 43 I. C. 445 : A. I. R. 1918 Pat. 649.

—S. 24—Penal Code, S. 379—Rescuing cattle from pound—Evidence—Trespass and damage.

For a conviction under S. 24 it is not enough that the accused removed the cattle from the pound, the prosecution must further prove, and there must be a finding of the Court, that the cattle were seized while they were trespassing upon and doing damage to the field of the owner and had then been put in the pound. *Bhow Anathi Singh v. Emperor*.

19 Cr. L. J. 202 : 43 I. C. 618 : 4 P. L. W. 40 : A. I. R. 1918 Pat. 628.

—S. 24—Railways Act, S. 125 (2)—Owner driving cattle across Railway line—No damage done—Resistance to illegal seizure—Offence.

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Where the accused drove some cattle across a Railway line at a place which was not a level crossing and where there was no fence, and on being stopped by the Railway employees, forcibly opposed the seizure and they were charged under S. 24, Cattle Trespass Act, and S. 125 (2) of the Railways Act, though there was no evidence to prove that the cattle had done any damage. *Held*, (1) that the cattle were not liable to be seized under S. 11 and as the seizure was illegal, the accused, in forcibly opposing the seizure, did not commit any offence under S. 21; (2) that the accused could not be convicted under S. 125 (2) of the Railways Act. *Emperor v. Madho*

31 Cr. L. J. 1015 :
126 I. C. 497 : 7 O. W. N. 461 :
A. I. R. 1930 Oudh 250.

—S. 24—*Rescuing cattle—Driving cattle away by shouts and cries—Force or violence, whether necessary.*

Driving cattle away by shouts and cries constitutes "rescuing" them within the meaning of S. 24. The word "rescue" does not necessarily imply the use of force or violence. Inducing an animal to move may even amount to using force. *In re : Kamma Kondiah.*

24 Cr. L. J. 456 :
72 I. C. 616 : 17 L. W. 546 : 32 M. L. T. 365 :
1923 M. W. N. 437 : A. I. R. 1923 Mad. 608.

CENTRAL PROVINCES BORSTAL ACT (IX OF 1928).

—S. 5—*Further detention in Borstal Institute in default of payment of fine—Legality.*

S. 5 authorises detention in lieu of transportation or imprisonment. There is no provision, however, for further detention in default of payment of fine, and such an order is illegal. It is inexpedient to impose a fine when there is no hope of realisation. *Emperor v. Panna Lal.*

39 Cr. L. J. 427 (a) :
173 I. C. 899 : 10 Nag. 334 (1) :
1938 N. L. J. 8 : A. I. R. 1938 Nag. 131.

CENTRAL PROVINCES COURTS ACT (II OF 1904).

—S. 8—*District Magistrate acting under Arms Act if Criminal Court.*

When receiving applications for licences under the Arms Act, a District Magistrate is not acting as a Criminal Court but as an executive officer. Consequently he is not empowered to fine under Sub-S. (3), S. 8, a person who writes such an application for hire as though that person had contravened a rule made under clause (a) of Sub-S. (1). Such rules apply only where the act complained of is done in a Court subordinate to the Court of the Judicial Commissioner or in the latter Court itself. *Suraj Prasad v. Emperor.*

8 Cr. L. J. 347 :
4 N. L. R. 134.

CENTRAL PROVINCES CRIMINAL CIRCULAR No. 1828.

—Para. 6—*Meaning of—Second Class Magistrate, competency of, to try adolescent accused.*

C. P. JUDICIAL COMMISSIONER'S COURT CIRCULARS (CRIMINAL) CIRCULAR No. 7

The C. P. Cr. Circular No. 1828, para. 6, does not say that a Second Class Magistrate may try an adolescent but must refer the case for punishment to the Sub-Divisional Magistrate under S. 349, Cr. P. C. Such a reference is invalid. In a case where adults and adolescents are tried jointly, even if the case of the adolescent accused can be validly referred under S. 349, Cr. P. C., it is doubtful whether the case of the adult accused can be so referred, there being no other reason for referring the case of the latter except that they have been jointly tried with the adolescents. *Baba v. Emperor.*

24 Cr. L. J. 738 :
74 I. C. 66 : A. I. R. 1924 Nag. 37.

C. P. EXCISE ACT (II OF 1915).

—S. 34 (a).

Possession of charas—Legality of possession and not of search material. *Local Government v. Nainsukh Teli.*

34 Cr. L. J. 721 :
144 I. C. 240 : 29 N. L. R. 67 :
I. R. 1933 Nag. 227 : A. I. R. 1933 Nag. 99.

—S. 36—*Second offence—Procedure.*

Where a person who has been convicted of an offence under S. 36 again commits a similar offence, the subsequent offence should be tried as a warrant case. *Gayaprasad v. Emperor.*

33 Cr. L. J. 573 :
137 I. C. 150 : 28 I. L. R. 18 :
I. R. 1932 Nag. 64 :
A. I. R. 1932 Nag. 111.

—S. 43 (a) (f)—*Manufacture of Mahua spirit—Possession of materials for manufacture—Offences, whether distinct—Criminal P. C., S. 35.*

The offence of manufacture of Mahua spirit necessarily includes that of possession of materials for the manufacture of the same and the two offences of manufacture and possession cannot be called "distinct" for the purpose of S. 35 of the Cr. P. C. *Sheikh Munir v. Emperor.*

25 Cr. L. J. 83 :
76 I. C. 19 : A. I. R. 1924 Nag. 32.

—S. 345—*Bottling of liquor so that it may be kept and sold—Whether same transaction.*

Where the bottling of the liquor is done some time previous to the selling but is done in order that the liquor should be kept and sold in pursuance of the unlawful designs of the accused, there is such continuity of action as is required by S. 239, Cr. P. C. *Chhotey Miyan v. Emperor.*

38 Cr. L. J. 482 :
167 I. C. 860 : 9 R. N. 228 :
I. L. R. 1937 Nag. 165 :
A. I. R. 1936 Nag. 250.

C. P. JUDICIAL COMMISSIONER'S COURT CIRCULARS (CRIMINAL) CIRCULAR NO. 7.

—Para 4—*Duty of Magistrates—First Information Report.*

Trying Magistrates should carefully scrutinize the First Information Report. *Sham Lal v. Emperor.*

31 Cr. L. J. 15 :
120 I. C. 210 : A. I. R. 1929 Nag. 350.

C. P. LAND REVENUE ACT.

————S. 201.

Application under S. 201 is an original proceeding governed by C. P. C. Revenue Court is a Court of Civil Judicature and is authorised to receive affidavits in evidence. *Bade v. Emperor.*

36 Cr. L. J. 765 :
155 I. C. 557 : 7 R. N. 195 :
A. I. R. 1935 Nag. 125.

————S. 219.

Government Notification No. 332-341-XII, dated January 29, 1931—Tahsildar removing unauthorized encroachments acts in execution of duty as public servant. Assault on Tahsildar while doing duty is punishable under S. 353, I. P. C. *Dinanath Patiram v. Emperor.*

35 Cr. L. J. 746 :
148 I. C. 803 : 6 R. N. 206 :
A. I. R. 1933 Nag. 295.

————Ss. 128, 227 (2) (k)—*Warrant for arrest under C. P. Tenancy Act not bearing seal of Court—Legality—Person breaking arrest—Offence.*

Warrant for arrest issued under the provisions of C. P. Tenancy Act must be in Form II appended to the C. P. Land Revenue Act and that form provides for the affixing of the seal of the Court which issues it. The warrant not bearing the seal of the Court has, therefore, no force and the arrest under it is illegal, and in breaking arrest, the person commits no offence, and his conviction under S. 225—B, Penal Code, cannot stand. *Bhullikhan v. Emperor.*

39 Cr. L. J. 118 :
172 I. C. 335 : 10 R. N. 196 (1) :
20 N. L. J. 219 : A. I. R. 1938 Nag. 45.

C. P. LOCAL SELF-GOVERNMENT ACT (IV OF 1920).

————S. 41—*Work paid for out of public funds—Bribe alleged to be received in relation to such work—Vice-Chairman held to be performing official acts.*

Where the Vice-Chairman purports to act in an official capacity and the work in respect of which the receipt of bribery is alleged, is one which is paid for out of public funds, he is to be deemed to have been performing an official act in respect of the work, especially as there is a presumption that all acts of a public officer which purport to be official, have been regularly performed. *Anna Champat Rao Deshmukh v. Emperor.*

38 Cr. L. J. 444 :

————Ss. 41, 42—*Vice-Chairman of Local Board, if a Public Officer within S. 21, Penal Code.*

Person like the Vice-Chairman of a Local Board constituted under the C. P. Local Self-Government Act, who has been given authority to discharge certain public functions of a local or municipal nature is public Officer within S. 21, Penal Code. *Anna Champat Rao Deshmukh v. Emperor.*

38 Cr. L. J. 444 :
167 I. C. 752 : 19 N. L. J. 221 :
9 R. N. 211.

————S. 45—*Rule in S. 46 (2)—Object of.*

A rule which merely deals with the discharge

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of officials from office cannot be extended to exonerate them from criminal liability. The only object of the rule in S. 46 (2) is to prevent such officials from resorting to similar practices in the future, and to place these public bodies, as far as may be, beyond the pale of suspicion. *Anna Champat Rao Deshmukh v. Emperor.*

38 Cr. L. J. 444 :
167 I. C. 752 : 19 N. L. J. 221 :
9 R. N. 211.

————Ss. 68, 79 (1) (iv)—*Rules under S. 79 (1) (iv)—Conviction under R. 16-A (2)—Prosecution, whether should be on complaint of District Council or Local Board, etc., as required by S. 68.*

The words “under this Act or bye-law made thereunder” in S. 68, should not be read as including any rule made by the Local Government consistent with this Act. Where what the accused has broken is not any section of the Act nor any bye-law under the section, which are the only cases mentioned in S. 68, in respect of which prosecution by a District Council or Local Board or Market Committee is necessary, but a rule made by the Local Government, there is no provision in S. 68, that prosecution for a breach of such a rule can only be initiated by a local body. Where a person has been convicted under R. 16-(a) (2) made under S. 79 (1) (iv) the conviction is not illegal on the ground that the prosecution was not made on a complaint of the District Council or Local Board of Market Committee or some person authorized by District Council or Local Board in this behalf, as required by S. 68, but by a complaint of a Sub-Divisional Magistrate. *Emperor v. Gulabsingh.*

38 Cr. L. J. 1093 :
10 R. N. 121 : 171 I. C. 620 :
A. I. R. 1937 Nag. 387:

C. P. MOTOR VEHICLES TAXATION ACT (AS AMENDED IN 1935).

————S. 3 (1), *Proviso—License fee imposed by a Municipality on motor lorry, if tax—Person residing in Notified Area Committee plying lorry between C. and A. Municipality, if can impose such fees.*

The person residing within one Municipality would not be liable to pay any tax on his motor vehicles which any other Municipal Committee might impose under the provisions of S. 66 of the C. P. Municipalities Act as applied to Berar, but would be liable for any other fee imposed by its bye-laws. The definition of “tax” in the Municipalities Act would not include any toll, rate, due or fee of any kind whatever in addition to whatever kind of impost is mentioned in S. 66. License fee for motor lorry imposed by Amraoti Town Municipality is not a tax. Consequently a person residing in Chandur Bazar Notified Area Committee would be liable for license fee imposed by Amraoti Town Municipality, on motor lorries plying between Amraoti and Chandur Bazar. *Amruttal v. President, Town Municipal Committee, Amraoti.*

40 Cr. L. J. 556 :
181 I. C. 520 : 1939 N. L. J. 262 : 11 R. N. 466 :
A. I. R. 1939 Nag. 171.

CENTRAL PROVINCES MUNICIPAL ACT (XVII OF 1889).

—S. 66 (5)—*Notice requiring alteration or demolition—Reasonable time—Starting point.*

A notice given by a Municipal Committee requiring a party to alter or demolish a building is bad unless given within a reasonable time. What is "reasonable time" is determined according to the circumstances of the case and with particular reference to the means and ability of the person by whom the duty is to be discharged. Where a work necessarily spreading over a considerable time is concerned, time should start from its inception. *Abdul Sattar v. Secretary, Municipal Committee.*

16 Cr. L. J. 532:
29 I. C. 660; 11 N. L. R. 87:
A. I. R. 1915 Nag. 70.

—(XVI of 1903), Ss. 44, 2 (f)—*Tax, essentials of—Lease money for municipal building, whether tax.*

The essential quality of a tax and of those similar imposts mentioned in S. 2 (f) is that the amounts or rates or payments are fixed by levying authority without reference to the payer. An unpaid balance of lease money in respect of a municipal market building is not a tax and is not recoverable by the summary procedure under S. 44. *Yeshwantrao Pandey v. Secretary, Municipal Committee.*

24 Cr. L. J. 516 :
73 I. C. 52; 19 N. L. R. 122 :
A. I. R. 1923 Nag. 264.

—S. 66—*Application for permission to build—Delay in passing orders, effect of.*

Under S. 66 (3) delay in passing orders on a valid notice given under S. 66 (1) may, if followed by failure to reply to a written reminder, lead to a conclusion that the proposed building has been absolutely sanctioned. *Mohammad Yacub v. Secretary, Municipal Committee, Nagpur.*

20 Cr. L. J. 89 :
48 I. C. 889; A. I. R. 1918 Nag. 121.

—S. 66 (1)—*"Building", meaning of.*

The word "building", as used in S. 66 (1) indicates a structure with a roof. *Thakurlal v. Secretary, Municipal Committee, Khandwa.*

22 Cr. L. J. 754 :
64 I. C. 274; A. I. R. 1921 Nag. 147.

—Ss. 67 (1), (2), 122, 139—*Encroachment, old prosecution in respect of, legality of—Remedy.*

What is made criminally punishable under S. 122 is the act of making an encroachment. The section cannot reasonably be construed as making punishable an existing encroachment not made by the accused person. In the case of an encroachment not made by the accused, S. 67 (2) provides full means of redress which can be enforced by the penal provisions of S. 139. The word "such" in S. 67 (2) refers back to the words "structure encroaching on any street" in sub-S. (1), and not only to new encroachments. *Madan Gopal Dookaran v. Secretary, Municipal Committee, Nagpur.*

19 Cr. L. J. 979 :
47 I. C. 879; A. I. R. 1918 Nag. 239.

—Ss. 67 (2), 139 — *Encroachment — Not made by present owner.*

Sub-S. (2) of S. 67 read with S. 139 provides

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a remedy for an encroachment not made by the present owner or occupant of the erection which is an encroachment. *Chunnilal v. Municipal Committee, Arvi.* 23 Cr. L. J. 127 :
65 I. C. 559; 18 N. L. R. 92 :
A. I. R. 1922 Nag. 167.

—S. 86—*Notice to erect latrine, contents of—Directions—Committee, duty of.*

A notice under S. 86 (1) is itself to contain the directions as to the nature and position of the required latrine. The law does not contemplate delegation to an individual officer of the power to give the necessary directions, though the Committee are at liberty to guide themselves by the advice of any expert in their employ. *Abdul Sutar v. Secretary, Municipal Committee, Nagpur.* 20 Cr. L. J. 82 :
48 I. C. 882; A. I. R. 1918 Nag. 135.

—S. 105 (1) (b)—*Bye-law 5 (a)—Lease by Municipality—Resolution for eviction—No notice given to lessee—Conviction of lessee under bye-law 5 (a), legality of.*

A Municipal Committee gave a lease of certain premises from month to month. It subsequently passed a resolution that 7 days' notice should be given to the lessee and if he does not vacate, legal action should be taken. No notice was given to the lessee and he was convicted for breach of bye-law 5 (a) framed under S. 105 (1) (b) : *Held*, that as the lease was not determined according to law by giving notice to the lessee to quit, he did not commit any breach of bye-law 5 (a) and the conviction was illegal. *Mulchand Balbodhar v. Municipal Committee, Gondia.*

31 Cr. L. J. 667 :
124 I. C. 256; A. I. R. 1929 Nag. 332.

—S. 122—*Encroachment by previous owner—Applicability of S. 122.*

The word "obstructs" in S. 122 applies to the person who built or caused to be built the encroachment and not to the accused who originally had nothing to do with the erection of the encroachment. *Chunnilal v. Municipal Committee, Arvi.* 23 Cr. L. J. 127 :
65 I. C. 559; 18 N. L. R. 92 :
A. I. R. 1922 Nag. 167.

—S. 122—*Interpretation of.*

S. 122 cannot be interpreted as making punishable an omission to remove an existing encroachment not made by the accused person. *Chunnilal v. Municipal Committee, Arvi.*

23 Cr. L. J. 127 :
65 I. C. 559; 18 N. L. R. 92 :
A. I. R. 1922 Nag. 167.

—S. 139—*Continuing breach—Daily fines, for future breaches.*

The daily fine which may be imposed under S. 139 must relate to a period anterior to the Magistrate's order of conviction. There cannot be punishment under that section for a future breach. *Mohammad Yacub v. Secretary, Municipal Committee, Nagpur.* 20 Cr. L. J. 89 :
48 I. C. 889; A. I. R. 1918 Nag. 121.

—S. 152—*Notice, service of—Attestation of service by unofficial persons.*

The law of service of notices contained in

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S. 152 does not require the report of service of notice to be attested by any unofficial person. *Bija Ram v. Secretary, Municipal Committee, Nagpur.* 20 Cr. L. J. 256 :

49 I. C. 928 : A. I. R. 1918 Nag. 122.

—S. 158—*Complaint, if necessary, in respect of each accused tried jointly.*

A complaint has to be made as required by S. 159 in order to enable a court to take cognizance of an offence punishable under the Act. But once cognizance has been legally taken of an offence, the Magistrate is seized of the whole matter as to all other accused whose guilt may appear during the trial of the case. *Gambhirchand v. Secretary, Municipal Committee, Nagpur.* 20 Cr. L. J. 86 :

48 I. C. 886 : A. I. R. 1918 Nag. 134.

—(II of 1917), 199, 103—*Mere erection of building without sanction—Whether punishable—Proper procedure—S. 199, when applies.*

Under S. 199 it is disobedience of a lawful direction given by the Municipal Committee which is punishable. There is no provision in that section for punishing the mere erection of a building without the sanction of the Committee. The correct procedure, if a person erects a building without sanction, is laid down in S. 103, whereby the Committee may require the building to be demolished. If that order is disobeyed, then S. 199 comes into play but not before. When the Municipal Committee has omitted this necessary step, there is no order in existence in respect of which a person can be convicted for disobedience of an order. *Pandurang v. Secretary, Municipal Committee, Chanda.* 37 Cr. L. J. 1038 (b) :

164 I. C. 939 : 19 N. L. J. 81 : 9 R. N. 47 :
I. L. R. 1936 Nag. 56.

—(II of 1922), S. 38.

The absence of the inclusion of the disputed road in the Municipal *jamabandi* is *prima facie* good evidence which tends to negative the plea that the road is a public road. *Mahabir Prasad v. Pitamberprasad.* 35 Cr. L. J. 145 :

146 I. C. 601 : 29 N. L. R. 361 : 6 R. N. 91.

—S. 45 (1)—*Interested in contract with Municipality—Soil auctioned—Held, that Members were “interested” in contract with the Committee.*

Held on facts that the contract could not be discharged until the conditions were fulfilled, *i. e.*, by payment of the full price of the manure purchased. The transaction could be characterised as a “contract” even after the property in the manure had passed to M, the highest bidder, and by the purchase of the manure from M after he became owner of it, H who was a municipal member could be regarded as having become interested in a contract with the Municipal Committee. *Held*, also that G, another municipal member who simply assisted in the removal of the stuff could be regarded as a person interested in the contract with the Municipal Committee. *Hazarimal v. Emperor.* 41 Cr. L. J. 424 :

187 I. C. 161 : 1939 N. L. J. 567 :
I. L. R. 1940 Nag. 133 : 12 R. N. 278 :
A. I. R. 1940 Nag. 81.

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—S. 45 (1)—*“Interested” meaning of.*

The word ‘interested’, in S. 45 (1) is to be interpreted in its ordinary wide sense and not confined to interest in money and includes jobbery. 121 I. C. 819 (2), explained and commented upon.

41 Cr. L. J. 424 :

187 I. C. 161 : 1939 N. L. J. 567 :

I. L. R. 1940 Nag. 133 : 12 R. N. 278 :

A. I. R. 1940 Nag. 81.

—S. 105 (1)—*Bye-Laws under—Bye-law No. 7—Applicability.*

Bye-Law No. 7 does not apply to the case of a refusal to vacate land held for some years and subsequently found to be *nazul*. *Shripat Maratha v. Secretary, Municipal Committee, Nagpur.*

1923 A. I. R. Nag. 157.

—S. 133.

Conviction under S. 133—Order for continuing fine is illegal. *Abdul Razak v. Municipal Committee, Nagpur.* 33 Cr. L. J. 859 :

139 I. C. 496 (2) : I. R. 1932 Nag. 114 (1) :
A. I. R. 1932 Nag. 116.

—S. 140 (1).

Power to abolish slaughter house—Previous sanction of Deputy Commissioner is not necessary. Mere approval is enough. *Amir v. Emperor.* 34 Cr. L. J. 224 (2) :

141 I. C. 543 (1) : 15 N. L. J. 89 :
I. R. 1933 Nag. 73.

—Ss. 168, 199—*Health Officer appointed Secretary—Whether delegation of power—Notice by such officer not signed by him as Secretary—Non-compliance with such notice.*

There is nothing in the Act, to prevent the appointment of two Secretaries and allocation of duties between them. It is not a case of delegation of duties but of distribution of duties. An order appointing the Health Officer, as Secretary to the Municipal Committee for the purpose of issuing notices relating to the Health Department which received the sanction of Government, does not amount to delegation of powers, but there is distribution of duties. The consequent notice under S. 199 by the Health Officer in his capacity as an officer and not as a Secretary is perfectly correct and legal and any defect in form would be cured by S. 168 (4). *Local Government v. Ganpatrao.* 41 Cr. L. J. 437 :

167 I. C. 729 : 19 N. L. J. 192 : 9 R. N. 204 :
A. I. R. 1937 Nag. 119.

—S. 179.

Bye-law No. 5 framed under S. 179 of the Central Provinces Municipalities Act of 1922, is not *ultra vires* and a breach of the bye-law is punishable. *Municipal Committee, Bilaspur v. Bansidhar.* 36 Cr. L. J. 1336 :

157 I. C. 781 : 31 N. L. R. 261 :
8 R. N. 64.

—S. 179 (g)—*Rules under—R. 1, by Amraoti Town Municipal Committee—*

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"Plying for hire within limits of Amraoti Town Municipality," interpretation of.

The words "plying for hire within the limits of Amraoti Town Municipality" occurring in R. 1, framed by Amraoti Town Municipality under S. 179 (g) (as applied to Berar) cannot be confined to the narrow interpretation that the whole of the service which is offered must take place within the limits of the Municipalities and that otherwise the rules do not apply. Therefore vehicles operating as a regular service between Amraoti and Chandur Bazar and picking up passengers within limits of the Amraoti Town Municipality, ply for hire within the limits of the Amraoti Town Municipality. *Amrutlal v. President, Town Municipal Committee, Amraoti.* 40 Cr. L. J. 556 : 181 I. C. 520 : 1939 N. L. J. 262 : 11 R. N. 466 : A. I. R. 1939 Nag. 171.

—S. 179, Sub-S. 1, cl. (b).

Bye-law No. 3 framed by Committee under Notification No. 987-611-VIII, dated 18th March, 1926, is *ultra vires*. *A Merchant at Kareliganj v. Notified Area Committee, Kareliganj.* 34 Cr. L. J. 408 : 142 I. C. 857 (2) : 15 N. L. J. 168 : I. R. 1933 Nag. 139 : A. I. R. 1933 Nag. 68.

—S. 180—*Delegation of powers to Health Officer—Fresh delegation, if to be made each time a bye-law is made.*

Held, that sanction is given to prosecute in respect of offences against bye-laws framed *inter alia* under S. 180, cl. (a), and not in respect of specific or existing bye-laws. The sanction is given to take action for breach of any bye-laws which have been made under that section or which will be made under that section, and it is quite unnecessary for the Municipal Committee to give fresh delegation each time a bye-law is made, if it falls under the clause in respect of which sanction has already been given. *Ramchandra Jagannath v. Emperor.*

38 Cr. L. J. 459 : 167 I. C. 777 : 19 N. L. J. 195 : 9 R. N. 218 (2).

—S. 180, proviso—"At the time of the making of such bye-law," meaning of—*Limitation, when starts—Confirmation by Government, effect of.*

The words "at the time of the making of such bye-law" in the proviso to S. 180, must refer to the making by the Municipal Committee and can have no reference to the confirmation of a bye-law by an authority which has no power to make any bye-law. The date of confirmation by Government may be a more convenient and generally intelligible starting point for the limitation provided in the proviso to S. 180, but it is impossible to depart from the clear meaning of the words used. Government has no power to make bye-laws or to alter them. It can only accept or reject what is put before it by a Municipal Committee, and the making of bye-laws must, accordingly, refer to the final resolution of the Municipal Committee in

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respect of the bye-laws. *Ramchandra Jagannath v. Emperor.* 38 Cr. L. J. 459 : 167 I. C. 777 : 19 N. L. J. 195 : 9 R. N. 218 (2).

—S. 199—*Municipal Bye-laws—Continuing breach—Sentence.*

The words 'every day after the first' in S. 199 must be interpreted as every day after the first day to which the conviction relates. A fine of Rs. 50 for a breach on a particular date of a bye-law framed by a Municipal Committee under the Act and Rs. 5 for the subsequent days on which the offender persisted in the breach is illegal, even though the breach of the bye-law was first committed on a day previous to that for which there is actually a conviction. *The Secretary, Municipal Committee, Nagpur v. Yenka Khatik.*

31 Cr. L. J. 197 : 121 I. C. 64 : A. I. R. 1929 Nag. 330.

—S. 199—*Offence under, ingredients of—Burden of proof.*

In a case under S. 199 of the Act as applied to Berar, the prosecution has to establish that a lawful direction was given to the accused by a notice lawfully issued under the powers conferred by Part III of the Act and that the accused disobeyed the said direction. *Wasudeo Waman v. Akola Municipality.* 29 Cr. L. J. 785 : 111 I. C. 113 : 10 A. I. Cr. R. 566 : A. I. R. 1928 Nag. 337.

C. P. PROTECTION OF DEBTORS ACT (IV OF 1937).

—Ss. 3, 4—"Molestation"—*Creditor demanding payment of debt—Debtor becoming angry and bidding him go to Civil Court—Creditor losing temper beating debtor with shoe and leaving the place—If can be punished under S. 4.*

The terms of the definition of "molestation" given in S. 3, indicate that the obstruction or using violence or intimidation to constitute molestation should be accompanied by the intent to cause the debtor to abstain from doing what he has a right to do or to compel him to do what he has a right to abstain from doing. The creditor demanded payment of his debt, from his debtor whereupon the latter became angry and bade him go to Civil Court. The creditor lost his temper and beat the debtor with a shoe and left the place. The creditor was prosecuted for an offence under S. 4. Held, that the circumstances in which the creditor used violence did not warrant any assumption that the creditor's intention was to compel him to pay the debt. But on the contrary its effect would presumably be to confirm the debtor's resolve not to pay. The creditor did not resort to violence as an instrument to compel the debtor to pay when he was not disposed to pay. 41 Cr. L. J. 168 : 185 I. C. 348 : 1939 N. L. J. 455 : 12 R. N. 156 : A. I. R. 1939 Nag. 281.

CERTIORARI.

Issue of—Nature of writ—Jurisdiction of High Court—Letters Patent—Revision.

The power to issue writs of *certiorari* to inferior Tribunals is not taken away from the High

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Court by the Press Act. Per *Abdur Rahim, Offg. C. J.*—A High Court has jurisdiction to issue writs of *certiorari* in order to remove the proceedings of Courts or of persons entrusted with judicial functions out of the ordinary course of legal procedure for the purpose of quashing them. A writ of *certiorari* is issued not only to Courts but to Tribunals specially constituted and entrusted with duties of a judicial character. The proceedings will not be removed to the superior Court by a writ unless they are capable of being determined there. Per *Seshagiri Aiyar, J.*—The freedom of the Press is not a 'licensed calling' but a common law right inherent in the subject, subject to certain limitations, and this right is not affected by the Press Act. It is not a condition precedent to the issue of a writ of *certiorari* that the Court issuing should be able to place itself in the position of the Court whose order is complained against. The fact that the power to issue the writ is recognized in legislative provisions is not an argument for holding that the power does not exist *alimunde*. Unless the power to issue a writ of *certiorari* is expressly taken away, it inheres in the Court. There is nothing in the Press Act which can be said, expressly or even by implication, to take away this power from the High Court. Even if the right is taken away, the High Court can interfere, if there has been a want of jurisdiction in the inferior Court. The reason of the rule is that the power *prima facie* exists in the High Court in all matters which are not within the cognizance of the inferior Court: and when this latter Court acts beyond its powers, it usurps jurisdiction which the High Court can control. Even where jurisdiction to issue the writ has been expressly taken away, if fraud was practised, the writ can issue. *Annie Besant v. Government of Madras.* 18 Cr. L. J. 239 : 37 I. C. 607 : 2 M. W. N. 497 : 4 L. W. 625 : 32 M. L. J. 151 : 39 Mad. 1164.

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—S. 355 (1).

In cases under S. 355 (1) it is desirable that there should be available for the tribunal dealing with the reference a full note of the Judge's summing up. *Albert Godamuni v. The King.* 34 Cr. L. J. 550 (P. C.)

143 I. C. 224, 64 M. L. J. 290 :
I. R. 1933 P. C. 140 :
A. I. R. 1933 P. C. 7.

—S. 386.

Criminal misappropriation by one of the trustees—Failure to account for money received : *Held*, under particular circumstances, conviction should be quashed. *Albert Godamuni v. Emperor.* 34 Cr. L. J. 550 (P. C.)

143 I. C. 224 : 64 M. L. J. 290 :
I. R. 1933 P. C. 140 :
A. I. R. 1933 P. C. 7.

CHAMPERTY.

See Legal Practitioners Act.

CHARGE.

—Alteration of
—Defective charge.
—Essentials.
—Frame of

See also Cr. P. C. 1898, S. 221 to 240.

—Alteration of—High Court—Jury trial.

Where the trial was by jury, the High Court refused to convert the charge from one under Ss. 496, 109 to one under S. 494, 109, I. P. C. *Sheikh Alimuddin v. Emperor.* 4 Cr. L. J. 152 : 10 C. W. N. 982.

—Defective charge—Cheating.

In charge of attempting to cheat the silence as to the person upon whom the alleged attempt to cheat was made, and also as to the manner in which it was intended by the accused to influence the conduct of that person, was a serious defect, and placed the accused at a considerable disadvantage in the conduct of his defence, though these omissions had been remedied at the close of the case for the prosecution. *Hurjee Mul v. Iman Ali Sircar.*

1 Cr. L. J. 124 :
8 C. W. N. 278.

—Defective charge—Extortion—Charge of theft—Conviction for extortion, if legal.

It is wholly illegal to punish a man for a grave offence, involving many totally different ingredients of a charge of theft, on a charge under S. 379, I. P. C. A conviction, therefore, for extortion on a charge of theft cannot stand. *Amanullah v. Emperor.*

13 Cr. L. J. 597 :
16 I. C. 165.

—Defective charge for intention to commit offence—No evidence—Conviction, legality.

A charge which sets out an intention on the part of an accused person to commit an offence, but of which intention there is no evidence on the record, is defective and a conviction based thereon is illegal. *Lala v. Emperor.*

12 Cr. L. J. 483.
12 I. C. 91 : 23 P. W. R. 1911 Cr.

—Defective charge—No prejudice to accused—Mere irregularity.

A conviction cannot be set aside on the mere ground that the wording of the charge was on the face of it more or less meaningless, if it is clear that all the parties concerned knew what the charge meant and the accused was not in any way prejudiced by the defect in the charge. *K. C. V. Reddy v. Emperor.* 31 Cr. L. J. 793 : 125 I. C. 266 : 8 R. 25 : A. I. R. 1930 Rang. 201.

—Defective charge—Offence at two places—Only one place mentioned—Held, accused was not misled in defence.

Held, that where the offence was committed in two places but only one place was mentioned, by mention of only one place, the accused was not misled in his defence and this did not affect his conviction. *Nanhkoo Mahton v. Emperor.*

37 Cr. L. J. 862 :
163 I. C. 805 : 17 P. L. T. 472 : 9 R. P. 40 :
2 B. R. 643 (2) : A. I. R. 1936 Pat. 358.

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—————*Defective charge—Omission to frame—Conviction, validity of—Embezzlement.*

Where the charge against the accused was to the effect that he on or before the 21st day of June 1907, committed breach of trust in respect of some deeds which he took from the complainant and was thereby guilty of an offence punishable under S. 406, I. P. C., but at the trial he was convicted of embezzling not the deeds but amounts obtained by dealing with those deeds : *Held*, that the conviction was bad. *Birpa Das Giri v. Niradmoni Bewa.*

7 Cr. L. J. 372 :
12 C. W. N. 577.

—————*Defective charge, perjury—Exact words in deposition not used—Irregularity, whether curable.*

The failure to enter in a charge for perjury under S. 193, Penal Code, the actual words used in a deposition is at the most an irregularity cured by S. 537, Cr. P. C. *Mirabax v. Emperor.*

23 Cr. L. J. 500 :
68 I. C. 36 : 18 N. L. R. 192.

—————*Defective charge—Previous conviction not set out distinctly in the charge-sheet, effect of—Material omission—Enhanced punishment—Penal Code, S. 75.*

It is a part of the duty of the Courts to draw charge-sheets accurately, and where they fail to do this, the persons convicted are entitled to the benefit of any material omission. Where enhanced sentences are contemplated under S. 75, I. P. C. a separate head of charge must be distinctly drawn with this object. Where this was not done, the Court reduced the enhanced punishment awarded under S. 75, I. P. C., though there was some reference to previous convictions in the statements of the accused recorded on the reverse of the charge-sheets. *Dungri v. Emperor.*

12 Cr. L. J. 233 :
10 I. C. 241 : 139 P. L. R. 1911 :
40 P. W. R. 1911 Cr.

—————*Defective charge—Two persons charged with causing hurt to three—One charge—Irregularity—No case of hurt by one of the accused—Prejudice.*

In one charge two persons were charged with causing hurt to three others with a *dao*, but there was no case of hurt by *dao* by one of the accused and he was convicted under S. 352 for using a *lathi* against two of the complainants : *Held*, that this was an irregularity which might have prejudiced the accused in their trial and that a re-trial by a new Magistrate must be held on charges properly framed. *Sital Chandra Maitra v. Emperor.*

14 Cr. L. J. 212 :
19 I. C. 308 : 17 C. W. N. 419.

—————*Defective charge.*

Where an accused, who was tried with the other accused against whom a charge under S. 406, I. P. C. was framed, was convicted under S. 406 read with S. 116, I. P. C. without any specific charge having been framed against him, but it appeared that he knew of the charge as he put in a written statement denying it : *Held*, that his conviction was bad as the charge against the other

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accused was defective. *Bipra Das Giri v. Niradmoni Bewa.*

7 Cr. L. J. 372 :
12 C. W. N. 577.

—————*Essentials—Conviction on different—Prejudice—Knowledge.*

An accused person is entitled to know with certainty and accuracy the exact nature of the charge brought against him, and, unless he has this knowledge, he must be seriously prejudiced in his defence. Where he is convicted on a charge different from that on which he is tried, the nature of the case made at the trial, the evidence given and the line of defence made are matters to be taken into consideration to decide whether he has been prejudiced or not in the trial. *Balkeshwar Singh v. Emperor.*

23 Cr. L. J. 114 :
65 I. C. 546 : 3 P. L. T. 322 :
A. I. R. 1922 Pat. 5.

—————*Essentials.*

It is one of the elementary principles of Criminal Law that an accused person must know what the precise accusation against him, is before he is called upon to enter on his defence. *Indar Pal v. Emperor.*

37 Cr. L. J. 732 :
162 I. C. 969 : 38 P. L. R. 1128 :
8 R. L. 978 : A. I. R. 1936 Lah. 409.

—————*Essentials—Specification of offence—Summary trial.*

It is wrong to suppose that because a case is tried summarily, a charge under the Penal Code is not necessary. No formal charge need be drawn up, but the accused must be called upon to answer to the particulars of the offence charged, whether the proceedings be summary or otherwise. *Jharu Sheikh v. Emperor.*

13 Cr. L. J. 224 :
14 I. C. 320 : 16 C. W. N. 696.

—————*Frame of—Charge under S. 398, Penal Code, substantive S. 393 should be mentioned—Omission curable under S. 537, Cr. P. C.*

In a charge and finding under S. 398, P. C., the substantive S. 393, should be mentioned as well as the supplementary S. 398. The omission to specify the section would, however, be covered by S. 537 of Cr. P. C. Where the heads of charge did not contain a mention of the allegation that two out of three accused were carrying *das* and the Judge omitted to ascertain from the jury whether they found, as a fact, that the said two accused were armed with *das* : *Held*, that it was possible the jury overlooked the serious nature of the charge. The convictions were, consequently altered to S. 303 from S. 398, and the sentences reduced. *Chan Hok v. Emperor.*

12 Cr. L. J. 468 :
11 I. C. 1004 : 4 Bur. L. T. 198.

—————*Frame of—Defect in form—Prejudice to accused—Defect, whether cured.*

A charge stating that the accused did a particular act in order to commit a certain offence "or any other offence punishable with imprisonment" is improper as the accused should know the specific offence with which he is charged. When, however, the accused does not suffer any prejudice the defect in the form

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of the charge is curable by the provisions of S. 537 of the Cr. P. C. *Balaram Kundu v. Emperor*. 25 Cr. L. J. 1186;

82 I. C. 50 : A. I. R. 1925 Cal. 160.

———Frame of—Doubtful case.

In a case where there is some doubt as to what the offence really is that an accused is supposed to have committed, the charge should be clearly formulated. *Sital v. Emperor*.

19 Cr. L. J. 35 :
42 I. C. 995 : 15 A. L. J. 796 :
A. I. R. 1918 All. 322.

———Frame of—General deficiency charge, legality.

It is settled law that in cases of criminal misappropriation of money a general deficiency charge is regular. *Ram Kishen v. Emperor*.

29 Cr. L. J. 835 :
111 I. C. 387 : A. I. R. 1928 Lah. 880.

———Frame of—Practice.

In a criminal trial there is less difficulty and less liability to error if the Court throughout the trial keeps before it the frame-work of the charge in order to see whether the evidence fits into it. *Meghraj v. Emperor*. 18 Cr. L. J. 131 :
37 I. C. 483 : A. I. R. 1917 All. 108.

———Joinder of—See Cr. P. C. Ss. 234 to 239.

———Misjoinder of—See also Cr. P. C., Ss. 234 to 239.

———Misjoinder of—Penal Code, Ss. 411, 414, joinder of charges under, legality of—Defective charges, if can be remedied at conclusion of trial—Procedure—Alternative charges.

Joinder of charges of offences under S. 411, I. P. C. with charges of offences under S. 414, is bad. If, however, the charges are framed in the alternative under S. 236, there would be no defect in the trial. But having framed defective charges the Magistrate cannot remedy the error at the conclusion of the trial by saying in his judgment that he would only proceed on the charges that had been legally joined. If he wishes to strike out any of the charges, he should do so before concluding the trial, and should give the accused an opportunity of making such defence as he thinks fit on the charges as amended. Where this is not done, the error vitiates the trial and makes the conviction illegal. *Chettu Kakkar v. Emperor*.

24 Cr. L. J. 86 :
71 I. C. 214 : 49 Cal. 555 :
A. I. R. 1922 Cal. 401.

———Misjoinder of.

Where an objection as to the misjoinder of charges is taken for the first time before the High Court when dealing with a case not on the application of the Crown, the High Court will not give effect to it. *Emperor v. Luchmun Singh*. 1 Cr. L. J. 970.

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See also (i) Cr. P. C., Ss. 297 to 307.

(ii) Criminal trial—Trial by jury.

(iii) Jury trial.

———Misdirection—Charge under S. 304 or 325, I. P. C. conviction under S. 323, though no

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charge under that section drawn up—Misdirection to jury.

If the accused be charged with an offence under S. 304 or with one under S. 325, they may be convicted of an offence under S. 323, though no charge under that section has been drawn up against them. But if they be charged with the offences alleged to have been committed by another person in the course of a riot and it is found that there is no riot, they should not be convicted of the offence of hurt in respect of their individual acts with which they are not charged and of which there is no trace in the Judge's charge to the jury of ever having been imputed to them. If the Judge omits to call the attention of the jury to the fact of the original witnesses having been abandoned by the prosecution of two of them having given evidence for the defence and of the witnesses examined in Court for the prosecution being entirely new witnesses, it is sufficient misdirection in the Judge's charge to the jury to set aside the conviction. *Dasarath Mandal v. Emperor*. 5 Cr. L. J. 424 :
I. L. R. 34 Cal. 325.

———Misdirection—Jury not misled.

In a case of theft the Judge in his charge to the Jury said 'the accused may be presumed to be the thief if there is no evidence to the contrary' instead of the word 'unless he can account for his possession.' But there were passages in the charge which showed that the Judge did not mean and the jury did not understand him to mean that they should pay no attention to any explanation which the accused might put forward in the absence of evidence to support it: *Held*, that the passage did not amount to a mis-direction. *In re : Chinmu*. 16 Cr. L. J. 618 :
A. I. R. 1916 Mad. 1224.

———Misdirection—Proof of previous conviction against accused—Judge charging Jury that they were proved—Effect of misdirection on sentence and verdict.

Where, in a Sessions case, the Judge told the Jury that certain alleged prior convictions against the accused were proved instead of leaving it to them to decide whether they were proved or not: *Held*, (1) that it amounted to a misdirection, (2) that the misdirection did not affect the conviction of the accused as the question of prior convictions could be gone into only after the Jury returns their verdict, and (3) that though it affected the question of sentence, the Court was not prepared to interfere seeing that the sentences passed were not too severe. *Thoolipatti Rama Gowndan v. Emperor*. 10 Cr. L. J. 11 :
2 I. C. 434.

———Misdirection—Reference to previous trial.

Where there was a previous trial of certain persons for the same offence, the Judge ought to refer to that trial only, if at all, in order to warn the jury that they were not bound by its result, but were, on the contrary, bound to form an independent opinion on the evidence then before them. It is a misdirection if he

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warned them that they must consider carefully whether there was any reason for coming to a different conclusion on a certain point from that arrived at by the Court on the former occasion. *Keshab Pal v. Emperor*.

10 Cr. L. J. 498 :
4 I. C. 120 : 9 C. L. J. 380.

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—S. 15—Construction of—High Court's power to remedy any injustice—Interfering with order of Presidency Magistrate—Criminal Procedure Code (Act V of 1898), S. 203, order under—Dismissal of complaint—Further enquiry.

Independently of the Code of Criminal Procedure, the High Court has jurisdiction under S. 15 of the Charter Act to interfere with the order of a Presidency Magistrate dismissing a complaint under S. 203, Cr. P. C., and direct a further enquiry. There is no form of judicial injustice which the High Court, if need be, cannot reach under the Charter Act. S. 15 of the Charter Act should be interpreted in an extended sense so as to give the High Court power of superintendence, that is to say, powers of revision over proceedings of subordinate Courts. *Lekhraj Ram v. Debi Prasad*. 7 Cr. L. J. 499 : 12 C. W. N. 678.

—S. 15—Letters Patent (Mad.) Ss. 28 and 29—Powers of High Court to stay proceedings in Criminal Courts pending Civil appeal.

High Court has jurisdiction to direct criminal proceedings ordered by a Civil Court to be stayed till the disposal of the appeal from that Civil Court. *In re : L. Jogiah*. 8 Cr. L. J. 390 : 4 M. L. T. 225 : 2 R. R. 31 Mad. 515.

—Ss. 27, 34—Nature of S. 27—Construction of S. 31 arrears—Realization by warrant—Procedure.

S. 27 is mandatory and prescribes the procedure which must be followed in realizing arrears by warrant. It affords no scope for the contention that an Assessor *Panch* if he chooses to act himself instead of authorizing some one else, can act arbitrarily, or irregularly. A section like S. 34 must be construed very strictly and narrowly as to a certain extent it detracts from the fundamental right of the subject to protection from any act of the executive authorities, which is not entirely lawful and regular, or is, in any way, arbitrary. The words "any defect in the power or writing" in S. 34 must be read with the words "want of form", and must, therefore, be taken as covering only formal defects. The fact that the signature of the Assessor *Panch* is placed wrongly at the bottom of the form instead of in the place provided for the purpose is only a formal defect, and would be covered by S. 34. Similarly, it may be that the omission of any date in the proper place is also a formal defect. With regard, however, to the complete omission of any authorization to any one to execute the warrant, this is not a formal defect such as can be remedied by S. 34. *Gopal Mahlon v. Emperor*. 41 Cr. L. J. 819 : 190 I. C. 98 : 21 P. L. T. 716 : 6 B. R. 914 : 13 R. P. 182.

CHEATING

See Penal Code, Ss. 415 to 420.

—Mortgagor not disclosing his defective title—Penal Code, S. 420.

Mere suppression of some facts at the time of borrowing money does not amount to cheating where there is no evidence of either active deception or dishonest or fraudulent action. *Hari Krishan v. Emperor*. 11 Cr. L. J. 610 : 8 I. C. 256 : 40 P. W. R. 1910 Cr.

CHEMICAL EXAMINERS REPORT.

See Cr. P. C., S. 510.

CHHAVI.

See Arms Act, S. 20.

23 Cr. L. J. 338.

CHILD.

See (i) Cr. P. C., S. 488 (2).

(ii) Penal Code, S. 317.

CHILD MARRIAGE RESTRAINT ACT (XIX OF 1929).

—Policy of law—Guardianship of minor wife.

It is against the policy of the Child Marriage Restraint Act, that a husband should obtain possession of his wife if she has not attained the age of 14 years. Obtaining possession of the minor wife by her husband would not be for her benefit as the law clearly provides that such marriages shall not take place. *Nanku v. Emperor*. 37 Cr. L. J. 35 : 159 I. C. 183 : (1935) A. L. J. 1096 : 8 R. A. 400 : A. I. R. 1935 All. 916.

—Scope of—Marriage penalised but not invalidated.

It is true that the celebration of marriage of child of 12-13 years may contravene the provisions of the Act, but such marriage is not declared by the Act to be invalid. The Act merely imposes certain penalties on persons bringing about such marriages. *Moti v. Beni*. 38 Cr. L. J. 301 : 166 I. C. 847 : (1936) A. L. J. 1097 : 1937 A. L. : A. I. R. 1936 All. 852.

—Summary trial, legality of.

It is permissible to hold a summary trial for an offence under the Act. *Jwala Prasad v. Emperor*. 35 Cr. L. J. 677 (2) : 148 I. C. 351 : 6 R. A. 693 : A. I. R. 1934 All. 331.

—Whether ultra vires.

So far as Hindus are concerned, the Child Marriage Restraint Act is not ultra vires. *Jalsi Kuar v. Emperor*. 33 Cr. L. J. 20 : 146 I. C. 298 : 14 P. L. T. 438 : 6 R. P. 248 : A. I. R. 1933 Pat. 471.

—S. 5.

See Child Marriage Restraint Act, 1929, S. 9.

39 Cr. L. J. 776.

—S. 5—Abetment, prosecution for.

Abetment of offence under the Act—Prosecu-

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tion for abetment is legal. *Nanhak Lal v. Baij Nath Agarwal*. 37 Cr. L. J. 227 :

160 I. C. 116 : 16 P. L. T. 629 :

2 B. R. 164 : 8 R. P. 334 :

A. I. R. 1935 Pat. 474.

———S. 5—Application—Invalidity of marriage, effect of.

The question of the validity or invalidity of the marriage is beyond the scope of the Act. The Act applies even where the parties to the marriage belong to the same *gotra*. *Munshi Ram v. Emperor*. 36 Cr. L. J. 1483 :

158 I. C. 1007 : 1935 A. L. R. 1035 :

8 R. A. 353 : A. I. R. 1936 All. 11.

———S. 5—Application of.

S. 5 is wide enough to cover the case of the fathers of both the bridegroom and the bride. *Munshi Ram v. Emperor*. 36 Cr. L. J. 1483 :

158 I. C. 1007 : 8 R. A. 353 :

A. I. R. 1936 All. 11.

———S. 5—Scope of.

S. 5 excludes bridegroom, parent and guardian. *Ganpatrao Devaji v. Emperor*.

34 Cr. L. J. 311 :

142 I. C. 277 : 28 N. L. R. 302 :

I. R. 1933 Nag. 104 : A. I. R. 1932 Nag. 174.

———S. 5—Marriage, completion of—Consummation, necessity of.

The fact, that the *Gauna* ceremony has not been performed does not affect the performance of the marriage, which is complete as soon as the ceremony of the marriage is performed. Consummation is not a part of the marriage ceremony. *Munshi Ram v. Emperor*.

36 Cr. L. J. 1483 :

158 I. C. 1007 : 8 R. A. 353 :

A. I. R. 1936 All. 11.

———S. 5—Marriage conducted on certification of age by doctor, effect of.

Marriage conducted on certification of medical officer inferior to a Civil Surgeon does not amount to good faith—Existence of such certificate affects sentence. *Jwala Prasad v. Emperor*.

35 Cr. L. J. 677 (2) :

148 I. C. 351 : 6 R. A. 693 :

A. I. R. 1934 All. 331.

———S. 5—Offence—Forum of trial.

Offence under—Court at place where *Tilak* ceremony was performed has no jurisdiction to try case. *Matuk Dev v. Vinayak Prasad*.

35 Cr. L. J. 1175 (1) :

150 I. C. 993 : 1934 A. L. R. 762 :

1934 A. L. J. 681 : L. R. 15 A. 160 Cr. :

7 R. A. 59 (1) : A. I. R. 1934 All. 829 (1) :

———S. 6—Father's liability.

Father giving minor daughter in marriage is guilty under S. 6. *Ganpatrao Devaji v. Emperor*.

34 Cr. L. J. 311 :

142 I. C. 277 : 28 N. L. R. 302 :

I. R. 1933 Nag. 104 : A. I. R. 1932 Nag. 174.

———S. 6—Promotion of marriage—Conducted outside British India—Offence.

S. 6 of the Child Marriage Restraint Act has a reference only to the promotion of a marriage

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referred to in Ss. 4 and 5, that is to say, a marriage that is prohibited. As such marriage is not prohibited when performed outside British India, the promotion of such a marriage cannot be made punishable under the Child Marriage Restraint Act itself. *Haider v. Isa Syed*. 39 Cr. L. J. 651 :

175 I. C. 615 : 11 R. N. 2 :

A. I. R. 1938 Nag. 235.

———S. 6—Scope of—Mother of bridegroom participating in marriage—Offence.

Where the mother of the bridegroom had no authority by law to prevent the marriage, her mere participation in the marriage cannot be regarded as constituting an offence punishable under S. 6 of the Act which is confined only to the person who has actual charge of the minor either as parent or as guardian at the time. *Public Prosecutor v. Thammanna Rallayya*.

38 Cr. L. J. 594 :

168 I. C. 723 : 1937 M. W. N. 212 :

45 L. W. 437 : 9 R. M. 633 :

I. L. R. 1937 Mad. 854 :

A. I. R. 1937 Mad. 490.

———S. 6—Scope of.

S. 6 covers case where even one party is minor. *Ganpatrao Devaji v. Emperor*.

34 Cr. L. J. 311 :

142 I. C. 277 : 28 N. L. R. 302 :

I. R. 1933 Nag. 104 :

A. I. R. 1932 Nag. 174.

———S. 6—Scope of.

S. 6 only aims at permitting or failing to prevent a marriage which is made penal under the earlier sections, and does not impose a penalty for permitting a marriage which is lawful. *Narayan Mudlagiri Mahale v. Emperor*.

37 Cr. L. J. 211 :

159 I. C. 923 : 37 Bom. L. R. 885 :

59 Bom. 745 : 8 R. B. 239 :

A. I. R. 1935 Bom. 437.

———Ss. 9, 5—Offence not cognizable—Report of Police Officer conducting investigation under orders from Magistrate not complaint.

When a Police Officer investigates a non-cognizable case under the orders of a Magistrate, the report which he makes, at the end of his investigation, is of the same nature as a report, made under S. 17, Cr. P. C., and such a report being a Police report, is not a "complaint," though if a Police Officer acting without instructions from a Magistrate reports a non-cognizable offence to a Magistrate with a view to the Magistrate taking action, this is a complaint.

An offence under S. 5, being punishable only with simple imprisonment up to one month or a fine of Rs. 1,000, or both under Sch. III, Cr. P. C. is not cognizable, so when such a case is forwarded to an Assistant Superintendent of Police for investigation, a letter written on behalf of the Assistant Superintendent of Police to the District Magistrate is a "Police Report" and not a "complaint."

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Jagdeo Panday v. N. C. Hill, Assistant Superintendent of Police, Myitkyina. 39 Cr. L. J. 776 : 176 I. C. 694 : 1938 Rang. 150 : 11 R. Rang. 74 : A. I. R. 1938 Rang. 57.

—S. 5—Performing or directing marriage, what is.

Merely applying for permission to the Municipal Board for conducting festivities like *nach* with music and fireworks on the occasion of a marriage does not amount to "performing, conducting or directing a child marriage." *Bachchu Lal v. Emperor.* 37 Cr. L. J. 616 :

162 I. C. 389 (b) : 1936 O. L. R. 254 : 1936 O. W. N. 480 : 8 R. O. 376 : A. I. R. 1936 Oudh 311.

—S. 5—Purohit and duty of—Enquiry as to age.

S. 5 requires the person who solemnises a marriage to make some reasonable enquiry as to the ages of the parties to the marriage and satisfy himself that neither of the participants is a child. It is not enough if he merely looks at the bride and the bridegroom and forms his own opinion. He must know that it is difficult to judge by appearance and the law casts upon him the duty of making reasonable enquiry before he can claim to have had reason to believe that neither the bride nor the bridegroom was a child. *Public Prosecutor v. Ammanappa Rattayya.* 38 Cr. L. J. 594 :

168 I. C. 723 : 1937 M. W. N. 212 : 9 R. M. 633 : I. L. R. 1937 Mad. 854 : 45 L. W. 437 : A. I. R. 1937 Mad. 490.

—S. 5—Trial of offence—Application of S. 188, Cr. P. C.

Before S. 188, Cr. P. C., can be applied for trial of an offence under the Act, the prosecution must prove that the Act makes penal a child marriage performed outside British India. *Narayan Mudlagiri Mahale v. Emperor.* 37 Cr. L. J. 211 :

159 I. C. 923 : 37 Bom. L. R. 885 : 59 Bom. 745 : 8 R. B. 239 : A. I. R. 1935 Bom. 437.

—Ss. 5, 6—Complaint under—Finding as to age, necessity of.

In case of complaints under Ss. 5 and 6, it is essential that the trying Magistrate should find definitely that either or both of the contracting parties to the marriage, were infants, that is to say, that the bridegroom was under the age of 18 or that the bride was under the age of 14. *See Rattan Lal Binani v. Emperor.* 40 Cr. L. J. 605 :

181 I. C. 916 : 11 R. C. 874 : A. I. R. 1939 Cal. 288.

—Ss. 5, 6—Marriage celebrated outside British India under mistake of fact—Offence—Act whether extra-territorial—Mistake of fact, whether good in defence—Cr. P. C. (Act V of 1895), Ss. 186, 188.

A mistake of fact can be pleaded successfully only if on account of such mistake an act which otherwise would be an offence ceases to be an offence.

The Penal Code, as well as the Child Marriage Restraint Act, are extra-territorial to the ex-

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tent, that if Native Indian subjects commit offences punishable under these laws even outside British India, they are liable to be tried and punished when found in British India. Where a child marriage is celebrated under a mistaken view that the territory where it was celebrated was outside British India, the mistake of fact does not have the effect of rendering the celebration of the child marriage in question innocuous or innocent. The Child Marriage Restraint Act, 1929, can pursue them even when they have broken that law after going outside British India, and *a fortiori* after going to a place which they believed to be not part of British India but is really part of British India. *Sreeramamurthy v. Ranganayakulu.* 38 Cr. L. J. 587 :

168 I. C. 736 : 1937 M. W. N. 22 : 45 L. W. 210 : (1937) 1 M. L. J. 388 : 9 R. M. 628 : A. I. R. 1937 Mad. 273.

—Ss. 5, 6—Negotiations, preparation or preliminary acts, if punishable—Marriage outside British India not penalised.

S. 5 of the Child Marriage Restraint Act takes account only of performing, conducting or directing a child marriage, that is to say, the actual marriage ceremony itself and not of any negotiation, preparation or any other preliminary acts.

S. 3 of the Penal Code postulates that before any person can be tried in British India for an offence committed beyond British India, there must be in existence a law making him liable to be so tried. The contraction of a child marriage outside British India is not an offence under the Child Marriage Restraint Act, since there is no provision in the Act nor in any application of any part of the Penal Code that participating in such a marriage is an offence when committed outside British India. *Haider v. Issa Syed.* 39 Cr. L. J. 651 :

175 I. C. 615 : 11 R. N. 2 : A. I. R. 1938 Nag. 235.

—Ss. 5, 6—Scope of—Bridegroom's parents when liable, S. 6.

S. 5 applies only to the solemnisation of marriage by others than parents and hence S. 6 alone applies to parents who promote a child marriage or permit it or negligently fail to prevent it. The parents of the bridegroom cannot be convicted under S. 6 merely because the bride was under 14 years and they can be convicted, if at all under S. 6 only if the bridegroom that is their own son who was in their charge was under 18 years at the time of the marriage. *Public Prosecutor v. Thammanna Rattayya.* 38 Cr. L. J. 549 :

168 I. C. 723 : 1937 M. W. N. 212 : 45 L. W. 437 : 9 R. M. 633 : I. L. R. 1937 Mad. 854 : A. I. R. 1937 Mad. 490.

—Ss. 5, 6(1)—Application of—to foreigners—Sentence.

The Act is a penal statute, and under its provisions, whoever offends against those provisions, commits a crime even if he is a foreigner and the act is not an offence in the foreign place. But this matter can be considered in mitigation of punishment. *Superintendent and Remem-*

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brancer of Legal Affairs, Bengal v. Radha Kissen.

37 Cr. L. J. 757 :
163 I. C. 147 : 39 C. W. N. 656 :
8 R. C. 697 (1).

—S. 8—Jurisdiction—Additional District Magistrate whether competent to try.

An Additional District Magistrate who has been given all the powers of a District Magistrate is empowered to try a case under the Act. *In re : Abdur Rahiman Kutty.*

138 Cr. L. J. 664 (2) :
169 I. C. 71 : 1937 M. W. N. 321 :
45 L. W. 435 : 1937 1. M. L. J. 498 :
9 R. M. 679 : I. L. R. 1937 Mad. 1034 :
A. I. R. 1937 Mad. 637.

—Ss. 8, 10—Preliminary enquiry, necessity of—Issue of process without enquiry, legality of.

A preliminary enquiry is absolutely necessary before the Court can take cognizance of an offence under Act. Hence the issue of process in the case under S. 8 without holding an enquiry under S. 10 is unauthorized by law and must be set aside. *In re : Darapureddi Jaggu Naidu.*

40 Cr. L. J. 818 (1) :
183 I. C. 581 : 49 L. W. 552 :
1939 M. W. N. 411 : 1939 1 M. L. J. 900 :
12 R. M. 343 (1) : A. I. R. 1939 Mad. 530.

—S. 9—Taking cognizance, meaning of—taking cognizance before obtaining certificate required under S. 188, Cr. P. C.—Taking cognizance and enquiry into charge—Distinction between.

Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Thus it occurs as soon as he reads the complaint and even before he examines the complainant which he is bound to do. Having taken cognizance, he proceeds to enquire into the charge. Hence a Magistrate has jurisdiction to take cognizance under S. 9 before certificate is obtained under S. 188 of the Cr. P. C. The taking of cognizance is an action which is prior to and independent of the enquiry into the charge, so that the Court may have jurisdiction to take cognizance, although it has no jurisdiction to enquire into the charge before certificate is obtained. *Harnarayan v. Govindram.*

41 Cr. L. J. 645 :
188 I. C. 606 : 1940 N. L. J. 304 : 13 R. N. 9 :
A. I. R. 1940 Nag. 245.

—S. 10—Preliminary inquiry, necessity of—Accused's failure to object—Estoppel.

The object of S. 10 is that no one should be harassed by a prosecution until a Magistrate has satisfied himself by inquiry that there is a *prima facie* case against him. The object of the preliminary inquiry is, therefore, to inquire whether there is a *prima facie* case or not. But where the accused makes no objection to the trial, he cannot, when the result has gone against him, showing that there was not only a *prima facie* case against the accused, but there was a substantive case against the accused, benefit by an objection which is entirely

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technical in its nature. *Harihar Tiwari v. Etwari Gop.*

40 Cr. L. J. 887 (1) :
184 I. C. 230 : 20 P. L. T. 495 :
12 R. P. 231 : 6 B. R. 24 :
A. I. R. 1939 Pat. 525.

—S. 10.

Preliminary enquiry, necessity of—Omission to hold preliminary inquiry before issuing process to accused—Trial is vitiated. *Mangal v. Kalu.*

32 Cr. L. J. 616 :
130 I. C. 783 (2) : 31 P. L. R. 945 :
12 Lah. 383 : I. R. 1931 Lah. 351 :
A. I. R. 1931 Lah. 56 (1).

—S. 10—Preliminary enquiry, necessity of.

The Court taking cognizance of an offence under this Act is bound to hold a preliminary enquiry before taking further action, unless it dismisses the complaint under S. 203 of the Cr. P. C. *Emperor v. Chand Mal Goenka.*

35 Cr. L. J. 1436 :
151 I. C. 830 : 35 P. L. R. 8 :
15 Lah. 63 : 7 R. L. 209 :
A. I. R. 1934 Lah. 155.

—S. 10—Transfer of case for trial without inquiry, not legal.

Transfer of a case under S. 10 to Sub-Divisional Magistrate for disposal according to law without an inquiry under S. 202, Cr. P. C. is illegal. *Sivagami Ammal v. Muthu Iyer.*

40 Cr. L. J. 514 (2) :
180 I. C. 902 (1) : 48 L. W. 774 :
1938 M. W. N. 1312 1939 : 1 M. L. J. 111 :
11 R. M. 766 : A. I. R. 1939 Mad. 294.

—S. 11—Complaint by judicial officer—Failure to take bond, effect of.

Where the complaint is by a judicial officer, omission to record reasons for not requiring him to execute a bond cannot be held to vitiate the proceedings. *Sukha Sahu v. Emperor.*

34 Cr. L. J. 237 :
141 I. C. 810 : 13 O. L. J. 791 :
I. R. 1933 Pat. 91 :
A. I. R. 1933 Pat. 87.

—S. 11—Security bond found subsequently insufficient—Legality of trial.

The mere fact that the security bond under S. 11 which was *prima facie* sufficient, was afterwards found to be defective, does not vitiate the trial. *Bachchu Lal v. Emperor.*

37 Cr. L. J. 616 :
162 I. C. 389 (b) : 1936 O. L. R. 254 :
1936 O. W. N. 480 : 8 R. O. 376 :
A. I. R. 1936 Oudh 311.

—S. 11 (1)—Prosecution, if imperative—Failure to record reasons for not taking bond, effect of.

Provision is imperative—Failure of Magistrate to record reasons why complainant was not required to execute bond is material irregularity not curable by S. 537, Cr. P. C. *Kaluram Daga v. Emperor.*

34 Cr. L. J. 554 :
143 I. C. 279 : 37 C. W. N. 626 :
I. R. 1933 Cal. 393 :
A. I. R. 1933 Cal. 433 (1).

CHILD WITNESS.

See also (i) Evidence Act, 1872, S. 118.
(ii) Oaths Act, 1873, S. 6.

—*Eye-witness of crime, evidence of, when to be relied upon.*

The mere fact that the evidence of the only eye-witness of a crime is that of a child six-years of age, is not a ground for not relying upon it, especially when the evidence is given without hesitation and without the slightest suggestion of tutoring or anything of that sort and there is corroboration of the evidence in so far as it narrates the actual facts, and of the child's subsequent conduct immediately afterwards. *Fatu Santal v. Emperor*.

22 Cr. L. J. 427 :
61 I. C. 705 : 6 P. L. J. 147 : 2 P. L. T. 988 :
A. I. R. 1921 Pat. 109.

CHIN HILLS REGULATION (V OF 1896).

See Cr. P. C., 1898, S. 439.

CHINESE BUDDHIST LAW.

See also Buddhist Law (Chinese.)

—*Marriage—Valid marriage—Essentials of—Consent of parties to live together and publicly of relationship—Sufficiency of—Maintenance.*

Marriage is in China, concluded according to the will of the contracting parties, and has in some way or other to be made public. Where the question of the status of a chief or first wife is not involved, in the case of marriage among Chinese Buddhists, what really constitutes a valid marriage is the consent of the parties concerned to live together as husband and wife. They must, however, give sufficient publicity to their relationship. The result is the same whether the Burmese Buddhist Law or Chinese Customary Law applies to a marriage between a Chinese Buddhist man and a Chinese Buddhist woman. Consequently, where it is shown by the evidence that the parties lived together as husband and wife for some time and they were accepted as such by their relations and friends and there is no evidence to prove that the wife refused to live with her husband, she is entitled to maintenance. *Ma Kyin Hlaing v. Maung Kyin Srei*.

38 Cr. L. J. 274 :
166 I. C. 577 : 9 R. Rang. 270 : 1937 Rang. 90 :
A. I. R. 1931 Rang. 29.

CHOTA NAGPUR TENANCY ACT (VI OF 1908).

—S. 46, application of.

Lease executed before 1903—S. 46 has no application. *Jacula Prasad v. Emperor*.

35 Cr. L. J. 677 (2) :
148 I. C. 351 : 6 R. A. 693 :
A. I. R. 1934 All. 331.

—S. 63 (as amended by Act II of 1938), —*Offence under S. 63, essence of—Manager, Court of Wards, committing offence—Trial—Procedure.*

An offence under S. 63, Chota Nagpur Tenancy Act, is committed only if the landlord or his agent levies or makes certain demands over and

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above the rent legally due from the tenants. There is no offence if anybody other than the landlord or an agent of the landlord demands commodities from persons who are not his tenants. Where the Manager of the Court of Wards demands certain commodities or animals or birds from the tenants of the estate which he is not entitled to demand, he commits an offence under S. 63. S. 63 (1) (a) of the Chota Nagpur Tenancy Act creates an offence but does not deal with the method in which investigation is to be made and the trial to be held; therefore by reason of S. 5 (2) of the Cr. P. C., it must be investigated into and tried according to the provisions of the Code. *Capt. M. O. Angelo v. Kandan Manjhi*.

41 Cr. L. J. 221 :
185 I. C. 738 : 6 B. R. 241 : 12 R. P. 440 :
A. I. R. 1940 Pat. 316.

—Ss. 63, 215—*Appeal—Forum.*

Orders under S. 63 fall within the purview of S. 215 of the Act and are appealable to the officers mentioned therein and not to the officers to whom appeals would lie under the provisions of the Cr. P. C. *Krishna Prasad Singh v. Emperor*.

29 Cr. L. J. 420 :
108 I. C. 556 : 7 Pat. 421 : 10 A. I. Cr. R. 154 :
9 P. L. T. 496 : A. I. R. 1928 Pat. 370.

—Ss. 63, 258 (as amended by Act II of 1938)—*Jurisdiction of—Ss. 63 and 258—Criminal Courts to try offence—Court of Wards Act (IX of 1879), S. 70—Rules made under r. 115—If ultra vires.*

Rule 115 of the rules made by Court of Wards under S. 70 of the Court of Wards Act, does not take away the power expressly given to the Court by S. 20 to appoint and remove managers but it only requires the previous sanction of Govt. Ss. 69 and 70 of the Act empower the making of such a rule and it is not, therefore, ultra vires. *Capt. M. O. Angelo v. Kandan Manjhi*.

41 Cr. L. J. 221 :
185 I. C. 738 : 6 B. R. 241 : 12 R. P. 440 :
A. I. R. 1940 Pat. 316.

—Ss. 63, 258 (As amended by Act II of 1938)—*Scope of—Jurisdiction of Criminal Courts to try offences under S. 63—Manager of Court of Wards, committing offence under S. 63—Sanction for prosecution, necessity of—Cr. P. C. (Act V of 1898), S. 197.*

There is nothing in S. 63 which deprives the ordinary Criminal Courts of Jurisdiction to try all offences under that section. S. 258 does not deprive a Criminal Court of its jurisdiction to try a criminal offence. Under S. 59-A, Court of Wards Act, a manager of Court of Wards is a public servant and where, according to the rules made by the Court of Wards under S. 70 of that Act, such a person getting certain salary cannot be appointed without the previous sanction of the Govt., it follows that he cannot also be dismissed without the sanction of the Govt. When such a manager therefore commits an offence under S. 63, Chota Nag. Ten. Act, while acting in his capacity as a manager of the estate, a sanction of the Govt. under S. 197, Cr. P. C., is

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necessary for his prosecution. 181 I. C. 317 (1) referred to. *Capt. M. O. v. Angelo v. Kandan Manjhi*

41 Cr. L. J. 221 :
185 I. C. 738 : 6 B. R. 241 : 12 R. P. 440 :
A. I. R. 1940 Pat. 316.

———S. 72 (4)—*Surrender of holding by raiyat—Landlord's right to re-enter—Termination of under-raiyat's rights—Dispossession of under-raiyat—Criminal trespass.*

When a *raiya*t surrenders his holding, the landlord acquires a right to enter upon the land and he can do so in spite of the land being in the possession of an under-raiyat brought on the land by the raiyat, and if he does so, he commits no offence. *Har Prasad Singh v. Hulsan Chamar.*

29 Cr. L. J. 642 :
110 I. C. 98 : 9 P. L. T. 728 :
10 A. I. Cr. R. 420.

———S. 139 (4).

Jurisdiction of Civil Court is not barred to entertain suit under S. 41 (4) for ejectment of lessee holding over after termination of his lease. *Jawala Prasad v. Emperor.*

35 Cr. L. J. 677 (2) :
148 I. C. 351 : 6 R. A. 693 :
A. I. R. 1934 All. 331.

CHRISTIAN MARRIAGE ACT (XV OF 1872).

———Ss. 3, 68—*Construction of—'Professing Christian religion,' meaning of—Act, scope of—S. 68, applicability of—Christian marrying according to Hindu rites—Offence—Estoppel, doctrine of, whether applies to Criminal Law.*

Per *Knox, J.*—The Act has to be so construed that no case be held to fall within it which does not fall both within the reasonable meaning of its terms and within the spirit and scope of the enactment. No violence must be done to its language in order to bring people within it, but rather care must be taken that no one is brought within it who is not within its express language. It is not competent to a Court to extend the words of an enactment by construction.

The word 'means' in S. 3 is an inclusive term and, therefore, no one except a person who professes the Christian religion comes within the purview of S. 68. A person is not a 'person professing the Christian religion' within the meaning of the Act simply because he is baptised as an infant, when he has no possibility of saying to the world what is the faith to which he belongs, nor can any importance be attached to the fact that he attends a Christian school. The dressing as a Christian, especially in the *Bhangi* class, is not conclusive on the point either. A person cannot be said to profess the Christian religion if at the time of his marriage he performs *devi ki puja*. *Quacre.*—Whether S. 68 of Act XV of 1872 was intended to penalise marriages other than those intended to be or purporting to be marriage under the Act. Per *Walsh, J.*—A person, who, on the eve of his marriage, resists all pressure and persuasion to be married as a Christian by a Christian ceremony and who, having by birth and connection other religious associations, deliber-

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ately decides to marry a sweeper according to sweeper rites and does public worship to Hindu gods in the presence of his relatives and friends, is not 'a person professing the Christian religion' within the meaning of S. 3 of the Christian Marriage Act. The principle of estoppel has no place in the Criminal Law and the idea of a Christian by estoppel is a contradiction in terms. The object of Act XV of 1872 is not to prevent people marrying as they wish, but to enable them to protect themselves and their posterity by a lawful and binding marriage if they wish to be married as Christians. There is no express prohibition preventing a professing Christian from doing violence to his faith and marrying a non-Christian by a non-Christian ceremony. S. 68 of the Act does not make it criminal for a professing Christian to marry by a ceremony which is void under S. 4 of the Act. It refers to a class of persons who solemnize or profess to solemnise a Christian marriage under the Act not being authorized by S. 5 to do so. *Maha Ram v. Emperor.*

19 Cr. L. J. 615 :
45 I. C. 519 : 16 A. L. J. 414 : 40 All. 393 :
A. I. R. 1918 All. 168.

———Ss. 68, 4, 5—*Application of—Marriage between Hindu and Christian solemnised by Hindu rites—Offence of solemniser.*

A Hindu by religion, performing a marriage according to the Hindu mode between two persons either of whom is a Christian, commits an offence under S. 68. The Christian Marriage Act was intended to apply to the marriages of all Christians in India including marriages where one of the parties is a Christian. *Kolondai Velu v. Dequid.*

18 Cr. L. J. 840 :
41 I. C. 664 : 6 L. W. 126 : 22 M. L. T. 163 :
1917 M. W. N. 589 : 40 Mad. 1030 :
A. I. R. 1918 Mad. 601.

CIPHER CODE.

See—(i) Criminal Trial.
(ii) Evidence Act, S. 10.

CIRCUMSTANTIAL EVIDENCE.

See also—(i) Criminal Trial.
(ii) Evidence.

———*Capital case—Admissions of Counsel—Reliance on circumstantial evidence—Conclusion, mode of arriving at*

In a case of circumstantial evidence where the failure of one link destroys the chain, it is of the utmost importance to get on to the record every piece of evidence which makes the chain : otherwise there is danger of an Appellate Court not understanding how a particular conclusion has been reached and of miscarriage of justice resulting. It is better in a capital case not to take admissions from the Counsel for the defence at all. Every fact ought to be strictly proved on the record. *Sheo Narain Singh v. Emperor.*

21 Cr. L. J. 777 :
58 I. C. 457 : 2 U. P. L. R. All. 128 :
A. I. R. 1920 All. 99.

———*Conviction by process of elimination.*

A conviction based upon circumstantial evidence, in the absence of direct evidence, is

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good. When two persons are suspected of having committed an offence and when attendant circumstances show that the offence could not have been committed by one, the Court may infer that the other must have been concerned in its commission. *In re: Vaithinath Pillai*. 14 Cr. L. J. 465 : 20 I. C. 721 : (1912) M. W. N. 825.

———*Conviction—Facts to be inconsistent with innocence of accused—Reference—Disagreement between Judge and Jury—Reference when to be made to High Court—Criminal Procedure Code (Act V of 1898), S. 307.*

In case of circumstantial evidence, the facts found should be inconsistent on a reasonable hypothesis with the innocence of the accused before a conviction is pronounced. It is not in every case of doubt nor in every case in which a view different from that of the Jury can be entertained on the evidence, that a reference under S. 307 of the Cr. P. C. is to be made to the High Court; the verdict of the Jury should be manifestly wrong before such a reference is made. *Emperor v. Surnamoyee Biswas*. 14 Cr. L. J. 660 : 21 I. C. 900.

———*Conviction when evidence compatible with guilt and innocence, both.*

It is a fundamental rule of universal application in cases dependent on circumstantial evidence that in order to justify the inference of guilt, the incriminating facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. Where, however, circumstances are as consistent with the innocence as with the guilt of an accused person, they cannot have any probative force, and no inference of his guilt should be drawn. *Hurjee Mul v. Imam Ali Sircar*.

1 Cr. L. J. 124 :
8 C. W. N. 278.

———*Conviction, when justified.*

In order to pronounce a conviction in a case of circumstantial evidence, the facts found should, on a reasonable hypothesis, be inconsistent with the innocence of the accused. *Emperor v. Zohra*.

21 Cr. L. J. 278 :
55 I. C. 294 : 1 P. L. T. 657 :
A. I. R. 1920 Pat. 674.

———*Sufficiency for conviction.*

In order to justify the inference of guilt from purely circumstantial evidence, the evidence must be such as to be incompatible with the innocence of the accused and incapable of explanation on any reasonable hypothesis other than that of his guilt. *Mohammad Yar v. Emperor*.

25 Cr. L. J. 685 :
81 I. C. 173 : 5 L. L. J. 40 :
A. I. R. 1924 Lah. 62 :

Also *Emperor v. Jagat Ram*.

48 I. C. 167 : 19 C. L. J. 987 :
A. I. R. 1919 Lah. 440.

———*Value of—Quantum of proof necessary for conviction.*

The fundamental rule by which circumstantial evidence is estimated, is that in order to justify

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the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon reasonable hypothesis other than that of his guilt.

Although it cannot be laid down as a proposition of law that *quantum* or value of evidence must depend upon the enormity of the crime, yet it is safer to follow the established rule that "the fouler the crime is the clearer and the plainer the proof ought to be." *Raghunandan Koeri v. Emperor*. 22 Cr. L. J. 154 : 59 I. C. 858 : 1 P. L. T. 684.

———*Want of explanation—Effect.*

Where a *prima facie* case has been made out against an accused, the force of suspicious circumstances is augmented if he does not attempt to explain them. *Isarsing Sawansing v. Emperor*.

15 Cr. L. J. 497 :
24 I. C. 585 : 7 S. L. R. 109 :
A. I. R. 1914 Sind 111.

———*Reliance when permissible.*

Circumstantial evidence must be exhaustive and exclude the possibility of guilt of any other person, or must point conclusively to the complicity of the accused. *Chirag-ud-Din v. Emperor*.

15 Cr. L. J. 293 :
28 I. C. 501 : 18 C. W. N. 1144 :
A. I. R. 1914 Cal. 450.

CITATION TO DEFAULTER.

See Penal Code, 1860, S. 174.

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———*Ss. 3 (2), 515—Nuisance, definition of—Powers of Magistrate discretionary—Wrong-doer a public benefactor, effect of—Stables round residential house—Paying guest, whether can complain—Direction not to issue licence.*

The complainant was a paying guest of one W, a tenant in a certain bungalow. The owner, having obtained the consent of the Municipal Commissioner, commenced to erect stables on the open land round the bungalow. A complaint was filed under S. 515 of the City of Bombay Municipal Act, and the Magistrate being of the opinion that the stables were a nuisance, directed the Municipal Commissioner not to issue a licence. The Municipality appealed: *Held*, (1) that the stables were a nuisance with reference to the residents of the house in relation to the particular circumstances of the case; (2) that the fact that the complainant was a paying guest was not material; for the purpose of enabling him to complain of the nuisance, it was sufficient that he resided in the house; (3) that the Magistrate had jurisdiction to direct the Municipal Commissioner not to issue a licence. *Municipal Corporation of Bombay v. Mallandaine*.

26 Cr. L. J. 374 :
84 I. C. 854 : 25 Bom. L. R. 1321 :
48 Bom. 241 : A. I. R. 1924 Bom. 241.

———*Ss. 3 (x), (y), 305—Public and private street, distinction between—Street, whether includes houses abutting on it.*

A "street" does not merely mean the actual road-way but includes the houses on either sides

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of it. Where before the coming into force of the Act, a sewage pipe was laid down in a lane which carried the sullage water of the houses on the two sides of the lane : *Held*, that the lane was a public street to which S. 305 applied. *Emperor v. Ramrao Vishvanath*.

19 Cr. L. J. 743 :
46 I. C. 519 : 20 Bom. L. R. 620 :
A. I. R. 1918 Bom. 91.

———Ss. 3 (m), 248 (1) (c)—‘Owner’, meaning of—Leased premises sub-let—Service, of notice on whom competent.

Where premises have been let out by the owner to any lessee who sub-lets them and collects the rents, both the landlord and the lessee are ‘owner’ within the meaning of S. 3 (m), and the Municipality may, at their option, serve a notice under S. 248 (1) (c) either on the landlord or the lessee. *Jaffer Cassam Moosa v. Emperor*.

30 Cr. L. J. 29 :
112 I. C. 861 : 30 Bom. L. R. 144 :
I. R. 1929 Bom. 67 : 53 Bom. 131 :
A. I. R. 1928 Bom. 528.

———Ss. 3 (m), 248 (1) (c)—Rent farmer of premises whether ‘owner’—Notice for making sanitary arrangements—Disobedience—Prosecution.

A person who receives rent under an agreement with the owner of the premises to pay a fixed sum to him per month out of the rents, falls within the definition of ‘owner’ in S. 3, Cl. (m) and can be prosecuted for disobedience of a notice issued to him under S. 248 (1) (c) to provide sanitary arrangement for the premises. *Aziz Gaffor Kazi v. Emperor*.

30 Cr. L. J. 17 :
112 I. C. 849 : 30 Bom. L. R. 1439 :
I. R. 1929 Bom. 69 : A. I. R. 1928 Bom. 527.

———Ss. 33 (m), 380—‘Owner’, meaning of—Service of notice on trustee or agent.

The word ‘owner’ includes not only the person who ultimately receives the rent but also an agent or trustee who receives it on account of the ultimate owner, and the Municipality can serve a notice under S. 380 upon such agent or trustee. There is nothing in S. 380 which renders the definition of ‘owner’ inapplicable either to the case of the owner of a hut or shed or to the case of the owner of the land on which such hut or shed stands. *Lakshman Pandu v. Emperor*.

29 Cr. L. J. 520 :
109 I. C. 314 : 30 Bom. L. R. 339 :
10 A. I. R. 176 : A. I. R. 1928 Bom. 136.

———Ss. 248, 249, 525—Place where more than twenty persons are employed—Power of Commissioner to require erection of water-closets—Notice—Incorrect description of premises—Validity of notice.

Where more than 20 persons are employed in any place, the Commissioner has power under S. 249 to require the owner or occupier to construct a sufficient number of water-closets for their use even if the place forms part of an adjacent building of the owner and there are water-closets in that building. Incorrect description of the premises concerned, in a notice under S. 249 of the said Act is

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not fatal to the validity of the notice. *Amrattal Amarchand v. Emperor*.

30 Cr. L. J. 5 :
112 I. C. 773 : 30 Bom. L. R. 1422 :
I. R. 1929 Bom. 53 : A. I. R. 1928 Bom. 532.

———S. 257—Scope of—Water-closet—Construction, etc., of—Storage of water in cistern—Notice requiring landlord to pump water into cistern, legality of.

S. 246-A and the following sections of the Act, dealing with water-closets, merely relate to the construction, position and proper maintenance of water-closets, and have nothing whatever to do with the supply of water to such closets.

S. 257 of the City of Bombay Municipal Act being a penal section must be strictly construed. Under that section, only certain kinds of work can be requisitioned by the Commissioner to bring the condition of the privy or water-closet within the previous provisions of the Chapter, that is to say, with regard to its construction or maintenance. The Commissioner has no power under this section to direct a landlord to maintain a water-closet in good order by pumping a sufficient quantity of water into the cistern. *Salé Mahomed Haji Ahmed v. Emperor*.

25 Cr. L. J. 968 :
81 I. C. 616 : 26 Bom. L. R. 178 :
A. I. R. 1924 Bom. 337.

———S. 313-A—Complaint by Police.

The Police can lodge a complaint in respect of an offence under S. 313-A. *Emperor v. Kassam Alibhai*.
36 Cr. L. J. 279 :
153 I. C. 38 : 36 Bom. L. R. 965 : 59 Bom. 53 :
7 R. B. 210 : A. I. R. 1934 Bom. 459.

———S. 349-B—‘Building’, meaning of—Bath-room, addition of, whether raising or erecting building.

Where there is a substantial residential house, the house as a whole must be regarded as the ‘building’ referred to in S. 349-B and it is not possible to construe the word ‘building’ as denoting some small portion of the whole house, such as an outlying bath-room. The accused added small bath-rooms to the third and fourth floors of an old residential house in the City of Bombay. The house had been built before the coming into force of the City of Bombay Municipal Act, 1888, and newly added bath-rooms fell below the original height of the house : *Held*, that the accused had neither raised nor erected a building within the meaning of S. 349-B. *Kallianji Vardhaman v. Emperor*.

18 Cr. L. J. 902 :
42 I. C. 134 : 19 Bom. L. R. 681 :
41 Bom. 741 : A. I. R. 1917 Bom. 249.

———S. 384-A—Construction—Owner of building, when liable.

The provision contained in S. 384-A of City of Bombay Municipal Act, is a penal provision and the section must be strictly construed. The owner of a building is only liable under the section if he himself is using the premises

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but not otherwise. *Dattatraya Ramchandra v. Emperor*.

40 Cr. L. J. 343 :
180 I. C. 97 : 41 Bom. L. R. 82 :
11 R. B. 290 : A. I. R. 1939 Bom. 95.

—Ss. 394, 471, Sch. M., Part II—"Oil (other sorts)", meaning of—Storing oil without licence—Wrongful refusal of Commissioner to grant licence, defence of.

The words "oil (other sorts)" in Part II of Schedule M means oils other than petroleum, as defined in the Petroleum Act, and 'dangerous petroleum' as defined in the same Act, and include sweet oil and cocoanut oil. It is no answer to a charge of storing oil without a licence that the refusal of the Commissioner to grant a licence was wrongful. *Narandas Karasandas v. Emperor*.

22 Cr. L. J. 321 (2) :
61 I. C. 49 : 26 Bom. L. R. 353 :
45 Bom. 1076 : A. I. R. 1921 Bom. 445.

—Ss. 394, 412-A (b)—'Other milk products, Ghee.

The words 'other milk products' do not include ghee. *Ratansi Hirji v. Emperor*.

31 Cr. L. J. 103 :
120 I. C. 356 : 31 Bom. L. R. 581 :
53 Bom. 627 : A. I. R. 1929 Bom. 274.

—Ss. 402, 403—"Market", meaning of—Mere collection of shops owned by same landlord and selling same articles, whether market—Fruits, whether articles of human food.

A mere collection of shops, though owned by the same landlord and dealing with the same articles, would not constitute a private market unless the owner has control over the actions of the shop-keepers and the right to compel them to sell particular commodities and at particular hours. Fruits are articles of human food within the scope of S. 402 (2). *Bombay Municipality v. Yenkantha Ellappa Balaram*.

30 Cr. L. J. 168 :
113 I. C. 506 : 30 Bom. L. R. 1128 :
52 Bom. 780 : I. R. 1929 Bom. 138 :
A. I. R. 1929 Bom. 413.

—Ss. 461 (o), 418—Bombay Municipal Bye-laws, Ch. III, Bye-law 4, whether ultra vires—Measure, honest and current, but not verified, use of—Offence—Commissioner, duty of.

The fourth bye-law in Chapter III of the Bye-laws framed by the Bombay Municipal Corporation, which prohibits the use of any measure which has not been duly verified by comparison with the standard measure, is beyond the powers vested in the Municipal Corporation under S. 461 inasmuch as it purports to give the Municipal Corporation or the Commissioner far wider power than that conferred by S. 418 of the Act.

S. 461 (o) only empowers the Corporation to pass bye-laws to prevent the practice of fraud by the use of measures which are false or defective with reference to the standard measures assumed to have been verified by the Commissioner as directed in S. 418. But neither under S. 418 nor under S. 461 has the Corporation the power to say that in the private markets of the city no measure shall

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be brought into use unless it has already been verified by the Commissioner. Rather the provisions of the Act import that if the Commissioner has reason to suspect any particular measure which is current, his method of controlling it is to verify it as directed under S. 418, and thereafter to secure that the measures of that denomination in use shall correspond with the verified measure. There is nothing in S. 418 or under S. 461, Cl. (o), which would justify the Municipality in prohibiting the use of an honest measure in a private market merely on the plea that if the use of that measure were prohibited, it might be easier for the Municipality to ensure that the measure actually in use should not be false or defective with reference to the verified and standard measures.

The use of an honest measure of one description cannot be said to facilitate the commission of fraud by the use of false or defective measures of a wholly different name and description. *In re : Jivraj Dhanji*.

18 Cr. L. J. 701 :
40 I. C. 701 : 19 Bom. L. R. 368 :
41 Bom. 580 : A. I. R. 1917 Bom. 209.

—S. 517—Commissioner's powers.

Section 517 means that the Commissioner may prefer a charge against any person, and there is nothing in it to show that the Commissioner alone may take proceedings. *Emperor v. Kassam Alibhai*.

36 Cr. L. J. 279 :
153 I. C. 38 : 36 Bom. L. R. 965 :
59 Bom. 53 : 7 R. B. 210 :
A. I. R. 1934 Bom. 459.

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—S. 22 (1)—Scope of.

S. 22 (1) which entitles the driver of a vehicle intending to pull up to do so at the extreme side of the street along which he is proceeding does not justify overtaking cars which were going slowly. *Khodabux v. Emperor*.

27 Cr. L. J. 1213 :
97 I. C. 973 : 28 Bom. L. R. 1066 :
A. I. R. 1926 Bom. 564.

—Ss. 23 (3), 89 (3), 127, 134, 137—Order prohibiting meetings—Power of Commissioner of Police to prohibit meetings in private places—Order under S. 23 (3)—Mode of promulgation—Inference of knowledge from circumstances—Disobedience of order—Punishment under S. 188, Penal Code.

The words 'any assembly or procession' in S. 23 (3) of the City of Bombay Police Act are not restricted to an assembly or procession in a public place but are wide enough to include an assembly in a private place. A Commissioner of Police can lawfully promulgate an order under S. 23 (3), if, in his opinion, such an order is necessary for the preservation of the public peace or safety, but if he has manifestly abused his powers, the Court has power to say that he has not exercised his discretion fairly and honestly. There is

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no provision in the City of Bombay Police Act as to the mode of serving an order in writing under S. 23 (3) of the said Act but knowledge of the order may be proved by circumstances which give rise to an inference that the accused had such knowledge. In order that the disobedience of an order under S. 23 (3) may amount to an offence under S. 188, Penal Code, it is not necessary that the accused should intend to produce harm or contemplate his disobedience as likely to produce harm. It is sufficient if he knows of the order and his disobedience produces or is likely to produce harm. Though the disobedience of an order of the Police Commissioner under S. 23, Sub-s. (3) is an offence punishable under S. 127 of the Act, it would be equally punishable under S. 188 of the Penal Code, if all the conditions laid down by that section are fulfilled. *Bhalchandra Trimbak Ranadive v. Emperor*. 31 Cr. L. J. 495 : 123 I. C. 497 : 31 Bom. L. R. 1151 : 55 Bom. 35 : A. I. R. 1929 Bom. 433.

—S. 27—*Deputation by Commissioner—Arrest—Criminal Court's power to consider legality.*

When the Commissioner of Police deports a person under S. 27 and arrests him for disobedience of the order, the Criminal Court has power to consider whether the order of the Commissioner was justified on the evidence on record. *Emperor v. Anna Vithoba*.

33 Cr. L. J. 169 : 135 I. C. 484 : 33 Bom. L. R. 1164 : I. R. 1932 Bom. 100 : A. I. R. 1931 Bom. 514.

—S. 63—*Criminal Procedure Code (Act V of 1898), S. 162—Evidence Act (I of 1872), S. 157—Previous statement made by witness to officer of Police during investigation—Oral evidence of such statement, admissibility of.*

Oral evidence of what a witness had said on the occasion of an identification parade in the presence of a competent Police Officer of the Bombay City Police is admissible in evidence under S. 157, Evidence Act, to corroborate a subsequent statement made by the witness, notwithstanding the provisions of S. 162, Cr. P. C. *Wahiduddin Hamiduddin v. Emperor*. 31 Cr. L. J. 1003 :

126 I. C. 333 : 32 Bom. L. R. 327 : 54 Bom. 528 : A. I. R. 1930 Bom. 158.

—S. 70—*Accused person arrested in Native State and handed over to Bombay Police—Investigation not complete—Remand to Police custody—Jurisdiction of Presidency Magistrate.*

Where the accused are arrested in a Native State and are brought to Bombay in Police custody and the investigation is not complete, the Magistrate has jurisdiction to make the order of remand under S. 70 of the City of Bombay Police Act. *P. B. Pande v. Emperor*.

26 Cr. L. J. 1181 : 88 I. C. 605 : 27 Bom. L. R. 612 : 49 Bom. 623 : A. I. R. 1925 Bom. 387.

—Ss. 89 (3), 127, 134, 137.

See City of Bombay Police Act, 1902, S. 23 (3).

CIVIL DISPUTE

—S. 112-D—"Reputed thief," meaning of—*Person convicted of theft, whether reputed thief.*

The fact that a person had actually been convicted of theft is a ground for holding that he is a "reputed thief" within the meaning of cl. (d) of S. 112. The expression "reputed thief" does not mean a thief who has achieved not merely one or two convictions but in addition a reputation and a distinction amongst his neighbours and his community as habitual offender. A reputed thief is not something more than a convicted thief but something less and means a person who even though he might not have been convicted as a thief is so reputed in the circles to which his reputation is a matter of interest. A man who is convicted twice of theft is more than a reputed thief and not less, the question of reputation being one of fact. *Emperor v. Chand Mahboob*. 27 Cr. L. J. 123 : 91 I. C. 699 : 27 Bom. L. R. 1388 : A. I. R. 1926 Bom. 46.

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—Ss. 125, 214—*Keeping open private market without licence—Prosecution—Limitation.*

A complaint in respect of the offence keeping open private market without licence must be filed within 3 months from the date of the knowledge of the Municipality of the commission of the offence. *Emperor v. U Thin Chin*.

30 Cr. L. J. 754 : 117 I. C. 250 : 7 Rang. 23 : I. R. (1929) Rang. 186 : A. I. R. 1929 Rang. 122.

CIVIL AND CRIMINAL CASE

—*Difference between, trial of.*

The difference between the trial of a civil and a criminal case is that in the former, it is the duty of the parties to place their case before the Court as they think best, whereas in the latter, it is the duty of the Court to bring all relevant evidence on the record and to see that justice is done. *Emperor v. Janki Prasad*.

22 Cr. L. J. 210 : 60 I. C. 322 : 43 All. 283 : 19 A. L. J. 196 : A. I. R. 1921 All. 202.

CIVIL COURT.

—Adjudication of Civil Court must be accepted by Criminal Courts. 12 Cr. L. J. 50.

—*Judgment of.*

See Criminal trial—Duty of Court.

CIVIL DISOBEDIENCE.

See Criminal Law Amendment Act, 1908, S. 17 (1), (2).

CIVIL DISPUTE.

—*Police assistance, to enforce right, desirability of.*

It is very undesirable to employ the Police in order to assist parties to enforce what they claim to be their right in a matter of civil dispute, until the matter has been decided by the Civil Court. *Jugdeep Singh v. Emperor*.

18 Cr. L. J. 640 : 39 I. C. 1008 : 1 P. L. W. 580 : A. I. R. 1917 Pat. 339.

CIVIL PROCEDURE CODE (ACT XIV OF 1882).

—S. 622—*Civil Procedure Code (Act V of 1908), S. 115—Revision—Practice—Criminal Procedure Code, S. 476—Order passed by a Civil Court—Revision presented as under S. 439, Criminal Procedure Code, treated one under S. 115, Civil Procedure Code.*

The Court may entertain as an application under S. 622, C. P. C. (now S. 115) an application purporting to be one presented in accordance with the provisions of S. 439, Cr. P. C. for revision of an order passed by a Civil Court under S. 476 of the latter Act. *Emperor v. Durga Prasad.* 1 Cr. L. J. 639.

—S. 4—*Oudh Laws Act, S. 19—Recording of evidence in Criminal Case—Law applicable.*

Under S. 4, it is S. 19 of the Oudh Laws Act which applies to the recording of evidence in a criminal case in Oudh and not O. XVIII, r. 6, C. P. C. *Hazari v. Emperor.* 32 Cr. L. J. 851 :

132 I. C. 270 : 8 C. W. N. 685 :
I. R. 1931 Oudh 270 : A. I. R. 1931 Oudh 385.

—S. 9—*Provincial Small Cause Courts Act (IX of 1887), S. 16.—Suit of the nature of Small Causes—Court of principal jurisdiction.*

As regards cases of a nature cognizable by a Small Cause Court, the District Court is not the principal Court of original jurisdiction. A Small Cause Court is itself a principal Court of original jurisdiction with regard to suits cognizable only by such Court. *Sukhdco Singh v. District Magistrate of Muzaffarpur.*

18 Cr. L. J. 370 :
38 I. C. 754 : 2 P. L. J. 1 : 3 P. L. W. 433 :
A. I. R. 1916 Pat. 53.

—S. 10—*Objections against an award—Stay of proceedings.*

Where objections to an award are preferred in a Court, no application under S. 10, for stay of proceedings lies on the ground that a suit in respect of the same subject-matter has been instituted in another Court by the applicant. *Grahams Trading Co. (India), Ltd. v. Chandulal Parmanand.*

37 Cr. L. J. 175 :
159 I. C. 824 : 8 R. D. 102 :
A. I. R. 1935 Sind 228.

—S. 47—*Res judicata.*

Proceedings for enforcement of award—Objections to award overruled—Subsequent suit challenging award on same grounds is not maintainable. *Gour Chandra Pramanik v. Ranaghat Peoples Bank, Ltd.* 60 Cr. L. J. 572 :
7 R. C. 708 : 156 I. C. 405 (2) :
A. I. R. 1935 Cal. 396.

—S. 60—*Personal right to maintenance—Attachment.*

Where the right to receive maintenance is only a personal right, it is not assignable and is not liable to be seized and sold in execution of a decree for money. The test is whether a purely personal right was created by the order for maintenance or not. *Giribala Debi v. Nirmalabala Debi.* 157 I. C. 1089 : 62 Cal. 404 :
39 C. W. N. 281 : A. I. R. 1935 Cal. 578.

—S. 62 (3)—*Requirement of.*

In S. 62 (3), there is no limitation that the

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particular room in question must be in the occupancy of the judgment-debtor. *Tej Singh v. Emperor.* 36 Cr. L. J. 545 :

154 I. C. 631 : 1935 A. L. J. 367 :
7 R. A. 778 : A. I. R. 1935 All. 490.

—S. 70—*Local Government Rules under S. 70, rr. 30, 31, 32—Execution—Power of Assistant Collector to order prosecution—Jurisdiction—Penal Code (Act XLV of 1860), S. 182.*

An Assistant Collector has no powers of either Civil, Revenue or Criminal Court while receiving an application under rule 30 of the rules framed by the Local Government under Ss. 68 and 70 of the C. P. C. Hence if an offence as defined in S. 182 of the Penal Code is committed in the course of making the application under the above rule, the Assistant Collector has no jurisdiction to order prosecution. *Bhajan Tewari v. Emperor.*

16 Cr. L. J. 457 :
29 I. C. 89 : 13 A. L. J. 479 : 37 All. 334 :
A. I. R. 1915 All. 283.

—S. 80—*Act done in official capacity.*

If the act was such as is ordinarily done by the officer in the course of his official duties, and he considered himself to be acting as a public officer and desired other persons to consider that he was so acting, the act clearly purports to be done in his official capacity. The motives do not enter into the question at all. *Mohammad Sharif v. Nasir Ali.* 132 I. C. 17 :

(1930) A. L. J. 1443 : 53 All. 44 :
I. R. (1931) All. 449 : A. I. R. 1930 All. 742.

—S. 80—*Suit against public officer for act done in bad faith—Notice to Government, whether necessary.*

A public officer sued in respect of an act done in bad faith is not entitled to notice under S. 80 of the C. P. C., 1908. *Peary Mohan Das v. Weston.* 13 Cr. L. J. 65 :

16 C. W. N. 145 : 13 I. C. 721.

—S. 80 (4).

Where all the express requirements of the law so far as the ingredients of the notices are concerned, were complied with, there is a substantial compliance with the requirements of the law. *Asandas Hashmatrai v. Khanchand.*

148 I. C. 178 : 6 R. S. 189 :
A. I. R. 1933 Sind 240.

—S. 100—*Second appeal—Genuineness of signature—Finding of fact.*

A finding on a question as to genuineness of a signature is a finding of fact. *Radhika Prasad Singh Deo v. Emperor.* 38 Cr. L. J. 235 :
166 I. C. 531 : 3 B. R. 177 : 9 R. P. 309.

—S. 109—*Leave to appeal to Privy Council in contempt cases.*

Legal practitioner—Punishment for contempt of court—Another Bench of High Court suspending him from practice—Leave to appeal to Privy Council, may be granted—Security is to be furnished as in Civil cases.

145 I. C. 853 : (1933) A. L. J. 273 :
55 All. 246 : 6 R. A. 179 : A. I. R. 1933 All. 225.

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———S. 109 (c).

See Legal Practitioner.

———Ss. 109, 110, 112—*Proceedings for contempt for publication of article in newspaper by Advocate—Whether of a criminal nature—Leave to appeal to His Majesty in Council.*

Where the High Court took cognizance of contempt committed by the publication of an article in a newspaper by an Advocate and ordered notice to be issued to the writer, editor printer and publisher to show cause why they should not be convicted and punished for contempt, the proceedings are in the exercise of the inherent jurisdiction of the High Court and of a criminal nature. A mere misdescription in the notice issued by the office will not make the proceeding one of a civil nature. Nor can it be said that merely because the Advocate was an officer of the Court, the proceeding against him was of an administrative character. The conviction and the fine imposed are themselves sufficient to show at least that the proceeding was not of a civil nature. The matter is of an exclusive jurisdiction and the order is final. S. 110 has no application to such a case. Nor is S. 109 applicable and S. 112, Sub-S. (2) expressly makes the Code inapplicable to matters of criminal jurisdiction. Further as the question for consideration being not so much of jurisdiction as of an interpretation of the passage objected to, the case cannot be certified as being otherwise a fit one for appeal to His Majesty in Council. *Kapildeva Malviya v. The Chief Justice and the Judges of the High Court at Allahabad.* 155 I. C. 188 :

1935 A. L. R. 350 : 7 R. A. 902 :
(1935) A. L. J. 810 : 57 All. 910 :
A. I. R. 1935 All. 811 :

———S. 110—*Leave to appeal to Privy Council in orders from contempt proceedings.*

Proceedings for contempt for publication of article in newspaper by Advocate are of an administrative character. The matter is of an exclusive jurisdiction and order is final and leave to appeal to Privy Council will not be granted. *Kapildeva Malviya v. The Chief Justice and the Judges of the High Court at Allahabad.* 155 I. C. 188 :

1935 A. L. J. 810 : 7 R. A. 902,
A. I. R. 1935 All. 811.

———S. 115.

See also (i) Cr. P. C., 1898, Ss. 195, 476, 476-B.

(ii) Sanction to Prosecute.

———S. 115—*Civil or Revenue Court starting prosecution under S. 476, Cr. P. C.—Interference in revision by High Court.*

Where a Civil or Revenue Court has initiated proceedings under S. 476 of the Cr. P. C., the High Court can in revision interfere with an order of the Appellate Court in such proceedings only under S. 115. *Mandi Lal v. Ram Adhin.* 36 Cr. L. J. 254 :

153 I. C. 104 : 11 O. W. N. 1469 :
7 R. O. 291 : A. I. R. 1935 Oudh 59.

———S. 115—*Criminal Procedure Code (Act*

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V of 1898), Ss. 195, 476—Order sanctioning or refusing to sanction prosecution by Civil Court—Revision.

Where an order granting or refusing sanction for prosecution under S. 195 or S. 476, Cr. P. C., made by a Civil Court is sought to be set aside by an application to the High Court, the High Court can exercise the powers vested in it by S. 115 of the C. P. C. or S. 15 of the High Courts Act, and the Criminal Bench, as such, has no jurisdiction to deal with the matter on revision. *Budhu Lal v. Chotu Gope.* 18 Cr. L. J. 793 :

41 I. C. 313 : 25 C. L. J. 401 :
22 C. W. N. 654 : A. I. R. 1917 Cal. 527.

———S. 115—*Excessiveness of fee levied by Municipality—Mixed question of fact and law.*

The question whether the fee levied by a bye-law of the Municipality is excessive, is a mixed question of fact and law and cannot be raised for the first time in revision. *Ajmeri v. Emperor.* 35 Cr. L. J. 704 :

148 I. C. 603 : 1934 A. L. J. 80 : 56 All. 241 :
6 R. A. 727 : A. I. R. 1934 All. 39.

———S. 115—*Omission to appear in person in pursuance of a summons—Order for prosecution for the omission—Material irregularity—Revision—Penal Code (Act XLV of 1860), S. 174—Offence.*

In a land acquisition case, the District Judge fixed a date and issued notice to the applicant to appear on that date in person. The applicant failed to appear in person but appeared by a pleader. The District Judge informed the pleader that if the applicant did not appear in person, a warrant would be issued. The applicant, therefore, did appear in person on the same date and offered an explanation that as the notice was in Arabic characters, he did not know that his personal attendance was required. The District Judge ordered his prosecution under S. 174, Penal Code :

Held, that an offence under S. 174 had not been committed by the accused and that the District Judge committed a material irregularity in directing his prosecution. *Balbadhardas v. Emperor.* 12 Cr. L. J. 432 :
11 I. C. 616 : 8 A. L. J. 537.

———S. 115—*Person directed to be prosecuted for perjury and forgery—Omission to specify charge.—Irregularity—Delay in ordering prosecution, effect of—Criminal Procedure Code (Act V of 1898), S. 476.*

In a case where a person is directed to be prosecuted by a Civil Court for perjury and also for forgery, he is entitled to know what are the statements in respect of which he is charged with perjury and which portion of the document is said to have been forged by him, and to object to his committal on a general charge embracing any and all the offences mentioned in the Penal Code. In such a case, a High Court has power to interfere under S. 115 of the C. P. C., 1908.

In a case where steps under S. 476, C. P. C., are to be taken, it is highly desirable

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that they should be taken as soon as possible and not delayed. *Kashi Shukul v. Emperor*.

18 Cr. L. J. 4 :
36 I. C. 836 : 14 A. L. J. 844 : 38 Ali. 695.

—S. 115—*Proceedings under Legal Practitioners Act—Revision—High Court, interference by.*

A High Court has no power under S. 115. Civil Procedure Code, to interfere with an order under S. 30 of the Legal Practitioners Act. *In re : Mulchand*.

21 Cr. L. J. 449 :
56 I. C. 433 : 13 S. L. R. 212 :
A. I. R. 1920 Sind 70.

—S. 115—*Revision—Adjudication of case not put by plaintiff—Interference.*

Where the Court adjudicates upon a case which has not been put forward by the plaintiff, it is an irregularity in respect of which the revisional powers of the High Court may be invoked. *Mohammad v. Wahab Jan*.

37 Cr. L. J. 197 :
159 I. C. 819 : 8 R. Pesh. 87 :
A. I. R. 1935 Pesh. 174.

—S. 115—*Revision—Certification of payment time-barred—Executing Court going into question of receipt—Absence of jurisdiction.*

Where judgment-debtor's application for certification of certain amount not admitted by decree-holder in his petition for execution is dismissed as time-barred, the execution Court has no jurisdiction to take notice of the receipt produced by judgment-debtor after dismissal of application. If court enquires into the matter, it acts *ultra vires* and revision is competent. *Lachman Singh v. Emperor*.

32 Cr. L. J. 647 :
131 I. C. 216 : 32 P. L. R. 46 :
A. I. R. 1931 Lah. 105.

—S. 115—*Revision—Fantastic view of law by Court below.*

The High Court may interfere under S. 115, C. P. C., where the lower Court has taken a fantastic view of the law. *Rash Behary Ray v. Emperor*.

32 Cr. L. J. 238 :
129 I. C. 111 : I. R. 1931 Cal. 127 :
A. I. R. 1930 Cal. 639.

—S. 115—*Revision.*

Where a First Appellate Court confirms a sanction granted by the lower Court, no second appeal lies against the order of the First Appellate Court. The only remedy of the aggrieved party is to apply for revision under S. 115. *Jyotsna Raja v. Thayammal*.

18 Cr. L. J. 977 :
42 I. C. 593 : A. I. R. 1912 L. B. 85.

—S. 115—*Revocation of sanction to prosecute by District Judge in appeal—Revision—High Court, power of, interference of.*

The High Court can interfere under S. 115, C. P. C., with an appellate order of a District Judge passed under S. 596 of the Cr. P. C. *Rang Bahadur Singh v. Sheonandan Singh*.

18 Cr. L. J. 873 :
41 I. C. 985 : A. I. R. 1917 Pat. 173.

—S. 115—*Small Cause Court Judge—*

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Refusal of sanction to prosecute—Application for revision to original side of High Court whether proper—Revision whether Civil or Criminal necessary—Application in civil case—Enquiry, if necessary.

Where a Judge of the Small Cause Court at Calcutta refuses sanction to prosecute under S. 196, Cr. P. C., an application for the revision of his order should be made to the original side of the High Court and not to the Appellate Side. *Shamsher Mundul v. Ganindra Narain*, 29 C. 498 followed.

An application for sanction to prosecute made before the Small Cause Court is a case under S. 115 of the C. P. C.

The High Court on the criminal side has no jurisdiction under S. 439 of the Cr. P. C. to interfere with an order of a Civil Court passed under S. 195, but the High Court has such power under S. 115 of the C. P. C. for a Civil Court when acting under S. 195 is not in any way exercising Criminal jurisdiction. *Saligram v. Ramji Lal* 28 A. 554 : 3 A. L. J. 394 : A. W. N. (1906) 103 : 3 Cr. L. J. 400 : I. M. L. T. 219, followed.

An application under Sub-s. 6 of S. 195 of the Cr. P. C. is not an appeal properly so called and, therefore, the power of revision is not excluded. *Hardeo Singh v. Hanuman Dat Narain*, 20 A. 244 at p. 247, referred to.

In an application for sanction, it may be that to decide whether the case is a false case will involve an enquiry, but if the Judge finds that necessary, he must hold it. *Ramdin Bania v. Saw Bakhsh Singh*.

11 Cr. L. J. 357 :
6 I. C. 473.

—S. 135—*Criminal Procedure Code, S. 488—Warrant of arrest in maintenance proceedings—Protection from arrest.*

S. 135, C. P. C., does not exempt a party from being arrested by a Criminal Court in execution of an order under S. 488, Cr. P. C. *Dani v. Emperor*.

30 Cr. L. J. 788 :
117 I. C. 238 : I. R. 1929 Lah. 670 :
A. I. R. 1929 Lah. 785.

—S. 135 (2).

Party arrested one hour after rising of court—Arrest at place not on his way to his residence—Protection from arrest cannot be given. *Ram Prasad v. Emperor*.

34 Cr. L. J. 173 :
141 I. C. 605 : 36 C. W. N. 1071 :
I. R. 1933 Cal. 143 : A. I. R. 1933 Cal. 11.

—S. 136—*Powers under, construction of—Warrant sent to Munsif—Arrest in pursuance of such warrant—Escape—Offence, Penal Code (Act XLV of 1860), S. 225-B.*

When a Court exercises the extraordinary powers conferred on it by S. 136, C. P. C., the provisions of that section must be strictly observed ; and the warrant must be endorsed to the District Court outside the jurisdiction of the issuing Court, in which the warrant is to be executed. Therefore a warrant sent to the Munsif is defective and where a person arrested in pursuance of such warrant escapes, he can-

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not be convicted under S. 225-B., Penal Code. *Bansropan Singh v. Emperor*. 39 Cr. L. J. 2 : 171 I. C. 894 : 18 P. L. T. 760 : 4 B. R. 85 : 10 R. P. 258 : A. I. R. 1937 Pat. 603.

—S. 144—Restitution.

Court's jurisdiction as to restitution arises under S. 144 and also is inherent in its general jurisdiction.

134 I. C. 906 : 58 Cal. 1070 : 35 C. W. N. 483 : I. R. 1931 Cal. 906 : A. I. R. 1932 Cal. 29.

—S. 144—Restitution.

Restitution cannot be granted so as to affect the interest of strangers. *Rajjabali Khan v. Faku Bibi*. 134 I. C. 906 : 58 Cal. 1070 : 35 C. W. N. 483 : I. R. 1931 Cal. 906 : A. I. R. 1932 Cal. 29.

—S. 151—Criminal Procedure Code (Act V of 1898), S. 480—Penal Code (Act XLV of 1860), S. 175—Contempt of Court—Disobedience of Court's order to produce books and give deposition—Summary jurisdiction of Court to punish contempt.

S. 151, C. P. C., does not give the Court a blank cheque or an absolute discretion to make any order it pleases. It certainly does not confer upon any Court a summary jurisdiction, which it does not otherwise possess, to punish contempts by fine or imprisonment.

The summary power conferred by S. 480 of the Cr. P. C. only extends to offences in the nature of contempt, committed in the view or presence of the Court. It may also extend to contempts committed in the precincts or offices of the Court, but it does not extend to contempts committed outside the Court.

An order fining a person for contempt of Court on his failure to appear with books in Court is not legal either under S. 151, C. P. C. or S. 480, Cr. P. C. *Chogmal Sraogi v. Emperor*.

20 Cr. L. J. 373 : 50 I. C. 981 : 23 C. W. N. 389 : A. I. R. 1919 Cal. 44.

—O. III, R. 4 (2)—Pleader—Termination of engagement.

Under O. III, R. 4 (2), C. P. C., after a Pleader has once been appointed by a party, his employment cannot be determined except (1) by a writing signed by the client or the Pleader and filed in Court with the leave of the Court, or (2) by the termination of the proceedings in the suit. This rule should be strictly observed. *In the matter of Two Pleaders*.

18 Cr. L. J. 808 : 41 I. C. 328 : 1 P. L. W. 483 : 2 P. L. J. 259 : 1917 Pat. 217 : A. I. R. 1917 Pat. 211.

—O. VI, R. 5—Rejected replication, use of—To contradict statements by petitioner under S. 145, Evidence Act (1 of 1872).

Though the replication which is rejected cannot be treated as a pleading, the Court can place the replication on the record with its order thereon. The replication can be used as

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a previous statement to contradict the statements made by the petitioner in Court under S. 145, Evidence Act. *Behari Lal Sud v. Emperor*. 41 Cr. L. J. 204 : 185 I. C. 588 : 41 P. L. R. 652 : 12 R. L. 313 : A. I. R. 1939 Lah. 529.

—O. VI, R. 14—Plaint signed by prisoner in contravention of Jail Regulation, validity of.

A plaint signed or a suit authorised by a man in jail is just as good as any other suit or plaint, although the plaintiff in signing the plaint or authorising the suit contravenes some of the provisions of the Jail Manual. *Bisheshar Nath v. Emperor*. 19 Cr. L. J. 865 : 44 I. C. 28 : 16 A. L. J. 64 : 40 All. 147 : A. I. R. 1918 All. 275.

—O. 7, R. 1—Requirements of.

Particulars of facts constituting cause of action, when it arose and whether it is within jurisdiction must be clearly stated.

32 Cr. L. J. 1205 : 134 I. C. 583 : I. R. 1931 Lah. 967 : A. I. R. 1931 Lah. 189.

—O. VIII, R. 2—Written statement—Defendants right to raise or omit to raise pleading at their will, O. 8, r. 2.

A written statement being a pleading, it is competent to the defendants to a suit to raise such pleas in their written statements as they think fit or to abstain from raising things which appear to the defendants not to be of advantage to them. *Rash Behary Ray v. Emperor*.

32 Cr. L. J. 238 : 129 I. C. 111 : I. R. 1931 Cal. 127 : A. I. R. 1930 Cal. 639.

—O. VIII, R. 5—Denial by necessary implication.

There is no denial by necessary implication of the statements in the plaint when the language which can be looked to find that denial is a statement which is in itself so inconsistent as not to be capable of admitting or denying anything. *In re : S. K. Mitra*.

41 Cr. L. J. 899 : 190 I. C. 320 : 13 R. Rang. 81 : A. I. R. 1940 Rang. 190.

—O. IX, R. 9—Plaintiff Pardanashin Lady—Dismissal in default in early part of day—Application for restriction made same day—Sufficient case.

In a case in which plaintiff is *pardanashin* and her counsel was engaged in High Court when case was taken up and case was dismissed in early part of day and restoration application was made on same day, there is sufficient ground for restoration. *Sardar Begam v. Muhammad Said*. 129 I. C. 890 (1) : 31 P. L. R. 550 : A. I. R. 1930 Lah. 943.

—O. IX, R. 13.

Setting aside of an *ex parte* order at the instance of a defendant against whom the suit was dismissed, legality of—Proceedings subsequent to the setting aside of an *ex parte* order *ultra vires*—Judicial proceeding—False evidence given after re-hearing—No offence

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of giving false evidence. Penal Code (Act XLV of 1860), ss. 193, 196—Criminal Procedure Code (Act V of 1898), S. 476. *Babu Ram v. Emperor*. 12 C. L. J. 373 : 11 I. C. 141.

—O. X—Statement of party—Pleading and not evidence.

The statement made by a party under O. X, is on the same footing as a pleading and cannot be treated as evidence in the case against the opposite party who had no opportunity of cross-examination. *Dogar Mal-Amin Chand v. P., A Pleader*. 32 Cr. L. J. 303 : 129 R. C. 301 : I. R. 1931 Lah. 189 : 31 P. L. R. 913 : A. I. R. 1930 Lah. 947.

—O. X, r. 1, O. XVIII, r. 5—Court's power to examine on oath—Reading out statement, necessity and object of.

Under Order x, rule 1, C. P. C., a Court is not bound to examine the parties on oath, but it has power to do so if it should think fit. Order XVIII, rule 5, requires that a statement of a witness when recorded, should be read out to him and this, for a double reason. In the first place, any mistake made either by the deponent or by the writer can be corrected, and in the second place, a *locus poenitentiae* is provided for a person who has made a false statement. *Kartar Singh v. Emperor*. 18 Cr. L. J. 607 : 39 I. C. 847 : 12 P. R. 1917 Cr. : 15 P. W. R. 1917 Cr. : A. I. R. 1917 Lah. 192.

—O. XVI, r. 10—Failure to attend as—Imposition of fine without attachment, legality of.

Neither the issue of a proclamation nor an order for attachment of property is a condition precedent to the imposition of a fine for non-attendance of a person who has been summoned to attend a Civil Court as a witness. *Sunder Singh v. Emperor*. 29 Cr. L. J. 704 : 110 I. C. 336 : 10 A. I. Cr. R. 423 : A. I. R. 1928 Lah. 469.

—O. XVIII, r. 5—Evidence Act (I of 1872), s. 80—Perjury, trial for—Statement read over to witness—Proof—Presumption.

There is no provision of law that a judge, who records the evidence of a witness in cases to which Order XVIII, rule 5, C. P. C. applies, shall append a note to the effect that the evidence of the witness, when completed, has been duly read out to him. In every such case it should be presumed to have been so done under S. 80, Evidence Act. *Emperor v. Jagat Ram*. 19 Cr. L. J. 972 : 47 I. C. 872 : 28 P. R. 1918 Cr. : 39 P. W. R. 1918 Cr. : A. I. R. 1919 Lah. 348.

—O. XVIII, r. 5—Nature of—Deposition not read over—Admissibility in evidence—Evidence Act (I of 1872), S. 80.

O. XVIII, rule 5, C. P. C., requiring a deposi-

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tion to be read over to the witness is in its nature directory ; non-compliance with it does not make the deposition entirely inadmissible in evidence (even in a prosecution for perjury in respect of the deposition) and the deposition can be proved in some way other than by calling in aid the provisions of S. 80 of the Evidence Act. *Elahi Baksh v. Emperor*. 19 Cr. L. J. 498 : 45 I. C. 258 : 27 C. L. J. 377 : 22 C. W. N. 646 : 45 Cal. 825 : A. I. R. 1918 Cal. 289.

—O. XVIII, rr. 5, 6—Provisions about interpretations—Directory—Deposition interpreted by reader, Judge and Pleader not attending—Prosecution for perjury—Validity.

The provisions of O. XVIII, rr. 5 and 6 of the C. P. C. are directory, and non-compliance with them does not render the deposition inadmissible at a subsequent trial of the deponent for perjury.

If the deposition has not been read over to the witness in the presence of the Presiding Judge, it does not prove itself under S. 80 of the Evidence Act, but it may be proved in some other way. The Judge who recorded it, can prove it or the accused can admit it; S. 91 of the Evidence Act merely excluding the oral contents of a deposition but not making it admissible in evidence.

If a deposition has been interpreted by the Reader working in the same room as the Judge even though the Judge and the Pleaders for the parties did not attend to the interpretation, there has been sufficient compliance for all purposes with the provisions of O. XVIII, r. 5, and a deposition so interpreted proves itself under the provisions of S. 80 of the Evidence Act. *Mirabax v. Emperor*. 23 Cr. L. J. 500 : 68 I. C. 36 : 18 N. L. R. 192.

—O. XXI, r. 22—Issuing process without notice—Jurisdiction.

Issuing any process forthwith without notice under O. XXI, r. 22, in a case coming under that rule cannot be said to be without jurisdiction merely on the ground of the failure to record the reasons. *Kanta Saha v. Emperor*. 32 Cr. L. J. 886 : 132 I. C. 244 : 35 C. W. N. 228 : I. R. 1931 Cal. 564 : 58 Cal. 940 : A. I. R. 1931 Cal. 443.

—O. XXI, r. 22—Service of notice, question of, immaterial.

The question whether there was due service of notice under O. XXI, r. 22, is immaterial where the notice has in fact been issued and it is found that the judgment-debtor had knowledge of the fact of issue of the notice and possession was delivered to the decree-holder in execution. *Korec Mahto v. Emperor*. 33 Cr. L. J. 862 : 139 I. C. 585 : 13 P. L. J. 395 : I. R. 1932 Pat. 246 : A. I. R. 1932 Pat. 244.

—O. XXI, r. 24—Warrant of attachment of crop illegal—Cutting of crop, not theft. Warrant of attachment not signed by Court and not bearing seal of Court is illegal. When

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crops are removed after such attachment with consent of judgment-debtor, person removing is not guilty of theft. *Beni v. Emperor*.

36 Cr. L. J. 340 :
153 I. C. 428 : 1935 A. L. J. 63 :
7 R. A. 499 : A. I. R. 1935 All. 214.

—O. XXI, r. 24 (2)—Power to execute warrant, delegation of.

An officer to whom a warrant is issued can delegate his authority to some subordinate officer for executing the warrant. *Jagannath v. Emperor*.

33 Cr. L. J. 887 :
140 I. C. 118 : 1932 A. L. J. 179 :
L. R. 13 All. 85 Cr. : I. R. 1932 All. 611 :
A. I. R. 1932 All. 227.

—O. XXI, r. 24 (3)—Date for return fixed in process—Subsequent attachment, legality of—Penal Code, S. 424—Refusal to return property—If an offence.

Where a process has a date fixed for its return under O. XXI, r. 24 (3), C. P. C., it cannot be executed after that date and any person, whose property is attached after the date fixed for the return of the process may, when charged with a criminal offence under S. 424, Penal Code, plead that this property has never been lawfully removed from his possession and that, therefore, he can commit no offence by taking the property in his own use. *Sheikh Nasir v. Emperor* (1) and *Emperor v. Gopalasamy* (2), relied on.

The provisions of O. XXI, r. 24, are mandatory. An offence of refusing to return property is not contemplated by S. 424, Penal Code. *Gurdial v. Emperor*.

144 I. C. 32 :
1933 A. L. J. 1 : L. R. 14 All. 34 Cr. :
I. R. 1933 All. 368 : 55 All. 119 :
A. I. R. 1933 All. 46.

—O. XXI, r. 32—'Injunction,' meaning of—Order to furnish accounts, whether injunction—Failure to obey order—Offence.

An injunction is in its essence the grant of a mode of relief consequential upon an infringement of a legal right. It forms part of a decree made at a hearing upon the merits, whereby the defendant is perpetually inhibited from the assertion of a right, or perpetually restrained from the commission of an act contrary to equity and good conscience. A preliminary decree in a suit for accounts directing the defendant to furnish and render accounts is not an "injunction" within the meaning of r. 32 of O. XXI, C. P. C. and the failure of the defendant to furnish accounts does not entitle the Court to take proceedings under that section. *Arjun Suite v. Emperor*.

19 Cr. L. J. 385 :
44 I. C. 737 : 3 P. L. J. 106 :
A. I. R. 1918 Pat. 451.

—O. XXI, r. 35—Delivery of possession of land includes crops standing thereon.

Where the decree-holder is put in possession of land, such possession includes the standing crops. The judgment-debtor cannot re-enter in order to reap and dispose of the crops which he had cultivated upon the land. *Aung Baw v.*

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Tun Gaung (2) and 33 I. C. 822 (3), relied on. *Maung Kan v. Maung Po Tok*.

41 Cr. L. J. 123 :
185 I. C. 119 : 1940 Rang. 157 :
12 R. Rang. 183 : A. I. R. 1939 Rang. 388.

—O. XXI, r. 35—Delivery of possession to agent orally authorised.

Under the provisions of O. XXI, r. 5 of the C. P. C. delivery of possession can be made to any person orally authorised by the decree-holder to take possession, even though he does not hold a power of attorney from the latter. *Lava v. Emperor*.

18 Cr. L. J. 37 :
40 I. C. 689 : 13 N. L. R. 87 :
A. I. R. 1917 Mad. 759.

—O. XXI, r. 35—Ejectment or delivery of possession—Information to judgment-debtor.

Under O. XXI, r. 35 (1), C. P. C., there is no need to give any information of actual ejectment or delivery of possession to the judgment-debtors. *Gajraj Sinha v. Emperor*.

37 Cr. L. J. 56 :
159 I. C. 306 : 1935 A. L. J. 1108 :
1935 R. D. 491 : 1935 A. L. R. 1104 :
8 R. A. 425 : A. I. R. 1935 All. 938.

—O. XXI, r. 37—Alternatives open to Court.

Two courses are open to the court under O. XXI, r. 37, either it can issue a warrant of arrest, or it can issue a notice giving the judgment-debtor a date on which to appear in Court. *Fattu v. Emperor*.

34 Cr. L. J. 455 :
142 I. C. 887 : 1932 A. L. J. 1073 :
L. R. 14 All. 9 Cr. : 55 All. 109 :
I. R. 1933 All. 139 : A. I. R. 1932 All. 692.

—O. XXI, r. 37—Simultaneous issue of notice and warrant of arrest.

Court issuing notice and warrant of arrest at same time acts injudicially. *Puna Mahton v. Emperor*.

34 Cr. L. J. 269 :
142 I. C. 160 : 13 P. L. J. 502 :
11 Pat. 743 : I. R. 1933 Pat. 125 :
A. I. R. 1932 Pat. 315.

—O. XXI, r. 43—Attachment of cattle, mode of—'Actual seizure,' whether necessary.

All that is necessary to constitute valid attachment of cattle is that the officer of the Court should go sufficiently near to them to explain to others that he has come to attach the property and to intimate his attention to do so. Physical contact or seizure is not necessary. *Punnamaraju Rajamraju v. Potturi Tirupatiraju*.

31 Cr. L. J. 1086 :
126 I. C. 601 : 1930 M. W. N. 347 :
32 L. W. 23 : A. I. R. 1930 M. d. 670.

—O. XXI, r. 44—Irregular attachment—Transfer of possession to Court.

An attachment not in accordance with the provisions of r. 44, O. XXI, would not transfer possession of the property to the Court. But the presumption of law is that anything which is done by the officer of the Court is properly done until the contrary is shown. *Ram Bahal Ahir v. Emperor*.

37 Cr. L. J. 675 :
162 I. C. 653 : 1936 A. L. J. 283 :
8 R. A. 882 :

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———O. XXI, r. 90, proviso.

As amended by Rangoon High Court—Application by decree-holder—Deposit of purchase money of auction-purchaser can be deemed to be deposit by decree-holder. *Maung Min Sin v. Maung Maung*. 133 I. C. 96 (2) : 9 Rang. 366 : I. R. 1931 Rang. 240 : A. I. R. 1931 Rang. 181 (1).

———O. XXI, r. 96—*Delivery of possession by beat of drum—Symbolical possession.*

A proclamation by beat of drum is only prescribed in cases where delivery of immovable property in possession of tenant is made by symbolical possession under O. XXI, r. 96. So where the possession is given by beat of drum and the process-server's report shows that the possession is given without crops, the only symbolical possession is given. *Laxmanrao Narayanrao Agnikar v. Emperor*.

35 Cr. L. J. 1213 : 150 I. C. 1028 : 7 R. M. 45 : A. I. R. 1934 Nag. 172.

———O. XXI, r. 105—*Nature of.*

Provision under O. XXI, r. 105, for recording reasons may be taken to be not mandatory but directory. *Tej Singh v. Emperor*.

36 Cr. L. J. 545 : 154 I. C. 631 : 1935 A. L. J. 367 : 7 R. A. 778 : A. I. R. 1935 All. 490.

———O. XXII, r. 6—*Death of party—Decree passed without impleading legal representatives—Second appeal—Remand.*

Where a case is heard after the death of the plaintiff or the sole defendant without bringing his legal representatives on the record, the judgment pronounced is an absolute nullity.

Where the Court hears and decides an appeal after the death of the appellant without bringing his legal representatives on the record, the High Court may either remand the case for fresh decision or decide the case itself. *Hassanand v. Nandiram*. 32 Cr. L. J. 174 : 128 I. C. 675 : I. R. 1931 Sind 3 : 25 S. L. R. 107 : A. I. R. 1930 Sind 259.

———O. XXXII, r. 7.

Partition suit—Mother accepting valuation by son, though having ample opportunities to ascertain its value—Compromise decree—Complaint for cheating—Remedy of mother indicated. *Virji Kallianji v. Emperor*.

36 Cr. L. J. 872 : 156 I. C. 153 : 7 R. D. 223 : A. I. R. 1935 Sind 95.

———O. XXXVIII, rr. 1, 3—*Penal Code (Act XLV of 1860), S. 225-B—Escape from arrest—Arrest illegal—Offence—Arrest before judgment—Application by surety for discharge—Duty of Court to give time to find fresh security.*

A surety under O. XXXVIII, r. 1, C. P. C. applied to the Court for his discharge. The Court discharged him and ordered arrest and detention of the judgment-debtor until he produced another surety. The judgment-debtor though orally directed not to leave the Court, left it :

Held, that the accused was not guilty of an

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offence under S. 225-B, Penal Code, inasmuch as an order to find fresh security was necessary and proper preliminary to his arrest under O. XXXVIII, r. 3, and the detention in the absence of such an order, was illegal. *Gopal Singh v. Emperor*. 30 Cr. L. J. 663 :

116 I. C. 709 : I. R. 1929 Lah. 565 : A. I. R. 1929 Lah. 163.

———O. XXXVIII, r. 5—*Legal warrant, absence of—Conviction under S. 186, Penal Code.*

Where it appears that no legal warrant was issued under O. XXXVIII, r. 5, a conviction under S. 186, Penal Code, cannot be upheld, although the facts proved may otherwise amount to an offence under the section. *Emperor v. Tohfa*.

34 Cr. L. J. 1211 : 146 I. C. 183 : 1933 A. L. J. 952 : 55 All. 985 : 6 R. A. 272 : A. I. R. 1933 All. 759.

———O. XXXIX, r. 2—*Injunction against wife prosecuting maintenance application under S. 488, Cr. P. C., not competent.*

The Civil Court has no jurisdiction to restrain a wife by an injunction from proceeding with an application for maintenance under S. 488, Cr. P. C., pending a suit by the husband for restitution of conjugal rights. *Krishna Gobinda Chatterji v. Kishoribala Debi*.

32 Cr. L. J. 232 : I. R. 1931 Cal. 119 : A. I. R. 1930 Cal. 753.

———O. XLV, r. 15—*Review application in Privy Council—Power of High Court or Executing Court to stay execution.*

Neither the Executing Court nor the High Court has power to stay the execution of a decree of the Privy Council on the ground that an application for review has been made to the Privy Council. *Rajendra Prasad Bosc v. Gopal Prasad Sen*.

132 I. C. 359 : 12 P. L. T. 61 : F. B. I. R. 1931 Pat. 279 : A. I. R. 1931 Pat. 208.

CO-ACCUSED.

See also Evidence Act, 1872, Ss. 30, 114, 133.

———*Statement, admissibility of—Practice.*

A statement made by one of two co-accused should not be used against the other, where later on, their cases are tried separately. If such a statement is to be relied on as evidence, the accused person who made it must be examined as a witness in the other case. *Ramudu Aiyar v. Emperor*.

24 Cr. L. J. 426 : 72 I. C. 538 : 44 M. L. J. 243 : 17 L. W. 370 : 32 M. L. T. 318 : A. I. R. 1923 Mad. 365.

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———Ss. 4, 7 and Schedule—*Vessel registered in name of father of Hindu joint family—Death of father—Son plying vessel without fresh registration—Change of ownership—Offence.*

The accused, his brother and his father were members of a joint Hindu family and they

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owned a harbour-craft which, however, was registered, under the provisions of the Coasting Vessels Act XIX of 1838, in the name of the father alone. After the death of the father, a second certificate of registry was not obtained by the accused who plied the craft for hire:

Held, that the accused had committed an offence under S. 13 of the Coasting Vessels Act, as the father's death constituted a change in the ownership of the craft under Ss. 4 and 7 of the Act and the Schedule appended to it. *Emperor v. Hari Das*.

14 Cr. L. J. 653 :
21 I. C. 893 : 15 Bom. L. R. 994 :
38 Bom. 111.

COCAINE.

See Excise Acts (Local).

COGNIZANCE.

———*Taking cognizance, what is.*

Taking cognizance does not involve any formal action, or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence. *Sourindra Mohan v. Emperor*.

11 Cr. L. J. 217 :
6 I. C. 8.

COGNIZABLE OFFENCE.

See also Cr. P. C.

———*Complaint of—Some of the accused sent up by Police—Trial and conviction by Deputy Magistrate—Magistrate of the District, jurisdiction of, to order prosecution of remaining accused—Cognizance of complaint against them—Order, propriety of—Code of Criminal Procedure (Act V of 1898), Sec. 190.*

On a complaint of a cognizable offence, the Police sent up some only of the accused persons who were tried and convicted by a Deputy Magistrate; subsequently the District Magistrate or Deputy Commissioner, while inspecting the Police outpost, made a note that the remaining accused should be sent up and thereupon the remaining accused were sent up for trial and the case was made over to the same Deputy Magistrate:

Held, that nothing was made over to the Deputy Magistrate at first except the case of some of the accused who had been previously tried and convicted:

Held also, that the proceedings taken against the remaining accused without any one formally taking cognizance of the case were irregularly instituted and should be set aside. *Jharu Jhola v. Shukh Deo Singh*.

3 Cr. L. J. 209 :
3 C. L. J. 87

COIN.

See Penal Code, Ss. 232, 235.

COLLISION.

See (i) Admiralty.
(ii) Railways Act, 1890, S. 101.
(iii) Tort.

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See Contempt.

COMMENT ON PENDING PROCEEDINGS.

See Contempt.

COMMERCIAL INTERCOURSE WITH ENEMIES ORDINANCE (VI OF 1914.)

———*If retrospective—Trading with the Enemy Proclamation No. 2, cl. 5 (7) scope of Royal Proclamation of 5th October 1914—"Destined," meaning of—Enemy destination, when not—Penal Statute, construction of—Agency—Principal, when criminally liable for agent's wrong—Offence under Proclamation—Intention, necessity of—"Trading," meaning of.*

Ordinance VI of 1914 is not retrospective and for the purpose of establishing an offence of trading with an enemy against an accused under the said Ordinance, a Court can look at only such acts as took place after it was enacted.

Where, however, the accused shipped mica from India before the war, and it was sold after the declaration of the war and the date of the Trading with the Enemy Ordinance No. 2, by the accused's agent in Europe to a German firm:

Held, that the accused was guilty of an offence under cl. 5 (7) of the Ordinance.

The word "destined" in the trading with the Enemy Proclamation No. 2, cl. 5 (7), when used in connection with the word "trading," is not limited to "on the way to" but is equivalent to the term "intended for." Legal destination must not be confused with actual destination.

Sub-cl. 7 of S. 5 of the Proclamation deals only with goods actually in existence or capable of ascertainment and there must be an actual dealing with the goods themselves or with the documents of title thereto to constitute an offence under the third part of the said clause, and the mere intention or desire to get goods for the enemy does not constitute an offence under this part of the sub-clause, unless there are goods in existence or capable of coming into existence.

Ordinarily a person is not criminally liable for an act unless he has himself committed the act. But in cases where a particular intent or state of mind is not of the essence of the offence, the acts or defaults of an agent in the ordinary course of his employment may make the master or principal criminally liable, although he was not aware of such acts or defaults and even where they were, were against his orders.

To constitute an offence punishable under the Proclamation, a particular intent or state of mind is not necessary, it is sufficient to constitute an offence thereunder by the principal that the act has been committed by the agent, even although not expressly authorised by the principal.

Per Beachcroft, J.—The term "trading" includes any commercial transaction between parties which has, for its object, the transfer of goods by purchase, sale, barter, or exchange. It is not necessary that goods should, in fact, pass and the term cannot be limited to cases where

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one of the parties is actually in physical possession of the goods. *Indar Chand v. Emperor*.

17 Cr. L. J. 113 :
33 I. C. 289 : 19 C. W. N. 1239 : 42 Cal. 1094 :
A. I. R. 1916 Cal. 431.

—S. 3—"Obtaining," meaning of—*Receiving goods ordered before Ordinance, whether offence—*"Attempt to obtain," rule of law applicable to—*Penal Code (Act XLV of 1860), S. 511—Interpretation of Penal Statutes.*

▲ The accused was charged with contravening the Royal Proclamation of the 9th September 1914 at Madras between the 21st and 26th November by obtaining and attempting to obtain goods from an enemy and from an enemy country. It appeared that on the 28th July the accused had cabled to his agent (who afterwards became an enemy) an order for 28 bales of tobacco leaf and on the 31st July the agent wrote saying that he had executed the order. These bales were shipped at Amsterdam on the 7th October and consigned to the London Agents of the accused, who paid the freight, took them out and re-shipped them for Madras where they arrived on the 21st November. The Ordinance prohibiting commercial intercourse with the enemy had come into force on the 14th October. It further appeared that on the 26th November accused wrote two letters, one to his Amsterdam Agents and the other to Blum Bros., an enemy firm in Goch. In these letters the accused sought to get his tobacco stored with Blum at Goch in Germany, sent to Amsterdam and undertook to pay the incidental charges :

Held, (1) that inasmuch as the goods in question were shipped before the 14th October 1914, the date when the Ordinance came into force, the accused could not be convicted of "obtaining" enemy goods within the meaning of S. 3 of the Ordinance.

(2) (*Coutts-Trotter, J.*, dissenting) that the charge could not be altered into one of obtaining goods at Madras from his London Agents by way of transmission from an enemy, as, if the accused be held to have obtained the goods in London, he could not again be convicted of obtaining them from himself.

Y (3) that the conduct of the accused in sending the letters of the 26th November 1914 amounted to an attempt within the meaning of S. 511, I. P. C., which also applied to cases punishable under some other law, and that it could not be contended that it was no offence for the accused to send for his own goods, as the removal of merchandise, even though acquired before the war, from the enemy country after knowledge of the war without a Royal licence is illegal.

Per *Wallis, C. J.*—A Penal Statute has no retrospective operation unless the intention of the Legislature that, it should have such effect; is clearly indicated.

The word "obtaining" in S. 3 of the Commercial Intercourse with Enemies Ordinance VI of 1914 includes procuring, or ordering the goods from the enemy as well as taking delivery of them on arrival.

Though the provisions of the I. P. C. do not

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in terms apply to offences created by special laws, there is no reason why the same rule should not apply to cases of attempts which are punishable under some other law.

Per *Coutts-Trotter, J.*—The same goods could be "obtained" twice within the meaning of the section and such an act would constitute a second offence under the latter part of the subsection, but as the accused had not been charged under it, the charge could not be altered, especially in view of the fact that the accused had acted without realising that he might be breaking the law.

Whenever the Legislature declares a series of acts to constitute a crime, any person who has entered upon that series of acts must, from that moment, stay his hand, and if he proceeds to the completion of the series of acts, he is guilty of the crime.

Breaches of law enacted to safeguard the welfare and safety of the Empire in war time must be punished, if only as a warning to others. *Frederick Edmed Hooper v. Emperor*.

17 Cr. L. J. 321 :
35 I. C. 497 : 4 L. W. 82 : 20 M. L. T. 180 :
1916 2 M. W. N. 161 :
A. I. R. 1917 Mad. 937.

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See also (i) Cr. P. C., 1898, Ss. 206 to 220.

(ii) Criminal trial.

—Magistrate, power of—Magistrate's belief that case is not fit for commitment—Discharge of accused.

The mere fact that there is evidence which, if believed, would justify a conviction, does not compel the Magistrate to commit the case to the Sessions. The accused were sent up for trial for having committed offence under Ss. 366 and 376, I. P. C. The Sub-Divisional Magistrate inquired into the offence and recorded evidence of the prosecution witnesses at great length. He, however, discharged the accused on the ground that there were insufficient grounds for committing them to the Sessions: *Held*, that the Magistrate was right in so discharging the accused. *Shahzad v. Emperor*.

14 Cr. L. J. 491 :
20 I. C. 747 : 12 A. L. J. 150.

—No evidence to justify commitment—Accused entitled to acquittal—High Court will not quash such commitment. *In re: The Sessions Judge of Coimbatore*.

15 Cr. L. J. 665 :
25 I. C. 993 : 27 M. L. J. 593 :
A. I. R. 1915 Mad. 24.

—Commitment once made can be quashed only on point of law. *Emperor v. Channing Arnold*.

13 Cr. L. J. 877 :
17 I. C. 813 : 5 Bur. L. T. 239 : 6 L. B. R. 129.
—To Sessions. considerations governing—Government resolution, not binding on Magistrate.

When a Magistrate comes to consider whether he shall or shall not commit a case to the Court of Sessions, he has to consider the gravity of the offence, the punishment with

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which, in his opinion, it ought to be met and the section under which he charges the accused person. He may consider any special difficulties in the case, or that it is a matter of some peculiar public importance, and other matters, such as the wishes of the parties. But a Magistrate must not determine this important matter, whether he is to commit the case or to try it himself, solely by the wish of the parties and the terms of a Government resolution. No resolution whatever that the Executive Government has issued can properly control or determine the discretion of a Magistrate in such a matter. *Emperor v. Bhimaji Venkaji Nadgir.*

19 Cr. L. J. 342 :
44 I. C. 454 : 20 Bom. L. R. 89 :
42 Bom. 172 : A. I. R. 1917 Bom. 33.

———Committing Magistrate conducting jail identification—Magistrate giving evidence before himself—Commitment, whether vitiated.

Where a Magistrate who has conducted the jail identifications happens to be the Committing Magistrate, ordinarily his evidence should be taken for the first time in the Court of Session by calling him as a Court witness. But the fact that a Magistrate took the unusual course of going into the witness-box during the committal proceedings, will not vitiate the committal or the subsequent trial. *Ram Prasad v. Emperor.*

29 Cr. L. J. 129 :
106 I. C. 721 : 1 Luck. Cas. 339 :
8 A. I. Cr. R. 449 : 2 Luck. 631 :
A. I. R. 1927 Oudh 369.

COMMITTING MAGISTRATES.

———Responsibilities.

Committing Magistrates not are to shirk their responsibilities of deciding doubtful cases by making unnecessary committals to the Sessions. *Emperor v. Ahmed Shah.* 8 Cr. L. J. 360 :
1 S. L. R. 103.

COMMON GAMING-HOUSE.

See Gambling Acts (Local and Imperial).

COMMON INTENTION OR OBJECT.

See Penal Code 1860, Ss. 34, 141.

COMMUNAL CONSIDERATIONS.

See Criminal trial.

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———Ss. 2 (9), 87—"Manager," meaning of.

Unless a person is in charge of the entire business of a Company, he cannot be deemed to be the manager thereof. A person in charge of the business of a branch of a Bank, therefore, does not come within the purview of the term "Manager" as used in S. 87. *Basant Lal v. Emperor.*

19 Cr. L. J. 215 :
43 I. C. 791 : 47 P. R. 1917 Cr :
A. I. R. 1918 Lah. 170.

———Ss. 2 (14), 92, 93—Advertisement offering shares of Company for sale, whether "prospectus"—Failure to file copy before Registrar—Offence.

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An advertisement offering to the public shares in a Company for sale comes within the definition of "prospectus" as contained in Cl. (14) of S. 2 of the Companies Act.

Under the provisions of S. 92, an advertisement of this nature must be placed before the Registrar by filing a copy of it before it is issued, and in order to be so filed, it must contain the essential particulars which are mentioned in S. 93 of the Act. If the advertisement does not comply with the requirements of S. 93, it cannot be accepted by the Registrar and consequently it cannot be published.

Failure to file a copy of such an advertisement with the Registrar before it is issued, is punishable under S. 92 (5) of the Companies Act. *Pramathanath Sanyal v. Kali Kumar Dutt.*

26 Cr. L. J. 1061 :
88 I. C. 5 : 29 C. W. N. 523 :
52 Cal. 440 : A. I. R. 1925 Cal. 714.

———S. 3—Scope of—Jurisdiction of High Court, nature of.

The jurisdiction of the High Court referred to in S. 3 is obviously the jurisdiction exercised by virtue of the specific provisions of the Act and not a jurisdiction which may be invoked where merely a criminal offence is declared. It is very difficult to say that S. 3 has specifically mentioned that the High Court would be the Court which should, as a Court of first instance, try persons who have been guilty of an offence committed on account of breaches of the provisions of the sections of the Act, e. g., contravention of the provisions of S. 85. *Harishchandra v. Kavindra Narain Sinha.* (F.B.) 38 Cr. L. J. 111 :
166 I. C. 53 : 1936 A. L. J. 1105 :
9 R. A. 349 : I. L. R. 1937 All. 220 :
A. I. R. 1936 All. 830.

———S. 4 (2)—Existence of legal relation between persons forming company, necessity of.

In order to constitute an association within the meaning of S. 4, the existence of the legal relation between more than twenty persons giving rise to joint rights or obligations or mutual rights and duties is absolutely necessary except where the object is to form a company. *D. D. Dawson v. The King.*

40 Cr. L. J. 799 (2) :
183 I. C. 497 : 12 R. Rang. 79 :
A. I. R. 1939 Rang. 273.

———S. 4 (2)—Unregistered Company started for carrying on business for gain—Money collected from subscribers—Subscribers become share-holders though share certificates are not issued.

Where a person, with the object of carrying on business for the acquisition of gain, starts an unregistered company and collects money from its subscribers who number more than twenty, then as soon as the money is collected, the bargain is clinched, and turned into an actual contract by acceptance and the subscribers become the share-holders even though no share certificates have been issued. *D. D. Dawson v. The King.*

40 Cr. L. J. 799 (2) :
183 I. C. 497 : 12 R. Rang. 79 :
A. I. R. 1939 Rang. 273.

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—Ss. 4 (5), 283—Offences, non-cognizable—Investigation by Police under Chap. XIV, Criminal Procedure Code—Trial by Magistrate whether barred.

Offences under Ss. 4 (5) and 283 are non-cognizable and cannot be investigated under Chap. XIV, Cr. P. C. But if they have been wrongly investigated and sent up by the police, that is no obstacle to their being tried by the Magistrate. *D. D. Dawson v. The King*.

40 Cr. L. J. 799 (2) :
183 I. C. 497 : 12 R. Rang. 79 :
A. I. R. 1939 Rang. 273.

—S. 32—Default in filing annual list and summary—Default not wilful—Conviction.

A Director of a Company cannot be convicted under S. 32 (4) for a default in filing with the Registrar a copy of the list of share-holders and of the summary described in S. 32 (2), if there is no evidence to prove that he knowingly and wilfully authorised or permitted the Company to make such default. *Sundar Das v. Emperor*.

31 Cr. L. J. 341 :
122 I. C. 88 : 10 Lah. 521 : 30 P. L. R. 715 :
A. I. R. 1929 Lah. 836.

—S. 32—Wilful default, permitting of—Proof.

Conviction of officer under Ss. 32 (4), 77 (6), 131 (4)—that the officer knowingly and wilfully authorised or permitted defaults should be proved. Proof of authorisation is not necessary. *Balla Dass v. Mohan Lal Sadhu*.

37 Cr. L. J. 552 :
162 I. C. 282 : 39 C. W. N. 1152 : 8 R. C. 586 :
A. I. R. 1936 Cal. 237.

—(VI of 1882) Ss. 48, 50—Officers of Company resigning their positions as such without resigning directorships—Liability under S. 50 not affected—Plea of ignorance of law.

Where a paid Managing Director and the Chief Secretary of a Company were prosecuted for an offence under S. 48, and convicted under S. 50 of the Indian Companies Act, VI of 1882 :

Held, that the fact of their having resigned their positions as Managing Director and Chief Secretary, before the prosecution was started, without assigning thereby their posts as Directors would not free them from their liability under S. 50 of the Act.

The plea of ignorance of law cannot be accepted. *Chhabil Das v. Emperor*. 15 Cr. L. J. 300 :
23 I. C. 508 : 164 P. L. R. 914 :
38 P. W. R. 1914 Cr. : A. I. R. 1914 Oudh 193.

—Ss. 48, 50—Punjab Government Notification No. 3, dated 23-2-1910—Registrar's power to authorise any person to file complaint—Complaint by clerk under authority from Registrar—Director's liability and defence.

Under the Punjab Government Notification No. 3, dated the 23rd February 1910, the Registrar of the Joint Stock Companies is empowered to authorise any person to institute complaints of offences under the Companies Act.

Where, therefore, a clerk "acting under the instructions of the Registrar, Joint Stock Com-

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panies, Punjab, instituted complaints against the petitioner under Ss. 48, 50 and 74 of the Companies Act :

Held, that the clerk having been duly authorised by the Registrar, the complaint was good in law.

A person who acts as a Director or Manager of a Company cannot set up in answer to a penalty under S. 50 of the Companies Act that he was not legally a Director or Manager.

It is the bounden duty of a Company and of its Directors and Managers to forward to the Registrar the summary and list specified in S. 48 of the Companies Act and this obligation does not come to an end on the date on which by default on the part of the Company, Directors and Managers, the penalty begins to accrue. Therefore, every person who at any time during the default in complying with the provisions of S. 48 acted as Director or Manager can be convicted under Ss. 48 and 50, and it is immaterial that some or all of these persons were not legally qualified to act as Directors or Managers or that they did not, in fact, become Directors or Managers until after the date when the penalty first accrued. *Tota Ram v. Emperor*.

17 Cr. L. J. 242 :
34 I. C. 962 : 14 P. R. 1916 Cr. :
38 P. W. R. 1916 Cr. : A. I. R. 1916 Lah. 397.

—S. 74—Failure to comply with—Complaint—Jurisdiction of Magistrate—Practice.

Though a Magistrate can entertain a complaint against a Director of a Company for a failure to comply with the provisions of S. 74 for misappropriation of money or falsification of accounts, he should ordinarily be chary of proceeding on a complaint of this kind except after reference to the Registrar or on the complaint of responsible persons. *Sidheshwar Ghose v. Emperor*.

12 Cr. L. J. 596 :
12 I. C. 972 : 8 A. L. J. 1260.

—S. 74—Filing balance-sheet within year—Director resigning before expiry of year—Liability for failure to file.

A Company is not by law obliged to file a balance-sheet till a year from its registration is complete, and a Director of the Company who resigns office before the expiry of the year cannot be fixed with liability under S. 74 for failure to file a balance-sheet with the Registrar of Joint Stock Companies. *Chandar Bhan v. Emperor*.

15 Cr. L. J. 380 :
23 I. C. 748 : 39 P. W. R. 1914 Cr. :
250 P. L. R. 1914 Cr. : A. I. R. 1914 Lah. 222.

—S. 74—Summary trial—Jurisdiction—Fixed penalty.

A Magistrate of the first class can try any offence under S. 74 in a summary way, but he cannot inflict a lesser punishment than a fine of Rs. 1,000. In deciding whether or not the Magistrate will try a case summarily, it is for him to exercise a wise discretion, and ordinarily he ought to restrict such trials to simple cases. *Dina Nath v. Emperor*.

14 Cr. L. J. 105 :
18 I. C. 665 : 11 A. L. J. 196 : 35 All. 173.

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———S. 74—"Manager", definition of—Default in filing balance-sheet—Managing Agents and Directors, liability of.

The expression "Manager" as used in S. 74 of the Companies Act, 1882, includes every person or body of persons who conducts or conduct the affairs of a Company and to whom its management, subject to the control of the Directors, is entrusted.

Where, therefore, a firm is entrusted with the management of a Company, it cannot escape liability for its misfeasance or non-feasance merely by calling itself "Managing Agent" instead of "Manager".

Where the balance-sheet should have been made out and filed with the Registrar on the 20th August 1913, but was not in fact submitted till the 22nd October, and the Chairman of Directors and the Managing Agents of the Company were convicted under S. 74 :

Held, (1) that the Chairman of Directors could not escape liability on the ground that he depended upon the Managing Agents to do all that was necessary, and had, on several occasions, asked them to do so.

(2) that the fact that one of the members of the firm, which acted as Managing Agents, was also punished in his individual capacity as a Director was no reason for not punishing him as a member of the firm. *Tota Ram v. Emperor*.

17 Cr. L. J. 306 :
35 I. C. 482 : 18 P. R. 1916 Cr :
A. I. R. 1916 Lah. 199.

———S. 74—Penalty of Rs. 1,000 is fixed and irreducible—Criminal revision—Enhancement of sentence.

Under S. 74 of the Companies Act, the fine of Rs. 1,000 is a fixed one and a Magistrate cannot impose a lesser fine where the offence is proved.

The Chief Court enhanced the fine from Rs. 300 to Rs. 1,000. *Emperor v. Harkishen Lal*.

15 Cr. L. J. 260 :
23 I. C. 468 : 37 P. L. R. 1914 :
16 P. W. R. 1914 Cr. : 19 P. R. 1914 Cr.
A. I. R. 1914 Lah. 321.

———Ss. 74, 220 (B)—Regulations—Failure to file balance-sheet—Registrar only competent to prosecute—Complaint by unauthorised person ultra vires—Revision—Interference.

Under Regulations framed by the Local Government under S. 220 (b) of Act VI of 1882, the Registrar is the only officer authorized for instituting and conducting all prosecutions under the Act, specially where the prosecutions are in connection with breach of the rules relating to submission of balance-sheets and other periodical returns. So a complaint under S. 74 of the Indian Companies Act, VI of 1882 for wilful default in filing a balance-sheet, not brought by the Registrar but by a clerk of his office and counter-signed by the Public Prosecutor, is bad in law and not entertainable by a Criminal Court.

Where by any Law or Regulation a certain person is only authorized to complain about a particular offence, the proceedings of a Magistrate based on a complaint relating to that

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offence, made by any unauthorized person, are *ultra vires* and liable to be set aside on revision by the High Court at any time during the pendency of the case. *Emperor v. Shib Das*.

11 Cr. L. J. 577 :
8 I. C. 190 : 35 P. W. R. 1910 Cr.

———S. 75—Failure to hold general meeting within six months of Memorandum of Association being registered—Offence.

Where after the repeal of the Companies Act of 1882, the accused was convicted of not holding a general meeting within six months of the Memorandum of Association being registered under S. 75 of that Act :

Held, that the conviction was bad and must be set aside. *Ram Richpal v. Emperor*.

18 Cr. L. J. 896 :
41 I. C. 1008 : A. I. R. 1917 Lah. 280.

———S. 76—Requirements of—One meeting per year required.

S. 76 demands that there shall be a general meeting held once at least in every year, *i.e.*, one meeting per year, and as many meetings as there are years. It does not mean that the same meeting can go on being held once in each year. The section requires that a separate and distinct meeting should be held. *Meenakshi Mills Co., Ltd. v. Assistant Registrar of Joint Stock Companies, Madura*.

39 Cr. L. J. 907 (1) :
177 I. C. 600 : 47 L. W. 635 :
1938 1 M. L. J. 856 : 1938 M. W. N. 608 :
11 R. M. 358 (1) : A. I. R. 1938 Mad. 640.

———Ss. 76, 77, 151—Failure to hold general meeting—Directors' liability of—Extraordinary meeting held on request of share-holders—Effect.

A Company, registered in Bombay, held its statutory meeting under S. 77 on 30th March, 1921, and also a general meeting on the same day. Under S. 76 the company had to hold a general meeting before 30th June, 1922; no such meeting was held, but on a requisition of certain share-holders, an extraordinary meeting was held on 29th June, 1922. On the complaint of a share-holder the Directors of the Company were prosecuted for failing to comply with Ss. 76 and 131 of the Act, and it was argued on their behalf that the holding of the meeting on 29th June, 1922, was a compliance with the provisions of S. 76 :

Held, that the conviction was right, as the meeting held on the requisition of the share-holders on 29th June, 1922, was not a general meeting within the meaning of S. 76. *Nasurbhai Abdullabhai Lalji v. Emperor*. 24 Cr. L. J. 349 :
72 I. C. 349 : 25 Bom. L. R. 224 :
A. I. R. 1933 (Bom.) 194.

———Ss. 76, 136, 248, R. 15—Annual General Meeting not held—Share-holder, competency of, to make complaint.

Rule 15 of the rules made by the Government of the Central Provinces under S. 248 does not exclude a person aggrieved, such as a share-holder, from filing a complaint against the Directors of a Registered Company for failure to comply with the provisions of Ss. 76 and 136

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of the Act with reference to the holding of the annual general meeting and the preparation of the annual balance-sheet. *Laxmi Narayan v. D. H. Mahajan*. 29 Cr. L. J. 581 :

109 I. C. 597 : 10 A. I. Cr. R. 300 :
A. I. R. 1928 Nag. 186.

—S. 76 (1)—General meeting, what is—
Default in holding general meeting—Offence.

S. 76 of the Companies Act, 1913, does not differentiate between a general meeting and an extraordinary general meeting of a Company. Where, therefore, an extraordinary general meeting of a company is held within fifteen months of the last general meeting, no offence can be said to have been committed. *Lachmi Narain v. Emperor*. 21 Cr. L. J. 94 (a) :

54 I. C. 494 : 1 U. P. L. R. (A.) 171 :
A. I. R. 1920 U. Bur. 29.

—S. 85—Contravention of S. 85, whether
amounts to offence.

Contravention of the provisions of S. 85, Companies Act, amounts to an offence punishable with fine. *Harish Chandra v. Kavindra Narain Sinha*. (F. B.) 38 Cr. L. J. 111 :

166 I. C. 53 : (1936) A. L. J. 1105 :
9 R. A. 349 : 1 L. R. 1937 All. 220 :
A. I. R. 1936 All. 830

—S. 87.
Conviction of Manager and Secretary of Company for not giving notice in time to Registrar on change of director is illegal as no period is prescribed within which such notice should be given. *Kumud Chandra Nandi v. Emperor*. 32 Cr. L. J. 778 :

131 I. C. 592 : 35 C. W. N. 227 : 58 Cal. 882 :
A. I. R. 1931 Cal. 265 (1).

—S. 91-A—Contracts under section, defined.

Contracts referred to in S. 91-A, include *inter alia* contracts not made at a meeting of the directors. They include even petty purchases from another firm in which the purchasing director is interested. *Ribindra Nath Mitra v. Emperor*. 39 Cr. L. J. 687 (2) :

176 I. C. 108 : 42 C. W. N. 533 : 11 R. C. 39 :
A. I. R. 1938 Cal. 440.

—Ss. 92 (5).

Prospectus filed in English before Registrar—Subsequent issue of prospectus in Bengali not containing certain particulars required by S. 93—Such prospectus not filed before Registrar—Offence under S. 92 (5) is committed—Offence is not merely technical—No interference by High Court. *Emperor v. Bengal Salt Co., Ltd.* 37 Cr. L. J. 379 :

160 I. C. 829 : 49 C. W. N. 320 :
63 C. L. J. 183 : 8 R. C. 453 :
A. I. R. 1936 Cal. 33.

—S. 104—Agreement to transfer property
in future—Not transfer in present.

Under S. 104 the particulars of the contract 'constituting the title of the allottee' should be filed with the Registrar. If this contract consists merely of an agreement to transfer property in future, the particulars thereof cannot be treated as a transfer of the property in present. *Bhola Ram & Sons v. Emperor*. (S. B.) 150 I. C. 781 (2) : 36 P. L. R. 9 :

15 Lah. 501 : 7 R. L. 24 :
A. I. R. 1934 Lah. 530.

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—S. 104—Allotment of shares—Agreement
before formation of Company to allot shares—
Ratification by Directors after registration—Liability of Company to furnish particulars—Default—Penalty.

Certain persons who purchased a business, registered themselves as a Company under the Companies Act. By the terms of the contract of purchase the vendor was entitled to certain shares allotted otherwise than in cash and such allotment was, after registration of the Company, ratified by the Directors at a meeting :

Held, that there was no contract in writing constituting the title of allottee within the meaning of S. 104 (1) and the Company was bound to furnish the particulars duly stamped under Cl. (2) of the section, and in default, to do so, the officer responsible for the default was liable to be fined under cl. (3) of the section. *Ramasami Chetty v. Chengalraya Pillai*. 27 Cr. L. J. 700 :

94 I. C. 892 : 1926 M. W. N. 6 :
23 L. W. 571 : A. I. R. 1926 Mad. 380.

—S. 104—Contract to transfer property
in future—If can be treated as a conveyance.

Where the contract of which particulars are supplied, is only an agreement to transfer property in the future, the particulars cannot be treated as a conveyance. An actual transfer of property is an essential feature of a "conveyance." *Bhola Ram & Sons, Ltd. v. Emperor*. 7 R. L. 24 : 36 P. L. R. 9 :

15 Lah. 501 : 150 I. C. 781 (2) :
A. I. R. 1934 Lah. 530.

—S. 104.

Allotment of shares in consideration of transfer of business—Agreement in writing : Held it was not a conveyance. Stamp duty payable was Re. 1 only. *Lakshmi Iron & Steel Manufacturing Co., Ltd. v. Emperor*. (S. B.) 150 I. C. 790 : 36 P. L. R. 143 :

15 Lah. 509 : 7 R. L. 28 :
A. I. R. 1934 Lah. 533.

—S. 104—Return of allotment of shares,
failure to furnish—Ignorance of law, whether
excuse.

Under S. 104 (1) (a) the Directors and Manager of a Company are bound to furnish to the Registrar the return of allotment of shares, and their failure to do so, renders them liable to the penalties provided by Sub-s. (3) of that section. Ignorance of law is no excuse. Where, however, the default is not intentional, but is due to negligence alone, the full or a heavy penalty ought not to be exacted. *Emperor v. Nathu Ram*. 20 Cr. L. J. 725 : 52 I. C. 835 : 26 P. R. 1919 Cr. :

A. I. R. 1919 Lah. 361.

—S. 104, Form No. VI—Allotment of
shares in consideration of transfer of business—
Agreement in writing—Whether a conveyance—
Stamp duty payable.

Where shares had been allotted in consideration of a written agreement as regard the transfer of business and the Company accordingly submitted a return as to allotment in Form No. 6 accompanied by the agreement which formed the consideration for the allot-

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ment of the shares : *Held*, that the agreement was not a conveyance, that it was liable to a stamp duty of Re. 1 only, and that the fact that the agreement was a written one was not material. *Bhola Ram & Sons, Ltd. v. Emperor* (1), applied. *Lakshmi Iron & Steel Manufacturing Co., Ltd. v. Emperor*.

150 I. C. 790 : 7 R. L. 28 : 36 P. L. R. 143 :
15 Lah. 509 : A. I. R. 1934 Lah. 533.

—Ss. 131, 134—S. 131, scope of—Charge in respect of same years against same persons—Legality of.

In respect of the same years, the same persons cannot be charged with offences punishable both under Ss. 131 and 134, Companies Act. *In re : N. V. L. Narasimha Rao*. 38 Cr. L. J. 695 :
169 I. C. 100 : 1937 M. W. N. 90 :
45 L. W. 242 : 9 R. M. 681 :
A. I. R. 1937 Mad. 341.

—Ss. 132, 282, Sch. III, Form F—Banking Company—Balance-sheet—Duty of Company to show 'doubtful and bad' debts.

A banking company is bound to show in the balance-sheet; under the item of 'book debts' all 'doubtful and bad' debts appearing in the books of the company as well as the 'good' debts. *P. D. Shamdassani v. S. M. Pochkhana-vala*. 28 Cr. L. J. 568 :

102 I. C. 504 : 29 Bom. L. R. 722 :
8 A. I. Cr. R. 218 : A. I. R. 1927 Bom. 414.

—S. 134—Fine imposed on Company—Recovery from directors individually.

A fine imposed upon a Company under S. 134 must be recovered from the property of the Company and not from the Directors individually. *Dwarka Das v. Emperor*.

26 Cr. L. J. 799 :
86 I. C. 431 : 6 L. L. J. 160 :
A. I. R. 1924 Lah. 489.

—S. 134 (4)—Default of Director in filing balance-sheet—General Meeting not held—Offence—Territorial jurisdiction.

In answer to a charge under S. 134 (4) in respect of default made in filing with the Registrar the balance-sheet for a certain year, it is not open to a Director to plead that as no general meeting was called in that year and no balance-sheet was laid before the Company at any such general meeting, it was impossible for him or his Company to comply with the requirements of S. 134. The Presidency Magistrates in Calcutta possess jurisdiction to try charges under S. 134 even where the Company is situate outside Calcutta, as the office of the Registrar with whom the balance-sheet should be filed is in Calcutta. *Debendra Nath Das Gupta v. Registrar, Joint Stock Companies, Bengal*. 18 Cr. L. J. 787 :

41 I. C. 307 : 22 C. W. N. 96 :
27 C. L. J. 85 : A. I. R. 1917 Cal. 1.

—Ss. 134 (4), 76—Conviction under s. 134 (4), requisites of.

For conviction of an officer of a Company under S. 134 (4) for default in submitting to the Registrar of Companies the balance-sheet laid before the Company at a general meeting, in a case where no such general meeting was held, it is necessary to show that the officer was knowingly a party to the default in hold-

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ing the general meeting. *Raj Kumar Kusari v. Registrar of Joint Stock Companies, Bengal*.

18 Cr. L. J. 325 :
38 I. C. 437 : 21 C. W. N. 840 :
A. I. R. 1918 Cal. 190.

—S. 136 (1)—Banking Company's omission to publish statements on specified dates in good faith—Offence.

The omission to publish the statements specified in S. 136 (1) on the dates indicated in the section, cannot be justified by the fact that the omission was due to a change in the closing date of the financial year of the Company and that the officers of the Company imagined in good faith that this justified a change in the dates on which the statements were required to be published. The officers of the Company are liable to be dealt with under S. 136 (4). *In re : Shamdassani*.

25 Cr. L. J. 1194 :
82 I. C. 58 : 26 Bom. L. R. 68 :
48 Bom. 305 : A. I. R. 1924 Bom. 308.

—S. 137 (6)—Scope of.

The intention of S. 137 is to facilitate the investigation of the affairs of a company, and it has no reference to actual proceedings in Court. *Surendra Nath Sarkar v. Kali Pada Das*. 41 Cr. L. J. 625 :

188 I. C. 537 : I. L. R. 1940 (1) Cal. 575 :
44 C. W. N. 454 : 13 R. C. 14 :
A. I. R. 1940 Cal. 232.

—S. 140 (3)—Appointment of Inspector invalid—Refusal to produce books and documents before him—Conviction illegal.

Where the appointment of an Inspector is invalid by reason of the provisions of para. 8 (2), India and Burma (Transitory Provisions) Order, 1937, conviction under S. 140 (3), Companies Act, for refusal to produce the books and documents of the company before such Inspector is not legal. *In re : Karumuthu Thiagarajan*. 40 Cr. L. J. 835 :

183 I. C. 762 : 49 L. W. 651 :
1939 M. W. N. 743 : 1939 2 M. L. J. 97 :
12 R. M. 371 (1) : A. I. R. 1939 Mad. 589.

—Ss. 141-A, 137 (6)—Prosecution by private individuals, if barred.

S. 141-A does not debar prosecutions by private persons. The section casts a duty upon the Advocate-General or the Public Prosecutor to cause proceedings to be instituted in certain circumstances. It also casts a duty upon the officers of the Company to render assistance in connection with any such prosecution. *Surendra Nath Sarkar v. Kali Pada Das*.

41 Cr. L. J. 625 :
188 I. C. 537 : I. L. R. 1940 (1) Cal. 575 :
44 C. W. N. 454 : 13 R. C. 14 :
A. I. R. 1940 Cal. 232.

—S. 152—Arbitration—Company party to reference—Award, filing of—Arbitration Act, application of.

Where one of the parties to an arbitration is a Corporation registered under the Companies Act, S. 152 (3) applies and any award obtained by it may be filed under the provisions of the

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Arbitration Act. *Grahams Trading Co. (India), Ltd. v. Chandulal Parmanand.*

37 Cr. L. J. 175 :
159 I. C. 824 : 8 R. S. 102 :
A. I. R. 1935 Sind 228.

S. 171.

Proceedings against Liquidator under S. 145, Cr. P. C.—Leave of Court is not necessary. *Mukerjee v. Krishna Dassi.*

34 Cr. L. J. 640 (2) :
143 I. C. 795 : 37 C. W. N. 932 :
I. R. 1933 Cal. 484 : A. I. R. 1933 Cal. 433 (2).

S. 196 (5), (7)—*Examination of officers of Company—Answers given, whether can be proved in criminal proceedings,—‘In civil proceedings,’ meaning of—Evidence Act (I of 1872), S. 132, proviso, scope of—Objection to answering, necessity of—Privilege, whether confers general immunity.*

The proviso to S. 132 of the Evidence Act does not prohibit the answers given by an officer of a Company during his examination under S. 196 of the Companies Act from being proved in evidence against him in subsequent criminal proceedings. The said proviso applies only to answers given to particular questions and does not confer a general immunity on a person who has been examined, and, further, does not come into operation at all unless the witness has objected to answering such questions. The expression ‘in civil proceedings’ in S. 196 (7) of the Companies Act was introduced with a view to save the provisions of S. 132 of the Evidence Act and does not confine the admissibility of the notice of an examination under S. 196, Companies Act, to civil proceedings only. Such evidence is, therefore, admissible against the person examined, unconditionally in civil proceedings and subject to S. 132 of the Evidence Act in criminal proceedings. *Ram Chand Gurcila v. Emperor.*

27 Cr. L. J. 1383 :
98 I. C. 599 : A. I. R. 1926 Lah. 385.

S. 208—*Liquidator—Appointment irregular—Liquidator, duty of, on appointment—Failure to give notice—Bona fide excuse—Penalty.*

Where a person is appointed Liquidator, however imperfect he may consider his appointment to be, if he acts as such, he must carry out the duties as well as exercise the rights of a Liquidator. When a person accepts his appointment as a Liquidator, he must give notice of it according to law. Failure to do so in the absence of some *bona fide* excuse will render him liable to penalty under S. 208. *Salish Chandra Ghosh v. Emperor.*

18 Cr. L. J. 510 :
39 I. C. 478 : 15 A. L. J. 346 :
39 All. 412 : A. I. R. 1917 All. 93.

S. 282—*Bad debts shown as profits—Offence.*

Showing bad debts which are not paid and are not likely to be paid as part of profit amounts to making false statement. *Official Liquidator of Karachi Bank, Ltd. v. Shewaram Deccanmal.*

33 Cr. L. J. 891 :
140 I. C. 31 : 26 S. L. R. 211 :
I. R. 1932 Sind 163 : A. I. R. 1933 Sind 12.

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S. 282—*Balance-sheet, essentials of—Statements in, effect of Breach of law, what is.*

A balance-sheet must not be a mere inventory. It is supposed to be a pictorial representation of the trading position of the Company easily appreciated not by ignorant people but by persons who are reasonably able to understand commercial expressions and commercial conditions. It is the effect upon the ordinary investor reading the statements in an ordinarily careful manner in which an investor would do which has to be considered, when one is making up one's mind as to whether the breach of S. 282 has been committed. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Akhil Bandu Guha.* 38 Cr. L. J. 151 :
166 I. C. 163 : 40 C. W. N. 1341 :
9 R. C. 478 : I. L. R. 1937 1 Cal. 328 :
A. I. R. 1936 Cal. 680.

S. 282—*Erroneous statement in balance-sheet—Absence of dishonesty—Error in accounting—Prosecution of officers, propriety of.*

The Officers of a Company should not be prosecuted under S. 282 in respect of statements made in a balance-sheet where the points involved are really technical matters of correct or incorrect accounting and there is no proof of any dishonesty. *In re : P. D. Shamdassani.*

31 Cr. L. J. 383 :
122 I. C. 141 : 31 Bom. L. R. 1144 :
A. I. R. 1929 Bom. 443.

S. 282—*False declaration regarding payments by Directors—Offence.*

Accused sent a Prospectus and a Memorandum and Articles of Association of a proposed Company to the Registrar, Joint Stock Companies, and from those documents it appeared that five persons had consented to become Directors of the Company and had undertaken to take up a certain number of shares. Three of them carried out the undertaking but the remaining two did nothing towards fulfilling it. The accused then filed a declaration with the Registrar stating that every Director had paid to the Company the sum necessary to be paid on the number of shares agreed to be taken by them : *Held*, that the accused was guilty of an offence under S. 282 of the Companies Act, and it was not a valid defence that the two defaulting Directors had ceased to be Directors and that, therefore, the declaration could not refer to them. *S. M. Bose v. Emperor.*

25 Cr. L. J. 474 :
77 I. C. 826 : 22 A. L. J. 83 :
46 All. 218 : A. I. R. 1924 All. 314.

S. 282—*False balance-sheet—Auditors' offence.*

Auditors signing auditors' report below false balance-sheet make false statement and are liable under S. 282. *Official Liquidators of Karachi Bank, Ltd. v. Shewaram Deccanmal.*

33 Cr. L. J. 891 :
140 I. C. 31 : 26 S. L. R. 211 :
I. R. (1932) Sind 163 : A. I. R. 1933 Sind 12.

S. 282—*Signing false balance-sheet—Offence.*

Directors signing false balance-sheets are liable to prosecution—The fact that they did

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not attend meeting or had no knowledge of banking or accounts is immaterial. *Official Liquidators of Karachi Bank, Ltd. v. Shewaram Dewanmal* 33 Cr. L. J. 891 :

140 I. C. 31 : 26 S. L. R. 211 :

I. R. (1932) Sind 163 : A. I. R. 1933 Sind 12.

—S. 282—*Signing false balance-sheet—Offence.*

Person signing false balance-sheet as manager is liable although he may not be manager in fact. *Official Liquidators of Karachi Bank, Ltd. v. Shewaram Dewanmal*. 33 Cr. L. J. 891 :

140 I. C. 31 : 26 S. L. R. 211 :

I. R. (1932) Sind 163 : A. I. R. 1933 Sind 12.

—S. 282—*Wilful false statement, what is.*

Current expenditure not debited in revenue accounts in balance-sheet but debited to organization : *Held*, it was wilful false statement and technical offence committed. It is not necessary that statement should be such as to deceive any one or that it should even be honestly made. *Baidya Nath Biswas v. Emperor*. 37 Cr. L. J. 115 :

159 I. C. 523 : 8 R. C. 322 :

A. I. R. 1935 Cal. 741.

—S. 282—*'Wilfully', meaning of.*

The expression 'wilfully', means nothing more nor less than the spontaneous action of a person who is a free agent. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Akhil Bandu Guha*. 38 Cr. L. J. 151 :

166 I. C. 163 : 40 C. W. N. 1341 :

9 R. C. 478 : I. L. R. 1937 : 1 Cal. 328 :

A. I. R. 1936 Cal. 680.

—Appendix A, Form 26—*Notice of change of Directors.*

The provision found in the foot-note of Form 26, Appendix A, of the Act, that notice of change of Directors should be given 30 days from the date of occurrence is not mandatory. *Kumud Chandra Nandi v. Emperor*. 32 Cr. L. J. 778 :

131 I. Cal. 592 : 35 C. W. N. 227 :

58 Cal. 882 : A. I. R. 1931 Cal. 265 (1).

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—Appeal—Conviction of Company—Appeal by Managing Director is not properly instituted. *Ajil Kumar Chatterji v. Emperor*. 35 Cr. L. J. 492 :

147 I. C. 848 : 37 C. W. N. 1159 :

6 R. C. 375 : A. I. R. 1934 Cal. 63.

—Balance-sheet—Loan and Deposit—Consolidation of the two amounts to suppression of the truth—Loan to depositor shown as overdraft—Concealment of facts.

A loan and a deposit are items differing completely in principle from the balance-sheet point of view. Strictly speaking, they ought to appear on different sides, for one is an asset and the other is a liability. Consolidating the two and presenting them as one item to the readers, is striking case of non-disclosure, amounting to a suppression of the truth.

A Company giving a loan to one of its depositors and showing it to be an overdraft to him, conceals the true statement of facts *Super-*

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intendent and Remembrancer of Legal Affairs, Bengal v. Akhil Bandu Guha. 38 Cr. L. J. 151 :

166 I. C. 163 : 40 C. W. N. 1341 : 9 R. C. 478 :

I. L. R. 1937 : 1 Cal. 328 :

A. I. R. 1936 Cal. 680.

—Breach of statutory duty.

Where a duty is imposed upon a company in such a way that a breach of the duty amounts to a disobedience of the law, then, if there is nothing in the statute either expressly or impliedly to the contrary, a breach of the statute is an offence which can be visited upon the Company. *Rangoon Electric Tramway and Supply Co., Ltd. v. Emperor*. 34 Cr. L. J. 1040 :

145 I. C. 710 : 11 R. 162 : 6 R. Rang. 53 :

A. I. R. 1933 Rang. 70.

—Directors—False balance-sheet to cover improper conduct.

It is of paramount importance that the investing public should have the utmost confidence in those persons who are managing Indian concerns. Directors of Joint Stock Companies stand in a fiduciary capacity with regard to capital under their control. They are in the position of trustees, and being entrusted with the money of the public, are bound to deal with it as trustees and cannot be allowed with impunity to publish false balance sheets in order to conceal their own improper conduct. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Akhil Bandu Guha*. 38 Cr. L. J. 151 :

166 I. C. 163 : 40 C. W. N. 1341 :

9 R. C. 478 : I. L. R. 1937 : 1 Cal. 328 :

A. I. R. 1936 Cal. 680.

—Director—Whether liable for acts taking place before he became director.

Persons cannot be held liable in respect of the default made in preparing balance-sheet or placing it before a general meeting of the Company which took place long before they ever became directors or officers of the Company, and indeed before they were even share-holders. *In re : N. V. L. Narasimha Rao*. 38 Cr. L. J. 695 :

169 I. C. 100 : 1937 M. W. N. 90 :

45 L. W. 242 : 9 R. M. 681 :

A. I. R. 1937 Mad. 341.

—Managing Agents—Expenses of management—From failure of business and heavy expenses, existence of criminal intention cannot be presumed when there is not a tittle of evidence. *Abinash Chandra Sarkar v. Emperor*. 37 Cr. L. J. 439 :

161 I. C. 280 : 63 Cal. 18 : 8 R. C. 502.

COMPARISON.

—Evidence of handwriting, value of.

Evidence of comparison of handwriting is often extremely dangerous. *Suresh Chandra Banerjee v. Emperor*. 29 Cr. L. J. 705 :

110 I. C. 449 : 47 C. L. J. 471 :

10 A. I. Cr. R. 371 :

A. I. R. 1928 Cal. 309.

COMPENSATION.

See also Cr. P. C., S. 250.

—Award of—Acquittal of accused in sum-

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many trial—Failure to record objection of complainant—Criminal Procedure Code (Act V of 1898), Ss. 250, 263 (g)—Interference in revision.

On acquitting the accused in a summary trial the Magistrate cannot award compensation to the accused without recording the complainant's objections. If he does so, the order is liable to be reversed in revision by the High Court. *Minhomal v. Emperor.* 15 Cr. L. J. 666 : 25 I. C. 994 : 8 S. L. R. 25 : A. I. R. 1914 Sind 69.

—Compensation to accused—frivolous accusation—mode of recovery—Criminal Procedure Code, S. 250.

An order awarding compensation to an accused person under S. 250, Cr. P. C., should not provide for imprisonment in default of payment. Imprisonment should not be ordered until the amount has been found to be irrecoverable. *Emperor v. Pan Aung.* 2 Cr. L. J. 724 : 3 L. B. R. 32

—Order "to show cause"—Adjournment—Order for payment of compensation passed four days after order of discharge is irregular but not *ultra vires*. *Ghurbin v. Emperor.* 15 Cr. L. J. 193 : A. I. R. 1914 All. 86.

COMPLAINANT.

See also Cr. P. C., Ss. 4 (h), 199 to 203.

—Cheating case—Person entitled to move.

The prosecutor, in all criminal cases, is really the Crown: the complainant merely sets the machinery of the Court in motion. In a case of cheating, it is not necessary that the complainant should have been the person deceived. *Mahadeo Lal v. Emperor.* 7 Cr. L. J. 342 : 7 C. L. J. 375 : 12 C. W. N. 750.

COMPLAINT.

See also Criminal Procedure Code, Ss. 4 (h), 199 to 203.

—Nature of—Case of civil nature.

The first accused was employed by a firm to sell certain bags and pay over the sale proceeds. In the complaint it was alleged that he had sold the bags and together with the second accused, who was a partner in the firm, misappropriated the proceeds: *Held*, that the complaint was not merely a civil dispute but that there was room for inquiry in a Criminal Court. *Narayanaswami Chetty v. Vadivelu Chetty.* 12 Cr. L. J. 123 : 9 I. C. 726 : 1911 2 M. W. N. 125 : 9 M. L. T. 322.

—Dismissal—No opportunity given to complainant to prove case—Criminal Procedure Code (Act V of 1898), Ss. 202, 203.

After the examination of a complainant on oath, the Magistrate is bound to dismiss the complaint at once, or to elect to hold inquiry under S. 202, Cr. P. C. before issuing process. If he elects to do the latter, it is his duty to impress upon the complainant that he should produce his witnesses on a particular day fixed for hearing, and if on that date no witnesses are

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produced, the Magistrate should dismiss the complaint.

A Magistrate made some inquiry from the Solicitor of the accused and looked into the papers filed by the accused before the Police, and thereupon dismissed the complaint: *Held*, that the action of the Magistrate was irregular and that he should have given the complainant an opportunity to prove his case. *Sandyal v. Kunjeshwar Misra.* 13 Cr. L. J. 125 : 13 I. C. 781 : 16 C. W. N. 143.

—Dismissed by one Magistrate—Fresh complaint to another, competency of.

A complaint under Ss. 420, 409, Penal Code, dismissed on the complainant's statement that he had come to terms with the accused and did not wish to offer any evidence, can be re-instituted in the Court of another Magistrate who has jurisdiction to entertain it. *Mohammad v. Ali Raza.* 16 Cr. L. J. 73 : 16 I. C. 665 : A. I. R. 1915 All. 50.

—Examination of complainant in presence of accused—Pardanashin lady—Daughter of prostitute married to respectable person—Examination on Commission.

Where it is doubtful whether any offence has been committed, the trying Magistrate must, before any other step is taken, insist on examining the complainant in the presence of the accused so that the latter may have an opportunity of cross-examining the complainant. Where the daughter of a prostitute marries a respectable person, in whose family women observe *pardah*, she is entitled to be treated with respect, despite her lowly origin. A complaint was made at Delhi under Ss. 363, 442, against the accused residing at Hissar for kidnapping A. The accused contended that A was his lawful wife and resided at Hissar as a *pardanashin* lady: *Held*, (1) that A should not be compelled to attend the Delhi Court for the purpose of her examination; (2) that A should be examined upon Commission through the District Magistrate, Hissar, arrangements being made to respect her *pardah*. *Abdul Ghaffar Beg v. Emperor.* 14 Cr. L. J. 3 : 18 I. C. 147 : 11 P. W. R. 1913 Cr : 43 P. L. R. 1913.

—Petition to Magistrate for enquiry during Police investigation whether complaint—Criminal Procedure Code (Act V of 1898), S. 4 (h).

A petition presented to a Magistrate in the course of a Police enquiry impugning its propriety and praying that action may be taken against some persons who are alleged to have committed an offence, is a complaint. *Jogendra Lal Mukerjee v. Babu Ballabh Hor.* 2 Cr. L. J. 615 : 9 C. W. N. 158 : I. L. R. 33 Cal. 1 : 2 C. L. J. 228.

—Report by Superintendent of Vaccination—Vaccination Act, 1850, S. 18—Order for costs—Court Fees Act, 1870, S. 31.

A report made by a Superintendent of Vaccination under S. 18 of the Vaccination Act, that a notice issued by him has not been complied with, is not a complaint of an offence, and a Magistrate who makes an order for

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compliance with such notice, cannot direct the refund of court-fees under S. 31, Court Fees Act, or the payment of costs. *Emperor v. Pokan* 6 Cr. L. J. 124 : 4 L. B. R. 12.

———*Summary dismissal of—Jurisdiction of Court to entertain another complaint in the same matter.*

Where a Court has summarily dismissed a complaint upon the ground that it does not disclose matter for inquiring into by a Criminal Court ; the same Court is not precluded from entertaining a second complaint *in parimateria*. *Bhagwan Din v. Dibba*. 7 Cr. L. J. 297.

28 A. W. N. 67 : 5 A. L. J. 137.

———*Withdrawal of—Compounding of offences—Revival of complaint.*

When a compoundable offence has been compromised and the complaint withdrawn, the complaint may be revived if it appear that the compromise was the result of a promise on the part of the accused, which he failed to fulfil.

Syad Ghulam Haidar Shah v. Syad Rukan Abdullah Shah. 1 Cr. L. J. 705 : 5 P. L. R. 324.

COMPOSITION OF OFFENCE.

See Cr. P. C., S. 345.

COMPOUNDABLE OFFENCE.

See also Cr. P. C., S. 345.

———*Conviction set aside on appeal—Liberty to compound when re-trial ordered—Sanction of court.*

When the accused is charged with an offence which is compoundable, and is convicted by the Magistrate, but on appeal, the conviction is set aside and a re-trial ordered :

Held, that it is open to the complainant and the accused to compound the case, in the same manner in which a case may be compounded before conviction by the Magistrate.

Held further, that it was not necessary to obtain permission to compound. *Uhrai v. Makaulan*.

4 Cr. L. J. 35.

3 A. L. J. 523 : 26 A. W. N. 200.

———*Magistrate cannot decline to allow the composition of compoundable offence—Compensation cannot be allowed when case is compounded.* *Emperor v. Sundar Singh*.

11 Cr. L. J. 638 (2) :

8 I. C. 387 : 30 P. R. 1910 Cr. :

197 P. L. R. 1910 : 44 P. W. R. 1910 Cr.

COMPOUNDING A CASE.

See (i) Cr. P. C., S. 345.

(ii) Criminal Trial.

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See also Criminal Procedure Code, Ss. 345, 488.

———*Compoundable offence—Magistrate, duty of.*

When parties to a criminal case who are nearly related to one another, succeed in patch-

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ing up their quarrels, the Magistrate should not refuse leave to compound. *Aminulla v. Emperor*.

24 Cr. L. J. 355:

72 I. C. 355 : 26 C. W. N. 536 :

35 C. L. J. 353 ; A. I. R. 1922 Cal. 191.

———*Discharge—Revival of case—Case really one of civil nature—Criminal proceedings initiated—Abuse of process of Criminal Courts—Criminal Procedure Code (Act V of 1898), S. 435.*

Once a criminal case is compromised and the accused are discharged in accordance with the compromise, the complainant is not entitled to have the case revised on the ground that some of the accused have gone back upon the compromise.

Where the complainant in a case declines to produce any evidence and the Court discharges the accused, the order of discharge is neither perverse nor foolish, and, therefore, is not liable to be set aside.

To initiate criminal proceedings in a case which is really one of a civil nature, with the object of keeping those proceedings hanging till the civil dispute is settled to the satisfaction of the complainant, is an abuse of the Criminal Courts. *Sural Singh v. Ahmad Beg*.

16 Cr. L. J. 662.

30 I. C. 646 : 19 P. W. R. 1915 Cr. :

A. I. R. 1915 Lah. 388.

CONCEALMENT OF BIRTH.

See Penal Code, S. 318.

CONCURRENT PROCEEDINGS.

———*Civil and Criminal proceedings on same matter between same parties—Each must be decided on evidence before it.* *Pandmanabhani v. Appalanarasayya*.

33 Cr. L. J. 307 :

136 I. C. 348 : 35 L. W. 176 :

1931 M. W. N. 1305 : 62 M. L. J. 230 :

55 Mad. 346 : I. R. 1932 Mad. 300 :

A. I. R. 1932 Mad. 254.

CONCURRENT SENTENCES.

See Criminal trial—Sentence.

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———*Admissibility.*

———*Basis of Conviction.*

———*Co-accused.*

———*Construction.*

———*Corroboration.*

———*Discovery.*

———*Effect on punishment.*

———*Extortion.*

———*Extra-judicial.*

———*Inducement.*

———*Presence of Police.*

———*Proof of.*

———*Recording of.*

———*Retracted.*

———*Self-exculpatory.*

———*Test of truth.*

———*Threat.*

———*To person in authority.*

———*Use of.*

———*Value of.*

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———Weight of.
———What is.

See also (i) Accomplice.

- (ii) Approver.
- (iii) Coroner's Act, Ss. 8, 19 and 20.
- (iv) Cr. P. C., Ss. 162, 164, 361.
- (v) Criminal trial.
- (vi) Evidence.
- (vii) Evidence Act, Ss. 24 to 30.

———Admissibility.

A confession taken in conformity with the strict provisions of the law by a Magistrate cannot be ruled out of Court simply because the accused was produced before the Magistrate with the sole object of having his confession recorded by him. *Bhag Singh v. Emperor*.

10 Cr. L. J. 584 :
4 I. C. 429 : 24 P. W. R. 1909 Cr.

———Admissibility—Admission of guilt—Statements made by accused to Zaildar on promise of benefit—Evidence Act (I of 1872), S. 24.

Admissions made by an accused to a Zaildar are not admissible in evidence when it appears that the Zaildar cautioned the accused before they made their statements that they would get some benefit from Government if they spoke the truth. *Mutsaddi v. Emperor*.

12 Cr. L. J. 554 :
12 I. C. 642 : 221 P. L. R. 1911.

———Admissibility against co-accused.

A confession is not admissible against a co-accused. *Lakhan v. Emperor*. 26 Cr. L. J. 324 :
84 I. C. 548 : L. R. 5 All. 101 Cr. :
A. I. R. 1924 All. 511.

———Admissibility of a confession recorded by a Magistrate in a Native State.

A confession of an accused person duly recorded by a Magistrate in Native Territory in proceedings under the provisions of the Cr. P. C., is admissible in a trial in British India. *Bhola v. Emperor*.

6 Cr. L. J. 377 :
8 P. R. Cr. 1907 : 2 P. W. R. 92 :
46 P. L. R. 1908.

———Admissibility—Procedure.

A Judge ought to decide the question of admissibility of a confession first and then exclude the confession from the record, if it is inadmissible, and keep its terms from the assessors.

A confession, if inadmissible, would be inadmissible in its entirety. *Emperor v. L. B. Nga Ba*.

18 Cr. L. J. 383 :
38 I. C. 767 : A. I. R. 1917 L. B. 93.

———Admissibility—Conviction based on admission of guilt—Entire statement of accused to be accepted.

Where an admission of guilt by the accused forms the basis of his conviction, his statement containing that admission should be accepted in its entirety and if it establishes grave and sudden provocation, he is entitled to its benefit. *Mohammad Yusuf Khan v. Emperor*.

31 Cr. L. J. 226 :
121 I. C. 178 : 31 P. L. R. 35 :
A. I. R. 1930 Lah. 269.

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———Admissibility—Confession of guilt before Police—Not to be allowed to go in as evidence.

A Police officer in giving evidence should not be allowed to state that an admission of guilt was made by the accused. *Paimullah v. Emperor*.

13 Cr. L. J. 127 :
16 C. W. N. 238 : 13 I. C. 783.

———Admissibility—Confession relating to different crime—Admissibility.

A confession made to the Police in the course of investigation of one crime is inadmissible even though it relates to another crime. The moment a statement is found to amount to a confession, it does not matter in the slightest of what crime it is said to be a confession. *Elukuri Seshapani Chetty v. Emperor*.

38 Cr. L. J. 323 :
166 I. C. 917 : 1936 M. W. N. 1241 :
45 L. W. 100 : (1937) 1 M. L. J. 154 :
I. L. R. 1937 Mad. 358 : 9 R. M. 411 :
A. I. R. 1937 Mad. 209.

———Admissibility—Confession to third person in immediate presence of Police—Admissibility.

A confession made to a Zaildar or a Lambardar, in the immediate presence of the Police, is inadmissible in evidence. *Kutab Ali v. Emperor*.

12 Cr. L. J. 597 :
12 I. C. 973 : 14 P. R. 1911 Cr. :
42 P. W. R. 1911 Cr.

———Admissibility—Confession to Zaildar or Lambardar in consequence of promise.

A promise made by Zaildar or Lambardar is a promise made by a person in authority within the meaning of S. 24 of the Evidence Act. A confession made to him in consequence of a promise made by him that the accused would get off if he confessed, is inadmissible in evidence. *Kutab Ali v. Emperor*.

12 Cr. L. J. 597 :
12 I. C. 973 : 14 P. R. 1911 Cr. :
42 P. W. R. 1911 Cr.

———Admissibility—Court, whether bound to accept confession in its entirety.

A Court is not bound to accept the confession of an accused *literalim et verbatim* but may reject a part of the statement which is found to be false and use the other part which it believes to be true. *Nirbhay Nath v. Emperor*.

27 Cr. L. J. 1282 :
98 I. C. 178 : 3 O. W. N. 800 : 29 O. C. 369 :
13 O. L. J. 809 : A. I. R. 1926 Oudh 618.

———Admissibility—Custody of Police, whether ground for suspecting genuineness of confession.

The mere fact that the accused had been in Police custody for a few hours is not by itself a ground for suspecting the genuineness of a confession. *Mohammad Yusuf Khan v. Emperor*.

31 Cr. L. J. 226 :
121 I. C. 178 : 31 P. L. R. 35 :
A. I. R. 1930 Lah. 269.

———Admissibility—Inducement—Accused knowing that it would be used against him—Statements of Magistrate before confession sufficient to put an end to all hopes of leniency—Admissibility.

Where there can be no doubt that the accused knew that when he was making his confession, it

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would be used against him and that he could not expect any leniency as a result of it, and the statement made by the Magistrate before the confession as recorded must have put an end to all hopes that might have been held out to the accused, the confession is admissible and cannot be held to have been made as a result of any inducement held out to him. *Hamid v. Emperor*.

37 Cr. L. J. 1112 :
164 I. C. 1118 : 9 R. Rang. 133 :
A. I. R. 1936 Rang. 453.

—————*Admissibility.*

It is not safe to rely upon confessions made to *Lambardars, Zaildars and Safedposhes*. *Des Raj v. Emperor*.

29 Cr. L. J. 865 :
111 I. C. 449 : A. I. R. 1928 Lah. 858.

—————*Admissibility—Joint trial of person who confesses along with other accused—Admissibility of confession.*

Where several persons were tried for an offence and one of them entered confession, but not being convicted on the plea of guilty, was tried jointly with the other accused: *Held*, that his confession was admissible in evidence as against all the accused. *Dip Narain v. Emperor*.

16 Cr. L. J. 327 :
28 I. C. 633 : 13 A. L. J. 337 : 37 All. 247 :
A. I. R. 1915 Cal. 744.

—————*Admissibility made to a person not a police officer and when accused not in police custody—Confession made under inducement held out by one who is not a person in authority—Proof of so much of confession as relates to facts thereby discovered—Admission—Evidence of Magistrate to prove confession recorded by him.*

The appellant who was accused of murder, made a statement during the course of police investigation to certain men of influence in the neighbouring villages when no Police official was present. In consequence of the accused's statement, some money and other things belonging to the deceased were found at the places mentioned by him. The accused also made a statement before the Magistrate of the District. The District Magistrate refused to make the memorandum referred to in S. 164, Cr. P. C., because it appeared to him that the statement was not the accused's free and spontaneous statement but was made by him in consequence of certain hopes which a constable had held out to the accused. In the Court of the Committing Magistrate when the statement made by the accused before the District Magistrate was read out to him, he stated that some constables had given him *bhang* and liquor to drink and he did not remember what he stated. The Sessions Judge held both statements to be inadmissible, the former under S. 27 of the Evidence Act, the latter on the ground that it did not contain the memorandum required under S. 164, Cr. P. C. On appeal, the Court of Judicial Commissioner directed the Sessions Judge to examine the District Magistrate. The District Magistrate was examined and he proved that the accused appeared to be in perfect possession of his senses and that there was absolutely nothing to suggest that he was under the influence of any intoxicant: *Held* (Per Ryves, O. A. J. C.) that the confession of the accused made to the residents of the neighbouring villages was admissible in

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evidence against him. A confession made not to a police officer and not improperly obtained as laid down in S. 24 of the Evidence Act is always admissible against an accused. In the same way any fact discovered in consequence of an admissible confession can also be admitted against him. *Held* (per Scott, J. C.). The former confession although having been made when the accused was not in police custody, proof of it was not prohibited by Ss. 24 and 26 of the Evidence Act and it was relevant under S. 24 if inducement held out to him did not proceed from "a person in authority"; and the latter was admissible under S. 533, Cr. P. C., as the evidence of the District Magistrate who recorded it was taken to prove that the said statement was made voluntarily. *Harbans v. Emperor*.

2 Cr. L. J. 811 :
8 O. C. 395.

—————*Admissibility—Part of confession if found false, whether confession to be rejected entirely.*

After the entire statement of a prisoner has been given in evidence, any part of it may be contradicted by the prosecution. If sufficient grounds exist, the part that charges the prisoner may be believed, while that which is in his favour, may be rejected. *Pulin Tanti v. Emperor*.

15 Cr. L. J. 25 :
22 I. C. 109 : 40 Cal. 873.

—————*Admissibility—Proper use of—Evidence—Court, duty of.*

It is not a proper use of the confession, where it is the only evidence which a Tribunal is in a position to accept, to extract from it such portions as are adverse to the accused and support the charge and to supply the remaining essentials by drawing inferences. *Jagdeo v. Emperor*.

18 Cr. L. J. 356 :
38 I. C. 740 : 15 A. L. J. 15 :
A. I. R. 1917 All. 80.

—————*Admissibility—Inspection of scene of occurrence by Judge—Additional statements by accused by way of explanation—Admissibility.*

In a case while the trial of several accused, one of whom had made a confession, was in progress, the Sessions Judge went himself to the scene of the crime accompanied by the assessors and the confessing accused, who showed him over the ground and made certain additional statements by way of comment or illustration of his confession, and the Judge made a note of them. *Held*, that the Judge was wrong in allowing the accused to make these additional statements which ought not to be regarded. *Kesho Singh v. Emperor*.

18 Cr. L. J. 742 :
40 I. C. 742 : 20 O. C. 136 :
A. I. R. 1917 Oudh 362.

—————*Admissibility—to Police Officer—Confession volunteered to mukhia in expectation of help, admissibility of.*

A confession made to another person in the presence of a Police Officer, who has asked or instructed that other person to take the confession in such a way as to be his agent,

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where the confession takes place under such circumstances that the Police Officer is in such proximity as to make his presence likely to affect the mind of the confessing person, is in substance a confession to a Police Officer and is, therefore, inadmissible. But, although a *mukhia* is undoubtedly a man in authority, where the accused volunteers to make a statement to a *Mukhia* if he could get some assurance from him that he would do his best to help the accused, the statement cannot be regarded as having been made under any inducement proceeding from a person in authority so as to make it either inadmissible or irrelevant. *Emperor v. Har Piari*

27 Cr. L. J. 1068 :
97 I. C. 44 : L. R. 7 A. 156 Cr. :
24 A. L. J. 958 : 49 All. 57 :
A. I. R. 1926 All. 737.

—Admissibility—Voluntary and true confession—Retraction of confessions—Duty of Judge.

A judge should, in the first instance, see whether a retracted confession is voluntary or has been improperly induced. The mere fact that a prisoner puts in a plea of not guilty and denies having made the confession or explains having made it by allegation of Police torture, is enough in itself to put a Judge upon enquiry. And he then has to decide before admitting the confession at all, or allowing it to be looked at, whether it has been improperly induced. That is a question for the Court, i. e. the Judge to answer in *limine*. If it appears to the Judge that the confession has been properly induced, no matter how true it may be, he is bound to exclude it. *Emperor v. Bhagi Vedu*.

4 Cr. L. J. 332 :
8 Bom. L. R. 697.

—Admissibility—Uncorroborated, retracted confession—Stolen property found in possession of accomplice identified by accused in presence of Chief Constable, but not before Magistrate and without other articles being placed with it.

Where an accused, who was alleged to have been a member of a gang that had committed a dacoity in a certain village at night with face cloths on, identified in the presence of a Chief Constable, some of the stolen property found in the possession of one of his accomplices in the identification that was carried under the orders of a Magistrate without other articles being placed with the articles to be identified, and where he also made a confession before the Magistrate, which he retracted at the trial and which was also uncorroborated : *Held*, that the whole procedure was simply an inadmissible confession obtained quite irregularly in a manner which had no sanction whatsoever ; that the Magistrate should have been present when the accused identified the property ; that the weight to be attached to an uncorroborated confession, must depend upon the circumstances of each case ; that when such a confession as this, which had been made the fabric rather than the foundation of their case by the police was made, they could very easily corroborate it and force its truth

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and genuineness upon the Court by using it to obtain corroborative evidence ; and that this was why it had lately been said that a Court should not convict an accused upon an un-retracted confession unless it believed that it could not be true. *Emperor v. Isak Umar*.

5 Cr. L. J. 471 :
17 K. L. R. 21.

—Basis of conviction.

A conviction cannot be based upon statements of witnesses transferred to the record of the Sessions Court under Section 288, Criminal Procedure Code, 1898, when they came forward after the accused confessed and gave only circumstantial evidence insufficient to connect the accused with the commission of the crime. *Ghanwara v. Emperor*.

16 Cr. L. J. 612 :
30 I. C. 436 : 19 P. W. R. 1915 Cr. :
A. I. R. 1915 Lah. 215.

—Basis of conviction—Confession only evidence against the accused.

Where the accused's own confession is the only evidence against him accounting for commission of the crime with which he is charged, it must be accepted in so far as is not in consistent with reason and other surrounding circumstances. *Gopal Singh v. Emperor*.

6 Cr. L. J. 260 :
2 P. W. R. Cr. 64.

—Basis of conviction.

In the absence of any evidence connecting the accused with the commission of the crime, it is not lawful to convict an accused person simply on the strength of the co-accused's confession. *Bhag Singh v. Emperor*.

10 Cr. L. J. 584 :
4 I. C. 429 : 24 P. W. R. 1909 Cr.

—Basis of conviction—Conviction cannot be based on confession not recorded in the manner prescribed by law.

A conviction cannot be based on a confession which is not recorded in the manner prescribed in Ss. 164 and 301 of the Cr. P. C. *Nga San Ya v. Emperor*.

11 Cr. L. J. 41 :
4 I. C. 759 : U. B. R. 1909.

—Basis of conviction—Conviction on accused's confession alone, legality of.

A conviction may be based on the confession of the accused person alone. *Sitai v. Emperor*.

30 Cr. L. J. 228 :
114 I. C. 123 : 5 O. W. N. 968 :
I. R. 1929 Oudh 123.

—Basis of conviction—Statement of accused partly in favour of and partly against himself—Confession, whether can be basis of conviction.

If an accused person is to be convicted on his confession, it must be taken as a whole. Where in a trial on a charge of misappropriation, the accused, a Post Master, while admitting that there was a shortage of a certain sum of money stated that he was in bad health for some time, that he was not verifying the accounts and could not explain how the shortage occurred and there was nothing to show that the statement as to his ill health was not

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true: *Held*, that the accused could not be convicted on the basis of this admission alone. *In re : Srinivasa Rao*.

29 Cr. L. J. 589 :
109 I. C. 605 : 27 L. W. 318 :
1928 M. W. N. 161 : 54 M. L. J. 607 :
9 A. I. Cr. R. 493 : A. I. R. 1928 Mad. 493.

—————*Co-accused.*

A confession of a co-accused is corroborative evidence of another co-accused's confession if the former supports the latter in all its material parts. *Bhag Singh v. Emperor*.

10 Cr. L. J. 584 :
4 I. C. 429 : 24 P. W. R. 1909 Cr.

—————*Co-accused—Accomplice—Retracted confession, value of—Evidence Act (I of 1872), Ss. 30, 114, 133.*

There is nothing in law to prevent the conviction of an accused on the uncorroborated and retracted confession of an accomplice, if it be believed against him. Such a confession should, however, be subjected to the most anxious scrutiny in deciding on its truth or falsity so far as it inculcates any person other than he who made it. Yet, if after applying every test to it that is available, the Judge still believes it to be true as against that other or others, it is the duty of the Judge to act upon it. *Nga Tun v. Emperor*.

14 Cr. L. J. 179 :
19 I. C. 179 : 6 Bur. L. T. 47.

—————*Co-accused—Admissible as evidence against a co-accused.*

Held, that the confession of a prisoner affecting himself and another person who was being tried with him for the same offence is, when duly proved is admissible as evidence against both but a confession unsupported by other testimony is evidence of the weakest kind against a co-accused. *Ragbir v. Emperor*.

8 Cr. L. J. 393 :
11 O. C. 238.

—————*Co-accused—Value of—Co-accused not intending to implicate himself.*

A confession made by one of several accused persons by which he does not intend to implicate himself although he actually does so, may be taken into account as against the accused making the confession, but should not be taken into account as against his co-accused. *Hayat v. Emperor*.

23 Cr. L. J. 561 :
68 I. C. 491 : 4 L. L. J. 41 :
A. I. R. 1922 Lah. 119.

—————*Co-accused—How far can be acted on.*

The confession of a co-accused cannot be taken into consideration where he does not substantially implicate himself to the same extent as the other accused. *Sivasami Pillai v. Emperor*.

11 Cr. L. J. 701 :
8 I. C. 719 : 1 M. W. N. 754.

—————*Co-accused—Confession of—Value of against co-accused—Basis of conviction—Evidence Act, S. 30.*

It is a fallacy to say that confession of a co-accused can be dealt with on the same basis as

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the evidence of an accomplice. Accomplice's testimony stands on a higher footing than confession of a co-accused. The confession of a co-accused is only a relevant fact which the Court has to consider. It is not strictly evidence against a co-accused and a conviction based solely on the confession of a co-accused is bad in law. *Emperor v. Sabitkhan* (1) and *Emperor v. Gangappa* (2) commented upon. *Emperor v. Larman Jairam*.

166 I. C. 569 :
38 Bom. L. R. 1122 : 9 R. B. 239 :
A. I. R. 1937 Bom. 31.

—————*Of co-accused, value of—Retracted confession—Corroboration.*

In the absence of material corroboration it is unsafe to rely upon the retracted confession of a co-accused which is not self-implicating in the same degree as it implicates the other accused. *Upendra Nath Das v. Emperor*.

19 Cr. L. J. 826 :
46 I. C. 842 : 1918 Pat. 175 :
A. I. R. 1918 Pat. 279.

—————*Co-accused.*

Conviction cannot be based on confession of co-accused unless it is corroborated. *Nga Po Kya v. Emperor*.

12 Cr. L. J. 465 :
11 I. C. 1001 : 4 Bom. L. T. 189.

—————*Co-accused.*

If each of the accused persons acknowledges having taken an active part in an offence, the implication is sufficiently substantial to warrant the use of the confession of one against the other or others, if the confessions are regarded as voluntary and true. *Emperor v. Mohan Tribhovan*.

3 Cr. L. J. 312 :
15 K. L. R. 369.

—————*Co-accused.*

If the confession of co-accused is supported by the probabilities of the case, and if the accused, who is tried jointly, is shown to have strong motives, it may fairly be taken into account against him. *Vashram Ratna*.

1 Cr. L. J. 887 :
14 K. L. R. 203.

—————*Co-accused.*

It is settled law that before the confession of the co-accused can be taken into consideration against others jointly tried with him for the same offence, it must appear that the confession implicates the confessing person substantially to the same extent as it implicates those against whom the confession is to be used. *Prabhu v. Emperor*.

6 Cr. L. J. 141 :
2 P. W. R. Cr. 55.

—————*Made by co-accused pleading guilty—Admissibility against other accused.*

Where one of several accused persons pleads guilty and the Court accepts the plea, though not in express terms at the moment the plea is put in, a confession made by such persons is inadmissible as against the other accused. *Kanhaya v. Emperor*.

12 Cr. L. J. 605 :
12 I. C. 981 : 15 P. R. 1911 Cr.

—————*Of one accused—Retracted—Ad-*

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missibility of retracted confession against co-accused—Evidence Act (I of 1872), S. 30.

A retracted confession may be taken into consideration under S. 30 of the Evidence Act against co-accused, but as a general rule, such a confession should not be considered as supplying sufficient evidence for the conviction of the co-accused unless it is corroborated by independent testimony in material particulars. No inflexible rule can be laid down in regard to the weight to be attached to such a confession; the rule must vary in each case. *Ataya v. Emperor.* 12 Cr. L. J. 276 : 10 I. C. 857 : 5 P. R. 1911 Cr. : 91 P. L. R. 1911 : 27 P. W. R. 1911 Cr.

Co-accused—Statement by accused—Guilt, inference as to—Co-accused, whether effected—Accused, presence of, as accessory, effect of—Corroboration.

A statement made by an accused person which suggests an inference of guilt may amount to a confession, though the person making the statement may directly repudiate his participation in the crime, it may be unsafe to use it against a co-accused. Where, however, it appears that the person making the statement was at all events an accessory present at the commission of the crime, the statement can be used against the co-accused, if sufficient corroboration is forthcoming. *Jasoda v. Emperor.*

20 Cr. L. J. 787 :
53 I. C. 691 : 6 O. L. J. 46 :
A. I. R. 1919 Oudh 233.

Co-accused.

The law does not anywhere forbid a Court in this country from considering against person tried jointly for the same offence, a confession made by one of such persons affecting himself and the persons who were being tried jointly, when such confession has been subsequently withdrawn. To do so, would be not to follow the law as it stands in S. 30, Evidence Act. *Kehri v. Emperor.*

5 Cr. L. J. 360 :
4 A. L. J. 310 : 27 A. W. N. 140 :
29 All. 434.

When can be used against co-accused.

The test as to whether the confession can be used as against co-accused is, whether the person making such confession could have been convicted on that confession of the crime with which he and his co-accused were charged. *Chuni Lal v. Emperor.* 22 Cr. L. J. 260 : 60 I. C. 660.

Construction.

A confession cannot be expanded or extended to make it available for incriminating persons other than the confessing accused. *Prabhu v. Emperor.* 6 Cr. L. J. 141 : 2 P. W. R. Cr. 55.

Construction.

A confession must be taken as a whole and nothing can be read into it which is not contained there. *In re: Santhanakrishna Chetty.*

35 Cr. L. J. 331 :
147 I. C. 46 : 65 M. L. J. 837 :
38 L. W. 979 : 6 R. M. 325 :
A. I. R. 1933 Mad. 888 (2).

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Construction—Court, whether can accept part and reject part.

The ordinary rule is that a confession is evidence for the prisoner as well as against him and must be taken altogether. But it is only where no other evidence is forthcoming that this can be pressed to the extent of requiring that no part can be accepted as true without accepting the whole. *Hasnu v. Emperor.*

20 Cr. L. J. 737 :
53 I. C. 145 : A. I. R. 1918 Nag. 131.

Construction—First, differing from subsequent ones—Right of self-defence not pleaded in first confession.

Where an accused in his first confession said he bit off his wife's nose in a quarrel that arose on account of her infidelity, but before the Committing Magistrate and the Sessions Court said he did so in self-defence, as she caught hold of his private parts: *Held* that under the circumstances, the original confession was voluntarily made and substantially true; and that the plea of self-defence unsupported by evidence was evidently an after-thought. *Emperor v. Bijal Vasa.*

1 Cr. L. J. 591 :
14 K. L. R. 59.

Construction—Preliminary warnings given by Magistrate—Whether part of the statement of accused.

The preliminary warnings given by the Magistrate to the confessing accused cannot be said to be part of the confessional statement. The confession cannot be attacked on the ground that the Magistrate did not write down the warnings he gave the accused in the vernacular, especially when the prosecution actually put the Magistrate into the witness-box. *Emperor v. Arajaddin Molla.* 37 Cr. L. J. 1101 : 165 I. C. 196 : 40 C. W. N. 872 : 9 R. C. 357.

Construction.

The confession of an accused, where it is to be the sole basis of the conviction must be taken in its entirety. *Fazal Hussain v. Emperor.*

34 Cr. L. J. 584 :
143 I. C. 362 : I. R. 1933 Lah. 385 :
A. I. R. 1933 Lah. 665.

Construction—To be read as a whole.

A confession or statement of an accused must be read and accepted as a whole unless there is evidence to contradict any portion thereof. *Waryam Singh v. Emperor.* 28 Cr. L. J. 39 : 99 I. C. 71 : A. I. R. 1926 Lah. 554.

Construction.

When an accused person makes two criminal statements, one before a Magistrate and another before a Police Officer, it is very essential to compare them and to try and ascertain why there occurred a change and which of them was true one, with a view to testing the value of the confession before the Magistrate, the other being of course inadmissible for any other purpose whatever as made to the Police. *Khair Din v. Emperor.*

6 Cr. L. J. 266 :
2 P. W. R. Cr. 70.

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Corroboration.

See also (i) Confession—Retracted.
(ii) Confession—Co-accused.

Corroboration.

A conviction of an accused person even on the unsupported evidence of the confession of a co-accused would not be illegal. But in all cases the Court should approach the consideration of such evidence with the greatest caution. If the Court believes the confession, it is not unlawful to convict. *Kehri v. Emperor*.

5 Cr. L. J. 360 :
4 A. L. J. 310 : 27 A. W. N. 140 : 29 All. 434.

Corroboration.

A was a Phaeton Driver, K engaged A to drive him in the Phaeton on a Tuesday and drove with him from Amritsar on the road to Attari. A was found strangled in that Phaeton at a short distance beyond Attari on Wednesday morning. K spent that Tuesday night with J in Dyal village close to where the Phaeton was found on Wednesday morning. A's *Pashmina Chadar* and part of his rubber shoes were traced to J : *Held*, on the above findings, that K's confession that he was one of the murderers of A was sufficiently corroborated. *Khair Din v. Emperor*.

6 Cr. L. J. 266 :
2 P. W. R. Cr. 70.

Corroboration.

Accused retracted their confessions, alleging that they had been beaten and forced to confess, but they did not allege that any threat, promise or inducement was held out to them : *Held*, that the confessions were relevant, but that in considering their value the circumstances under which they were taken and the probabilities of the case should also be taken into account ; and that corroboration was necessary where there was suspicion about the confessions. *Emperor v. Nanji Kalidas*.

1 Cr. L. J. 222 :
13 K. L. R. 377.

Corroboration—Confession by co-accused, whether corroborate each other.

The confession of one co-accused cannot be said to be corroborated by the confession of another accused as against an accused person who has not confessed at all ; but the confession of one co-accused may furnish the corroboration of the confession of another accused as against the latter and *vice versa*. *Ganga Ram v. Emperor*.

22 Cr. L. J. 290 :
60 I. C. 786.

Corroboration—Confession implicating co-accused retracted at trial—Independent corroboration essential.

Where N and R, husband and wife, were accused of the murder of N's brother and have made a confession before the Committing Magistrate implicating her husband as well, but subsequently retracted the confession : *Held*, that as there was no real corroboration of the retracted confession against N and against R herself, there was merely the retracted confession corroborated solely by evidence of her absence from her house during the night of the alleged murder, the accused were entitled to the

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benefit of the doubt and must be acquitted. *Nur Muhammad v. Emperor*. 16 Cr. L. J. 469 :
29 I. C. 101 : 22 P. W. R. 1915 Cr. :
163 P. L. R. 1915 : A. I. R. 1915 Lah. 467.

Corroboration—Conviction based on uncorroborated confession, legality of.

A conviction based upon an uncorroborated confession is not bad, if the surrounding circumstances point to the confession having been the outcome of a voluntary act on the part of the confessor, and in the absence of any evidence of coercion either by the Police or any other person. The fact that the confession was retracted before the Committing Magistrate would not deprive it of its voluntary character. *Sheo Prasad Keori v. Emperor*.

20 Cr. L. J. 562 :
52 I. C. 50 : A. I. R. 1919 Pat. 322.

Corroboration—Corroboration of part, effect of.

If other evidence incompatible with a part of the confession is on record, it may be relied on in preference to that part. *Hasnu v. Emperor*.

20 Cr. L. J. 737 :
53 I. C. 145 : A. I. R. 1918 Nag. 131.

Corroboration of co-accused, evidentiary value of—Corroboration, nature of.

Heaton, J. (Scott, C. J., concurring).—The rule as to the use to be made of the confession of co-accused is, that a man ought not to be convicted solely on such confessions, nor upon such confessions together with evidence of the ordinary kind which is trivial or unimportant. But where there is a body of evidence and circumstances enough to support a conviction if the evidence is accepted, such confessions may be taken into consideration, together with the evidence and the circumstances. *Shah, J.*—Before acting upon such confessions, the Court should insist upon independent corroboration from other evidence in the case in material particulars, particularly as to the identity of the accused. *Emperor v. Sabit Khan Bahadur Khan*.

20 Cr. L. J. 497.
51 I. C. 657 : 21 Bom. L. R. 448 ;
48 Bom. 739 : A. I. R. 1919 Bom. 164.

Corroboration—retracted at trial—Its value when uncorroborated by any other direct evidence—Production of thing unconnected with commission of crime.

C. was convicted of causing the death of J. C. made a confession before a Magistrate which she retracted in the Court of the trying Magistrate. Except the evidence of one witness who said he saw the two women quarrelling, there was no proof whatever to show C. committed the crime : *Held*, that it is not safe to convict an accused person on his retracted confession standing by itself uncorroborated : *Held* also, that production by an accused person, while in the hands of the Police of a thing unconnected with the commission of the crime is not admissible in evidence against him. *Mt. Chandan v. Emperor*.

6 Cr. L. J. 120.
2 P. W. R. Cr. 6.

Corroboration.

Scott, C. J.—Evidence in corroboration must

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be independent testimony which affects the accused by connecting or tending to connect him with the crime. *P. Emperor v. Sahit Khan Bahadur Khan*.

20 Cr. L. J. 497.
51 I. C. 657 : 21 Bom. L. R. 448 : 48 Bom. 739 :
A. I. R. 1919 Bom. 164.

Corroboration.

The accused was convicted of the offences under Ss. 392, 109 and 411 of the I. P. C. The case against the accused rested (1) on the confession of a co-accused ; (2) on his confession before a *lambardar*, and (3) on his production of stolen property. It was proved that there was enmity between the accused and the *lambardar* who took an active part in the investigation and the confession before him was made in the presence of the Deputy Inspector of Police. The property found was such that could not be identified : *Held*, that the confession made by the accused was inadmissible in evidence and the other evidence against him was insufficient and he must be acquitted. *Dasu v. Emperor*.

1 Cr. L. J. 42 :
5 P. L. R. 30.

Corroboration.

The evidence obviously unreliable is not sufficient to corroborate the statement of either an accomplice or an approver. *Kaloo v. Emperor*.

5 Cr. L. J. 437.
2 P. W. R. Cr. 24.

Corroboration.

The evidence of an accomplice cannot be acted upon without corroboration in material particulars unless it is such that the Court can unhesitatingly believe it. Such corroboration must be independent of the accomplice. The accomplice must be corroborated as to all of the persons affected by his evidence. If he is corroborated in his evidence as to one prisoner, there will still be need of corroboration of his testimony with respect to the other prisoners. *Abdul Karim v. Emperor*.

1 Cr. L. J. 21.
1 A. L. J. 110.

Corroboration.

The fact of pointing out the place where the murdered body is found, strongly corroborates the confession in a very material particular. But when the place has already been pointed out by another co-accused, the value of this evidence remains very small. *Bhag Singh v. Emperor*.

10 Cr. L. J. 584 :
4 I. C. 429 : 24 P. W. R. 1909 Cr.

Corroboration, use of—Confession against co-accused.

Where it is a question of using a confession against a co-accused and the Court is not prepared to accept the confession *per se* as sufficient, the corroboration ought to be of the kind that not only confirms the general story of the crime but also unmistakably connects the co-accused with the crime. *Emperor v. Jatnai*.

19 Cr. L. J. 275 :
44 I. C. 179 : 19 P. W. R. 1918 Cr. :
70 P. L. R. 1918 : A. I. R. 1918 Lah. 54.

Corroboration, value of—Corroboration, whether necessary—Court, duty of.

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The law does not require that the confession of an accused person should be corroborated before it can be acted upon. It is for the Court to decide whether it believes a confession or not. *Emperor v. Dhani*.

20 Cr. L. J. 721 :
52 I. C. 881 : A. I. R. 1919 All. 386.

Corroboration.

Where it is sought to corroborate the confession of an accused person the corroboration must be corroboration implicating the accused in the offence with which he is charged. *Emperor v. Bishnu Chandra*. (F. B.)

34 Cr. L. J. 918 :
145 I. C. 236 : 37 C. W. N. 1180 :
6 R. C. 81 : A. I. R. 1933 Cal. 665.

Corroboration.

Where the confession is admissible, it is even then necessary that there should be its corroboration which must be furnished by independent evidence and should incriminate each accused individually in respect of the offence charged. *Prabhu v. Emperor*.

6 Cr. L. J. 141 :
2 P. W. R. Cr. 55.

Discovery.

The mere pointing out of the dead body by the accused would not by itself be sufficient evidence for sustaining a conviction for murder, but it would be otherwise where the accused fails to explain how he came by his knowledge of the place where the body lay. *Bhai Khan v. Emperor*.

23 Cr. L. J. 617 :
68 I. C. 841 : 4 L. L. J. 225 :
A. I. R. 1922 Lah. 189.

Effect on punishment—Punishment, lenient, award of, to confessing accused.

An accused person should not be encouraged to confess by the knowledge that if he does so, he will receive lenient punishment. A confession may be an indication that the accused is not an entirely irreclaimable, and where this is so, it may and very properly should be taken into consideration in awarding punishment. *Nga Kyaw Zan Hla v. Emperor*.

17 Cr. L. J. 402 :
35 I. C. 962 : U. B. R. 1916 II 113 :
A. I. R. 1916 U. B. 1.

Extortion.

See Confession—Admissibility.

Extortion—Hurt to extort.

Two policemen sent for four more, and they all tortured a woman to extort a confession in a theft case, which was not proved and the property of which was not recovered. In defence, they pleaded that she had quarrelled with her husband who might have ill-treated her, but could not prove the quarrel. In the Court of trial, though she endeavoured to screen the first two accused and to confuse the details, she admitted that her statement before the Committing Magistrate was correct. Witnesses for the prosecution denied all knowledge of ill-treatment : *Held*, that the evidence of the prosecution witnesses could not be taken to favour the accused, if it did not

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help the prosecution; that nothing could have induced her to make an obviously false confession, but to stop the hands of her tormentors; that these offences were most difficult to detect; that as she walked from her own village to that which was headquarters of the policemen, none but the police could have inflicted the injuries; that the police had immense power and must remember their obligations; and that any proved misuse of such powers must invariably be visited with condign punishment. *Emperor v. Pran Gaga*.

1 Cr. L. J. 289 :
13 K. L. R. 301.

—Extortion.

When there is no judicial proof of the guilt of an accused person, it is illegal to rely upon an unreliable or suspicious confession or a confession which is open to grave suspicion of having been produced by ill-treatment of the Police. *Khair Din v. Emperor*.

6 Cr. L. J. 266 :
2 P. W. R. Cr. 70.

—Extra Judicial.

See Cr. P. C., S. 253.

—Extra judicial—Confession made before prosecution witnesses out of Court and not recorded by Magistrate, weight of.

There is nothing in law to prevent a Court acting upon extra-judicial confessions made by the prisoner to prosecution witnesses out of Court and not recorded by a Magistrate. *Kesri Mal v. Emperor*.

15 Cr. L. J. 502 :
24 I. C. 590 : 1 O. L. J. 200 :
A. I. R. 1914 Oudh 361.

—Extra-judicial—Confession to Magistrate after extra-judicial confession made under inducement previous day—Retraction before Committing Magistrate—Value of confession.

Where extra-judicial confessions were made by two boys, who were either cajoled or frightened into making these confessions, and next day the same confessions were made by the boys to a Magistrate but were promptly retracted when the two youths appeared before the Committing Magistrate: Held, that the confessions were insufficient to establish a case against the youths and to prove the guilt of persons who were accused jointly with the youths. *Kutab Ali v. Emperor*.

12 Cr. C. J. 597 :
12 I. C. 973 : 14 P. R. 1911 Cr. :
42 P. W. R. 1911 Cr.

—Extra-judicial—Extra-judicial confession—Proof—Evidence, weight of.

Per *Shadi Lal, C. J.*—It is the duty of the Court before which an extra-judicial confession, is relied upon, to scrutinise the whole of the material before it. A mere general statement to the effect that the accused had confessed is too uncertain a foundation to sustain a finding against him, and the trial Court ought to ascertain, as far as possible, the very words spoken by an accused who is said to have confessed. But if the evidence gives the substance, though not the actual words of the statement made by the accused,

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and if that evidence is reliable, there is no rule of law which precludes the Court from holding that the confession has been proved. If the statement made by the witness as to confession represents merely the impression conveyed to his mind of what was said by the prisoner, it would be insufficient to prove the alleged confession. But it cannot be held that in no case can an extra-judicial confession, not reduced to writing, be held to be proved unless the Court has before it the exact words used by the accused. Per *Fforde, J.*—A general statement by a witness that an accused person admitted that he committed the offence for which he is being tried, should not be accepted, and as a rule of caution, the Court should always require the witness to give the actual words uttered by the accused as nearly as the witness can recollect them. But the fact that witness gives the statement in the third person instead of in the first person does not make the evidence inadmissible. When a witness cannot give a clear account of what the accused is alleged to have said, his testimony will have to be received with great caution. *Nur Ali v. Emperor*.

25 Cr. L. J. 914 :
81 I. C. 530 : 6 L. L. J. 208 : 5 Lah. 140 :
A. I. R. 1924 Lah. 498.

—Extra-judicial.

It is unsafe to rely upon an extra-judicial confession where it is not possible to ascertain the exact words used by the person confessing. *Des Raj v. Emperor*.

29 Cr. L. J. 865 :
111 I. C. 449 : 29 P. L. R. 486 :
A. I. R. 1928 Lah. 858.

—Extra-judicial.

Little, if any, importance should be attached to an extra-judicial confession often found to bolster up the circumstantial evidence on which a case depends. *Hawaladar Singh v. Emperor*.

33 Cr. L. J. 379 :
137 I. C. 63 : 9 O. W. N. 170 :
I. R. 1932 Oudh 199 : A. I. R. 1932 Oudh 324.

—Inducement.

See Confession—Admissibility.

—Inducement.

A confession induced by promising immunity from prosecution of another case is not admissible against the confessor. *Kaloo v. Emperor*.

5 Cr. L. J. 437 :
2 P. W. R. Cr. 24:

—Inducement—Confession caused by illegal inducement is irrelevant.

A confession caused by illegal inducement or by illegal detention of the accused's relatives is irrelevant and the question of its truth is immaterial. *Nga Sanya v. Emperor*.

11 Cr. L. J. 41 :
4 I. C. 759 : U. B. R. 1909 1 Evidence p. 3.

—Inducement—Confession caused by inducement inadmissible.

A confession caused by inducement, which is not shown to have been "fully removed," is inadmissible, and it would be unsafe to presume removal, in the absence of clear proof. *Beg v. Navroji Dadabhai*, 9 Bom. H. C. R. 358 at

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p. 370 ; 5 N.-W. P. 86 at p. 88 ; 10 K. L. R. 211.
Emperor v. Kana Goza. 10 Cr. L. J. 344 :
 19 K. L. R. 175.

———*Inducement—Confession made through fear or under inducement, admissibility of.*

A statement made to a Magistrate by an accused through fear (consisting of a threat by the Police), is inadmissible. Similarly a statement made as the result of an inducement by the Police, which caused the person making the statement to believe that he would be offered a free pardon, should be rejected. *Emperor v. Anant Kumar Banerji.*

22 Cr. L. J. 225 :
 60 I. C. 417 : 32 C. L. J. 204.

———*Inducement.*

The confession of an accused made before a Magistrate cannot be used in evidence against him at his trial, when the Police told him that he would get a pardon if he would make a confession. *Abdul Karim v. Emperor.*

1 Cr. L. J. 211 :
 1 A. L. J. 110.

———*Of co-accused.*

See Evidence Act. S. 30.

———*Person in authority.*

Confession made after due warning to Coroner during inquest is admissible. *Emperor v. Azim Khan Zainkhan.*

29 Cr. L. J. 651 :
 110 I. C. 107 : 30 Bom. L. R. 84 :
 10 A. I. Cr. R. 419 : A. I. R. 1928 Bom. 52.

———*Presence of Police.*

See also Confession—Admissibility.

———*Presence of Police—Confession to Police Officer—Admissibility of—Evidence Act (I of 1872), ss. 25, 26—Conduct and condition of accused, proof of, by Police Officer.*

The accused came into a *thana* and made a statement, before he was arrested, to a Police Officer to the effect that he had committed a murder : *Held*, that the statement was inadmissible in evidence under S. 25 of the Evidence Act. The conduct and condition of the accused at the time when the statement was made may be proved by the Police Officer. *Rex v. Shaik Taleb.*

10 Cr. L. J. 193 :
 2 I. C. 951 : 10 C. L. J. 13.

———*Presence of Police.*

No part of an incriminating statement, whether amounting to a confession or not, written by an accused person himself while in Police custody is admissible either against him or against the person jointly tried with him unless it has led to the discovery of any fact. *Emperor v. Sheldham (F. B.)* 16 Cr. L. J. 257 :
 28 I. C. 145 : 14 P. W. R. 1914 :
 222 P. L. R. 1915 : A. I. R. 1915 Lah. 487.

———*Presence of Police—Police Officer employed as scribe to record confessions.*

A confession recorded under S. 161, Cr. P. C., by a police officer, even when employed as a scribe by a Magistrate, is inadmissible in evidence. *Khudiram Bose v. Emperor.*

10 Cr. L. J. 325 :
 3 I. C. 625 : 9 C. L. J. 55.

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———*Presence of Police—Retracted—Chief Constable sitting outside Court when confession recorded—Identification of deceased's body and clothes—Youth, as ground for mitigation of sentence.*

Where accused made confession of having murdered his wife by strangling her, but retracted it at the trial and before the Committing Magistrate on the ground of torture and the *Faujdar's* presence outside Court with a light cane, and where though there was no eye-witness, there was evidence to show that he was the last person seen with the deceased, that he took no steps to search for her when she disappeared, but that he pointed out the spot where her remains were concealed and though the body was not identified, being rotten, a petticoat string was tightly tied round the neck and the clothes were identified : *Held*, that even if the Chief Constable did sit outside the Court house with the cane, that would not amount to extorting a confession, that as the accused's story in Court tallied with that of the witnesses, the account given by the witnesses might safely be taken to be correct ; that the motive was supplied by the confession which might be taken to be true and that he was guilty of murder but that looking to his youth, he should not be inflicted the capital sentence but that of transportation for life. *Emperor v. Naga Lakha.*

1 Cr. L. J. 294 :
 13 K. L. R. 312.

———*Presence of Police—Taken in jail with Police Officer in next room—Subsequently retracted—Corroboration.*

Where a confession, which was subsequently retracted, was taken in jail by a Magistrate with a Police Officer in the next room : *Held*, that the confession should be supported by very good corroboration if it is to be acted upon. *Sheikh Sohali v. Emperor.*

11 Cr. L. J. 247 :
 5 I. C. 772 : 11 C. L. J. 273.

———*Proof of.*

Accused's statement recorded by Police can be proved by oral evidence if not amounting to confession. *Ganpat v. Emperor.*

12 Cr. L. J. 60 :
 8 I. C. 1181 : 6 N. L. R. 180.

———*Proof of.*

Confession to a Police Officer ; one accused can prove on his own behalf a co-accused's confession to a Police Officer. *Ebrahim v. Emperor.*

12 Cr. L. J. 79 :
 9 I. C. 449 : 4 Bur. L. T. 9.

———*Proof of confession—Essentials—Signature of accused, necessity of—Magistrate examined and proving statement—Sufficiency of proof.*

Before a confession can be admitted into evidence, the first thing which requires proof is that the accused person really made it. It is necessary that the Magistrate should take the signature of the accused person. If the Magistrate is not examined as a witness, in view of the fact that the appellant signed his own signature in the Judge's Court, it cannot be said that the confession was proved. But when he is ex-

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mined and he has proved that it was the accused who made the statement, it is sufficiently proved. *Emperor v. Aradjaddin Molla*.

37 Cr. L. J. 1101 :

165 I. C. 196 : 40 C. W. N. 872 : 9 R. C. 357.

———Recording of.

See Cr. P. C., 1898, S. 164 (3).

———Recording of, by accused persons—Duty of Magistrate—Criminal Procedure Code, 1898, Ss. 164, 364.

It is the imperative duty of a Magistrate before recording a confession carefully to examine the accused person and to the best of his ability satisfy himself that the accused does not speak in consequence of any inducement, threat, or promise, but that his confession is purely voluntary. The omission of the Magistrate to question the accused person before recording a confession is a fatal defect, which renders the confession inadmissible in evidence. *Shwe Sin v. Emperor*.

4 Cr. L. J. 477 :
3 L. B. R. 213.

———Recording of.

Certificate of voluntariness omitted, defect is cured by evidence of Magistrate. *Ram Sanchi v. Emperor*.

12 Cr. L. J. 15 :
9 I. C. 148.

———Recording of—Confession elicited by question.

The mere fact that a statement was elicited by a question does not make it irrelevant though that fact may be very material to an enquiry as to whether the confession is voluntary or not. *Brindra Kumar v. Emperor*.

11 Cr. L. J. 453 :
7 I. C. 359 : 37 Cal. 467.

———Recording of—Confession not recorded in accordance with rules, validity of—No question asked—Confession, retracted, value of.

A statement by an accused person not recorded in strict compliance with the rules and without asking any questions to test the voluntariness and genuineness and which only contains matters which could have been easily got from the investigation and which is uncorroborated and is withdrawn at the earliest opportunity, cannot be regarded as a voluntary and genuine confession upon which to base a conviction. *Emperor v. Azim-ud-Din*.

21 Cr. L. J. 638 :
57 I. C. 462 : 2 U. P. L. R. All. 218 :
A. I. R. 1920 All. 108.

———Recording of—Confession of accused person—Mode of recording evidence to such confession.

Where admissions or incriminating actions by more than one accused person are deposed to, it is of the first importance that the witness should be made to describe as nearly as possible the exact words or conduct of each. *Kha Hwa v. Emperor*.

7 Cr. L. J. 82 :
4 L. B. R. 116.

———Recording of—Confession recorded in English and not in the language of the accused.

A confession recorded in English and not in the language of the accused is rightly recorded

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in accordance with the provisions of S. 304, Cr. P. C., if the Magistrate could not record it in that language and had no clerk who could do so. *Khudiram Bose v. Emperor*.

10 Cr. L. J. 325 :
3 I. C. 625 : 9 C. L. J. 55.

———Recording of—Confession recorded without informing accused that the recording officer was a Magistrate.

A confession recorded, under S. 164, Cr. P. C. by a Magistrate, who does not inform the accused that he is a Magistrate, is not inadmissible in evidence when the circumstances show that the accused was fully aware, that the officer who took his statement, was a Magistrate. *Khudiram Bose v. Emperor*.

10 Cr. L. J. 325 :
3 I. C. 625 : 9 C. L. J. 55.

———Recording of—Duty of Magistrate to follow procedure.

Magistrates ought to be very careful to adopt the proper procedure in taking the confession of an accused person. *Durjan v. Emperor*.

31 Cr. L. J. 300 :
121 I. C. 550 : A. I. R. 1930 All. 192.

———Recording of—Government Circular not complied with—Inadmissibility—Voluntariness.

If a Magistrate in recording a confession does not comply with a Government order, not having the force of law, the confession does not become inadmissible in evidence, it may be a circumstance to be weighed to see the voluntary nature of the confession. *Public Prosecutor v. Sarabu Chennayya*.

11 Cr. L. J. 716 :
8 I. C. 809 : 33 Mad. 413.

———Recording of—Intervention of third person while accused is making confession.

While an accused person is making a confession, a third party should not be allowed to put suggestions to be put to the accused. *Jogjiban Ghose v. Emperor*.

10 Cr. L. J. 125 :
2 I. C. 681 : 9 C. L. J. 663 : 13 C. W. N. 851.

———Recording of—Looking into police report containing accused's statements, highly irregular.

It is highly irregular on the part of a Magistrate at the time of recording a confession to look into a police report containing the statements alleged to have been made by the accused to the police. *Jogjiban Ghose v. Emperor*.

10 Cr. L. J. 125 :
2 I. C. 681 : 9 C. L. J. 663 : 13 C. W. N. 851.

———Recording of—Magistrate not satisfying himself before but after recording confession that it was made voluntarily.

Where a Magistrate does not satisfy himself before recording a confession but does satisfy himself after it is recorded, that the accused has made it voluntarily, and then signs the requisite certificate to that effect, the confession will be taken to have been made voluntarily. *Khudiram Bose v. Emperor*.

10 Cr. L. J. 325 :
3 I. C. 625 : 9 C. L. J. 55.

———Recording of—Magistrate, if should ask accused in so many words whether confession was a voluntary one.

The Magistrate need not ask the accused in

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so many words whether it was a voluntary confession. All that is required is that the Magistrate should satisfy himself that the confession is voluntary. *Emperor v. Aradjaddin Molla*.

37 Cr. L. J. 1101 :

165 I. C. 196 : 40 C. W. N. 872 : 9 R. C. 357.

—Recording of confession by Magistrate—Magistrate, power of, to put questions—Additional statements made by confessing accused and recorded by Judge, admissibility of.

The Magistrate is not forbidden to ask questions to satisfy himself that the statement proposed to be made is voluntary or for the purpose of making clear and intelligible any particular passage of a statement made to him. A Magistrate not trying a case can only record the confession of an accused person if voluntarily made under S. 164 of the Cr. P. C. and it is not permissible for him to question the accused closely and at great length for the purpose of extracting statements to be afterwards used as evidence. *Kesho Singh v. Emperor*.

18 Cr. L. J. 742 :

40 I. C. 742 : 20 O. C. 136 :

A. I. R. 1917 Oudh 362.

—Recording of confession in open Court—Non-compliance, effect of.

It is the duty of a Magistrate to record a confession in open Court and during Court hours under the circulars of the Calcutta High Court, but the non-compliance of this rule is not sufficient ground for setting aside the verdict of a Jury in the absence of evidence to show that it has resulted in failure of justice. *Azimuddy v. Emperor*.

28 Cr. L. J. 485 :

101 I. C. 661 : 31 C. W. N. 410 :

8 A. I. Cr. R. 134 : A. I. R. 1927 Cal. 398.

—Recording of—Signature of accused to his confession, object of.

Where the signature of the accused to his confession is not taken at the time the confession is made but is taken the next day, and the Magistrate swears to the authenticity of the confessional statement, there is no such irregularity or illegality as would affect the admissibility of the statement in evidence. *Khudiram Bose v. Emperor*.

10 Cr. L. J. 325 :

3 I. C. 625 : 9 C. L. J. 55.

—Recording of—Statement of accused recorded in narrative form and not in the form of questions and answers.

Where the accused is not prejudiced or injured in any way in his defence on the merits, the commission to record the questions, specially when they were of a purely formal character, is an irregularity which is fully covered by the provisions of S. 533, Cr. P. C., and the confession thus recorded is not inadmissible. *Khudiram Bose v. Emperor*.

10 Cr. L. J. 325 :

3 I. C. 625 : 9 C. L. J. 55.

—Recording of—Voluntary nature of confession asked at end of statement—Defect of form not altering character of confession.

Where a Magistrate, instead of questioning the accused as to the voluntariness of a confession before recording the confession, asked him after the confession was recorded : *Held*, that

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the defect was merely one of form and did not alter the character of the confession. *Pulin Tanti v. Emperor*.

15 Cr. L. J. 25 :

22 I. C. 169 : 40 Cal. 873.

—Recording of.

Where it does not appear from the record that the Magistrate recording a confession gave due warning to the accused, the confession is defective, but the defect can be cured under S. 533 of the Cr. P. C., if the Court on taking the evidence of the Magistrate is satisfied that the warning required by law was actually given. *Maksud Ali v. Emperor*.

22 Cr. L. J. 200 :

3 U. P. L. R. Pat. 18 : 2P. L. T. 773 :

60 I. C. 56 : A. I. R. 1921 Pat. 337.

—Recording of.

Where proceedings as to the recording of a confession are not in conflict with any section of the Cr. P. C., the confession of the accused person should not be rejected simply on the ground of informality of procedure. *Bhai Khan v. Emperor*.

23 Cr. L. J. 617 :

68 I. C. 841 : 4 L. L. J. 225 :

A. I. R. 1922 Lah. 189.

—Recording of.

Where there were discrepancies in the statements of the complainant and those of the witnesses also, and the confession of one of the accused was not recorded in accordance with the provisions of the law and the rules of Government : *Held*, that the alleged facts were unsubstantiated and improbable, and that the accused's confession must be regarded with the gravest suspicion. *Emperor v. Vela Ratna*.

1 Cr. L. J. 799 :

14 K. L. R. 95.

—Retracted.

See also Confession—Co-accused.

See Evidence Act, 1872, S. 27.

—Retracted.

A confession made by an accused before the Committing Magistrate, which he retracts both before and after commitment, is of no value. *Ghanuara v. Emperor*.

16 Cr. L. J. 612 :

30 I. C. 436 : 19 P. W. R. 1915 Cr :

A. I. R. 1925 Lah. 215 :

—Retracted.

A confession retracted at an early opportunity must be very carefully scrutinised before it is accepted by the Courts. Its value is not diminished simply because its author has subsequently thought fit to disclaim it. *Sajjad Hussain v. Croxon*, 16 P. R. 1903 Cr. ; 153 P. L. R. 1903 followed. *Bhag Singh v. Emperor*.

10 Cr. L. J. 584 :

4 I. C. 429 : 24 P. W. R. 1909 Cr.

—Retracted.

A conviction cannot be safely based on the retracted confession of a co-accused. *Puttu v. Emperor*.

33 Cr. L. J. 514 (2) :

137 I. C. 290 : 9 O. W. N. 243 :

I. R. 1932 Oudh 225.

—Retracted.

A retracted confession can be taken into ac-

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count if it is borne out by independent evidence. *Bhimji Jeram v. Emperor*.

1 Cr. L. J. 491 :
14 K. L. R. 24.

—————*Retracted*.

A retracted confession may be used against the person making it but not against other accused jointly with him. *Chet Singh v. Emperor*.

7 Cr. L. J. 227 :
2 P. W. R. Cr. 86.

—————*Retracted*.

Although a retracted confession may be admitted in evidence against the person making it, the Court should not act upon it unless the Court is satisfied of its truth. *Itwari v. Emperor*.

35 Cr. L. J. 303 :
147 I. C. 113 : 10 O. W. N. 923 : 6 R. O. 226 :
A. I. R. 1933 Oudh 432 :

—————*Retracted*.

An approver's statement or the retracted confession of an accused cannot be made the basis of conviction unless they are corroborated sufficiently against the accused. *Emperor v. Maqbool Ahmad*.

33 Cr. L. J. 920 :
139 I. C. 751 : 9 O. W. N. 3 :
7 Luck. 511 : I. R. 1932 Oudh 383 :
A. I. R. 1932 Oudh 317.

—————*Retracted—Accused making admissions to various persons immediately after occurrence and later to Magistrate—Subsequent retraction—No explanation for making untrue admissions—Evidentiary value of confession.*

Admissions of guilt made by an accused to various persons immediately after the occurrence or in his confession to a Magistrate, do not, where the accused is unable to give any explanation as to how he came to make the admissions if they were not true, become ineffective because they are subsequently retracted. *Emperor v. Raj Kali*.

27 Cr. L. J. 1306 :
98 I. C. 250 : 3 O. W. N. 813 :
29 O. C. 396 : A. I. R. 1926 Oudh 622.

—————*Retracted—Adhered to before Committing Magistrate but retracted at trial on ground of ill-treatment by Police—Confession repeated before Committing Magistrate in presence of Police—Uncorroborated confession.*

The use, which the court makes of a retracted confession, depends on whether the court believes it or not, and in determining whether to believe it, the court must be guided by the circumstances of the case, that is, the evidence produced which is consistent or inconsistent with the confession. *Emperor v. Mohan Tribhovan*.

3 Cr. L. J. 312 :
15 K. L. R. 369.

—————*Retracted*.

Held, in order that a confession may be used against an accused, the Court must be satisfied : (1) that it is voluntary, and (2) that it is substantially true. Moreover, the court should not act upon retracted confessions unless they are corroborated on material points by credible independent evidence. *Emperor v. Motan*.

10 Cr. L. J. 200 :
2 S. L. R. 34.

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—————*Retracted—Magistrate taking precaution to protect accused's interest before recording confession—Deliberate confession of crime subsequently retracted—Allegation that confession was forced out of accused by torture unproved—Admissibility in evidence.*

Where a Magistrate, before recording the confession, takes every precaution to protect his interests, and obtains from him a clear statement that he had not been put in fear or received any inducement, and then the accused makes a deliberate confession of the crime, the confession, though subsequently retracted, is, in the absence of proof that it was forced out of the accused by torture or a satisfactory explanation as to how he came to make it if it was not true, is admissible in evidence. *Raj Bahadur Singh v. Emperor*.

27 Cr. L. J. 1258 :
98 I. C. 106 : 3 O. W. N. 818 :
A. I. R. 1927 Oudh 17.

—————*Retracted and uncorroborated, value of—Conviction.*

A conviction based on a retracted and uncorroborated confession of a weak, wretched creature, exposed to all sorts of influences and who could easily be prevailed upon to make a confession on a promise that he would be made a witness in the case, is bad. *Chheria v. Emperor*.

18 Cr. L. J. 631 :
39 I. C. 999 : 1 P. L. W. 474 :
A. I. R. 1913 Pat. 677.

—————*Retracted*.

Retracted confession—Conviction, can be based on it if there is ring of truth about it. *Inam-ud-Din v. Emperor*.

35 Cr. L. J. 1154 :
150 I. C. 862 : 1934 O. L. R. 652 :
11 O. W. N. 950 : 7 R. O. 70 :
A. I. R. 1934 Oudh 388.

—————*Retracted confession—Use against co-accused.*

When a confession is retracted, it becomes very unsafe to use the contents of that confession against any co-accused as to his responsibility for the crime that he is accused of. On the other hand a Judge sitting alone after due consideration and taking into consideration all extraneous facts such as the statements made by the Police Officers who were originally in charge of the persons confessing, the statement of the Magistrate who took down the confession and the general tone of the confession itself together with the probabilities to be attached to the explanatory statement retracting the confession, can accept the confession as being a true and proper account of the necessary happening to support the prosecution case before the Court. *Kalijiban Bhattacharjee v. Emperor*.

37 Cr. L. J. 775 :
163 I. C. 41 : 63 C. L. J. 232 :
8 R. C. 714 : 63 Cal. 1053 :
A. I. R. 1936 Cal. 316.

—————*Retracted confession as basis for conviction.*

A confession though retracted on the earliest possible opportunity can be relied upon for conviction when it has been corroborated by

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production of articles for which the accused can offer no explanation. *Arjan Singh v. Emperor*.

30 Cr. L. J. 1046 :
119 I. C. 325 : I. R. 1929 Lah. 869 :
33 P. L. R. 616 : A. I. R. 1930 Lah. 257.

—————*Retracted confession as basis for conviction of maker and co-accused.*

It is not safe to convict on a confession, unless from the peculiar circumstances in which it was made and judging from the reasons alleged or apparent of the retraction, there remains a high degree of certainty that the confession, notwithstanding its having been resiled from, is genuine. A retracted confession of a co-accused, even if genuine, is not a safe basis for conviction. *Pala Singh v. Emperor*.

29 Cr. L. J. 267 :
107 I. C. 614 : 9 A. I. Cr. R. 527 :
A. I. R. 1928 Lah. 329.

—————*Retracted.*

Retracted confession of an accused may be used against a co-accused. *Arjan Singh v. Emperor*.

30 Cr. L. J. 1046 :
119 I. C. 325 : I. R. 1929 Lah. 869 :
33 P. L. R. 616 : A. I. R. 1930 Lah. 257 :

—————*Retracted confession of co-accused.*

Retracted confessions do not constitute corroboration of a high value, although they may be taken into consideration against the co-accused. *Devi Dayal v. Emperor*.

14 Cr. L. J. 112 :
18 I. C. 672 : 14 A. L. J. 73.

—————*Retracted confession supported by other circumstances—Mere threats not amounting the extortion of confession.*

A widow before entering her village threw off her illegitimate child into a well, out of shame. When its body was found floating, she was questioned. She made a full confession but retracted it at the trial. She had been seen nursing a child before the murder. She also admitted the body to be her child's, when it was found. Medical evidence showed that the death had been caused by the skull striking a hard substance : *Held*, that a retracted confession, if believed to be both true and voluntary, was sufficient basis for a conviction. *Emperor v. Bai Pani Ramji*.

2 Cr. L. J. 193 :
14 K. L. R. 312.

—————*Retracted confession to be taken as a whole.*

In cases where the sole evidence against the accused is that of a retracted confession, if that evidence is to be relied on, it must be relied on as a whole and not only in part. *Durjan v. Emperor*.

31 Cr. L. J. 300 :
121 I. C. 550 : A. I. R. 1930 All. 192.

—————*Retracted confession, value of.*

It cannot be laid down as an absolute rule of law that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence. *Moti Ram v. Emperor*.

24 Cr. L. J. 904 :
75 I. C. 152.

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—————*Retracted confession, weight of, against co-accused.*

The retracted confession of an accused has very little weight against the other accused persons and does not constitute the independent evidence of corroboration of the statement of the approver which is required to base a conviction thereon. *Hubba v. Emperor*.

11 Cr. L. J. 71.
4 I. C. 884.

—————*Retracted, value of—Conviction, legality of.*

If the Court is satisfied that the retracted confession was voluntarily made and is true, it is bound, in the absence of coercion by the Police, to act on that belief so far as the reason making it is concerned. *Bihari Adraki v. Emperor*.

22 Cr. L. J. 293 :
60 I. C. 789 : 3 P. L. T. 98 : A. I. R. 1922 Pat. 492.

—————*Retracted, value of—Corroboration.*

It is unsafe to base the conviction of an accused for murder on his retracted confession, unless it is corroborated by trustworthy evidence in all the material particulars. *Sher Khan v. Emperor*.

18 Cr. L. J. 729 :
41 I. C. 155 : 2 P. W. R. 1917 Cr. :
75 P. L. R. 1917 Cr. :
A. I. R. 1917 Lah. 110.

—————*Retracted, value of—Corroboration, whether necessary.*

The mere fact that a confession is retracted, will not raise an inference that it was obtained by improper inducement, threat or promise. Such a conclusion can only be arrived at from the evidence on the record or from the surrounding circumstances. The weight to be attached to a retracted confession depends upon the circumstances. As regards the person making it, a retracted confession may, without corroboration, form the basis of a conviction, and though corroboration may be necessary as regards a co-accused, it is not necessary that this corroborative evidence should, by itself, be sufficient to support a conviction. *Mohar Singh v. Emperor*.

27 Cr. L. J. 933 :
96 I. C. 647 : 2 Lah. C. 224 :
27 P. L. R. 387.

—————*Retracted, value of—Corroboration, whether necessary.*

There is no rule of law requiring a retracted confession to be supported by independent reliable evidence corroborating it in material particulars. The use to be made of such a confession is a matter of prudence rather than of law. *Bhaddu v. Emperor*.

19 Cr. L. J. 861 :
46 I. C. 1005 : A. I. R. 1918 Nag. 174.

—————*Retracted, value of—Ill-treatment by Police, allegation of—Burden of proof.*

An accused person who, at his trial, retracts his confession recorded by the Magistrate alleging that it was the outcome of ill-treatment and inducement by the Police, should prove his allegations. *Emperor v. Kahili Katoni*.

19 Cr. L. J. 959 :
47 I. C. 811 : 22 C. W. N. 809 :
A. I. R. 1918 Cal. 72.

—————*Retraction—Whether sufficient to believe*

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it false—Question as to why a person should retract confession—Whether one of law.

The mere fact of retraction of confession is not sufficient reason for believing that the confession must have been false. The question as to why a man should at one time make a confession and afterwards retract it, is not a question of law but a question of human psychology and of experience. *Jiwan v. Emperor*.

37 Cr. L. J. 852 (2) :
163 I. C. 661 : 1936 A. L. J. 376 :
1936 A. W. R. 409 : 9 R. A. 56 :
A. I. R. 1936 All. 470.

—————*Retracted.*

The retracted confession of an accused, if voluntary and true, should be acted upon by the court and so far as the accused making the same is concerned, is sufficient for his conviction. It cannot be rejected simply on conjectural grounds. *Paragi v. Emperor*. 33 Cr. L. J. 929 :

139 I. C. 756 : 9 O. W. N. 321 :
I. R. 1932 Oudh 391.

—————*Retracted.*

Though a confession may not be a full and perfect account of the whole state of the accused's mind and though the accused may not have made a clean breast of every detail, yet, where it could not possibly be supposed that he could be tutored to that extent, or that, if tutored, he would produce a statement which is without any doubt substantially an account of what he himself tells of his knowledge, the confession is relevant, even if retracted. *Jadav Amra v. Emperor*.

10 Cr. L. J. 109 :
19 K. L. R. 78.

—————*Retracted—Use of retracted confession against person making it.*

A confessing prisoner should not be condemned upon a retracted confession unless it is corroborated in material particulars. *Jamai v. Emperor*.

19 Cr. L. J. 275 :
44 I. C. 179 : 19 P. W. R. 1918 Cr. :
70 P. L. R. 1918 : A. I. R. 1918 Lah. 54.

—————*Retracted, value of—Value of confession as against co-accused.*

Though, as a matter of law, a conviction may be based upon a retracted confession, if the Court can come to the unhesitating conclusion that the confession is voluntary yet, as a matter of prudence, no conviction should be based upon such a confession. The value to be attached to such a confession as against a co-accused is exceedingly weak. *Maksud Ali v. Emperor*.

22 Cr. L. J. 200 :
60 I. C. 56 : 3 U P. L. R. Pat. 18 : 2 P. L. J. 773 :
A. I. R. 1921 Pa. 337.

—————*Retracted—When admissible against person making it.*

A confession, though retracted, is admissible against the person making it, provided that the Court is satisfied that it was voluntarily made. *Maroti v. Emperor*.

41 Cr. L. J. 553 :
188 I. C. 146 : 1940 N. L. J. 210 : 12 R. N. 333 :
A. I. R. 1940 Nag. 230.

—————*Self-exculpatory.*

See Confession—Admissibility.

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—————*Test of truth.*

A Court must not regard the confession of an accused person in the same light as an admission made by parties in civil litigation. What has to be seen in the case of a confession is (1) whether the same was made voluntarily, *i. e.*, whether the disqualifying conditions given in S. 24 of the Evidence Act were absent, and (2) whether, if so, the confession is true as tested by the circumstances in which it was made, its internal evidence of truth and its consistency with other evidence. *Moti Ram v. Emperor*.

24 Cr. L. J. 904 :
75 I. C. 152.

—————*Test of truth—Appellate Court's power to enquire whether confession is voluntary.*

Although at the foot of a confession there is a memorandum signed by the recording Magistrate that he believed it was voluntarily and the Sessions Judge was also convinced that the statements were true, yet these facts do not preclude the Appellate Court from enquiring into the matter. *Sangam Lal v. Queen-Empress*, 15 A. 129, referred to. Under the circumstances of the case, the confession was held not to be voluntary. *Jogjiban Ghose v. Emperor*.

10 Cr. L. J. 125 :
2 I. C. 681 : 9 C. L. J. 663 : 13 C. W. N. 851.

—————*Test of truth—Deposition—Contradiction—Value to be estimated of the confessional statements.*

Variations in detail are of less importance in considering the effect of a confession, than they would be in considering a deposition incriminating a person other than the deponent. *Emperor v. Yellaraddi bin Rudraraddi*. 1 Cr. L. J. 926 :
6 Bom. L. R. 773.

—————*Test of truth—Inducement though outside S. 24, Evidence Act, proved—Admissibility of confession.*

If a confession is not voluntary in the wider sense of the term, *ex hypothesi*, the person who made it did not do so from any desire to tell the truth. In such circumstances if facts are proved which suggest that an inducement of some kind, although outside the terms of S. 24, Evidence Act, was in fact given, the Court may well refuse to accept the confession as true. *Kalijiban Bhattacharjee v. Emperor*.

37 Cr. L. J. 775 :
163 I. C. 41 : 63 C. L. J. 232 : 8 R. C. 714 :
63 Cal. 1053 : A. I. R. 1936 Cal. 316.

—————*Test of truth.*

One important test of the truth of a statement contained in a confession is the revelation of facts which up to the time that the confession was made had not been discovered by the Police. *Emperor v. Pancham*.

34 Cr. L. J. 653 :
143 I. C. 846 : 10 C. W. N. 348 : 8 Luck. 410 :
I. R. 1933 Oudh 208 :
A. I. R. 1933 Oudh 192.

—————*Test of truth.*

Suspicion that accused may make untrue confession is no particular reason for believing it. The fact that accused did not withdraw his confession while making first statement in

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committing Court does not prove that confession is true. *Ikari v. Emperor*.

35 Cr. L. J. 303 :
147 I. C. 113 : 10 O. W. N. 923 : 6 R. O. 226 :
A. I. R. 1933 Oudh 432.

———*Threat.*

See Confession—Admissibility.

———*Threat.*

The suggestion that it would be better to confess made by the accused's superior officer renders the confession inadmissible under S. 24 of the Evidence Act. *Nga Pye v. Emperor*.

1 Cr. L. J. 1124 :
2 L. B. R. 316.

———*To kokral.*

See Evidence Act, 1872, S. 25.

———*To panchayatdar.*

See Evidence Act, 1872, S. 24.

———*To person in authority.*

See Confession—Admissibility.

———*To Police Officer.*

See Evidence Act, 1872, Ss. 24, 25.

———*Use of.*

Per *Knor, J.*—If a judge believes that the confession contains a true account of that prisoner's connection with the crime, he is bound to act, so far as that prisoner is concerned, on the confession which he believes to be true. *Kehri v. Emperor*.

5 Cr. L. J. 360.
4 A. L. J. 310 : 27 A. W. N. 140 :
29 All. 434.

———*Use of—Self-exculpatory statement, use of, against co-accused.*

A self-exculpatory statement made by an accused at the trial cannot be treated as his confession and taken into consideration against his co-accused. *C. E. Ring v. Emperor*.

31 Cr. L. J. 65 :
120 I. C. 340 : 31 Bom. L. R. 545 :
53 B. 479 : A. I. R. 1929 Bom. 296.

———*Value of accused withdrawing some confessional statements as untrue, effect of—Admissibility of confession.*

A confession does not lose its evidentiary force only because in a subsequent statement the accused says that some of the statements contained in it are untrue. *Khudiram Bose v. Emperor*.

10 Cr. L. J. 325 :
9 C. L. J. 55 : 3 I. C. 625.

———*Value of—Confession—Retracted Confession—Value of confession against co-accused.*

The net result of authorities on the value of confession seems to be this.

(i) That it is not illegal to base a conviction upon the uncorroborated confession provided the Court is satisfied that the confession was voluntary and is true in fact ;

(ii) That, from the point of view of legality, pure and simple, the fact that a confession has been retracted, is immaterial ;

(iii) That the use to be made by the Court of

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a confession, whether retracted or not, is a matter rather of prudence than of law ;

(iv) That in the absence of corroboration in material particulars, it is not safe to convict on a confession, unless from the particular circumstances in which it was made and judging from the reasons, alleged or apparent, of the retraction, there remains a high degree of certainty that the confession, notwithstanding its having been resiled from, is genuine ;

(v) That when it is a question of using a confession against a co-accused and the Court would not be prepared to accept the confession *per se* as sufficient, the corroboration ought to be of the kind that not only confirms the general story of the crime, but also unmistakably connects the said co-accused with the crime. *Jawan v. Emperor*.

15 Cr. L. J. 626 :
25 I. C. 634 : 264 P. L. R. 1914 :
30 P. R. 1914 Cr. : 50 P. W. R. 1914 Cr. :
A. I. R. 1914 Lah. 321.

———*Value of—Oral confession at basis for conviction.*

Evidence of oral admissions is necessarily subject to much imperfection and mistake for either the party himself may have been misinformed, or he may not have clearly expressed his meaning, or the witness may have misunderstood him, or may purposely misquote the expression used. *Emperor v. Soopi*.

31 Cr. L. J. 141 :
120 I. C. 539 : 31 P. L. R. 391 :
A. I. R. 1930 Lah. 84.

———*Value of.*

The circumstance that the accused was in Police custody before and after making the confession should be regarded as discounting the value of the confession. *Emperor v. Pancham*.

34 Cr. L. J. 653 :
143 I. C. 846 : 10 C. W. N. 348 :
I. R. 1933 Oudh 208 :
8 Luck. 410 :
A. I. R. 1932 Oudh 192 :

———*Value of.*

The fact that the accused was in Police custody when he made the confession is a circumstance which may be regarded as discounting its value. *Emperor v. Magbool Ahmad Khan*.

139 I. C. 751 :
33 Cr. L. J. 920 : 9 O. W. N. 3 :
7 Luck. 511 : I. R. 1932 Oudh 383 :
A. I. R. 1932 Oudh 317.

———*Weight of—Confession—Statement incriminating only co-accused whether can be used against co-accused.*

Where some of the accused persons make statements in court denying their participation in the commission of any crime, but incriminate a co-accused, these statements are not confessions and cannot be taken into consideration as against the co-accused under S. 30, Indian Evidence Act. *Bishan Datt v. Emperor*.

2 Cr. L. J. 22 :
2 A. L. J. 53.

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———*Weight of—Implicating others but safeguarding conduct of confessor—Effect.*

The confession which seeks to implicate a number of other people whilst carefully safeguarding the conduct of the person confessing it are familiar to the High Court. Such confession should be treated with great caution. *Emperor v. Gostho Sardar.* 37 Cr. L. J. 1149 : 165 I. C. 438 : A. I. R. 1936 Cal. 407.

———*Weight of.*

The amount of weight to be attached to a confession is matter of prudence rather than of law. *Raggha v. Emperor.* 26 Cr. L. J. 1431 : 89 I. C. 903 : 23 A. L. J. 821 : L. R. 6 All. 161 Cr. : A. I. R. 1925 All. 627.

———*What amounts to.*

See Coroners' Act, 1871, S. 19.

———*What is.*

A person who is summoned to give evidence and who is put on oath and answers questions or makes a statement under the compulsion of his oath, cannot be said to have made a voluntary statement. *Emperor v. Kazi Dawood.*

27 Cr. L. J. 433 : 93 I. C. 225 : 28 Bom. L. R. 79 : 50 Bom. 56 : A. I. R. 1926 Bom. 144.

———*What is.*

An admission of all the ingredients required to constitute an offence is a confession. *Bhag Singh v. Emperor.*

10 Cr. L. J. 584 : 4 I. C. 429 : 24 P. W. R. 1909 Cr.

———*What is—Distinction between confession and statements of fact—Tests.*

If the prosecution rely on the statements of the accused to the Police as being true, then they may, and in many cases will, be found to amount to confession. If, on the other hand, the statements of the accused are relied on not because of their truth but because of their falsity, they will be admissible as admissions. *Elukuri Seshapani Chetty v. Emperor.*

38 Cr. L. J. 323 : 166 I. C. 917 : 1936 M. W. N. 1241 : 45 L. W. 100 : 1937 I. M. L. J. 154 : I. L. R. 1937 Mad. 358 : 9 R. M. 411 : A. I. R. 1937 Mad. 209.

———*Confession.*

Where a confession is suspicious one and grossly improbable in certain parts, it must altogether be set aside. *Prabhu v. Emperor.*

6 Cr. L. J. 141 : 2 P. W. R. Cr. 55.

CONFISCATION.

See Penal Code, Ss. 121, 122 and 124-A.

———*Of press.*

See Penal Code, S. 124-A.

CONGRESS FLAG.

See Criminal Law Amendment Act, S. 17 (1).

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———*Whether cures irregularity.*

CONSPIRACY

No serious defect in the mode of conducting a criminal trial can be justified or cured by the consent of the Advocate. *Abdul Rahman v. Emperor.* 28 Cr. L. J. 259 :

100 I. C. 227 : 31 C. W. N. 271 : 25 A. L. J. 117 : 1927 M. W. N. 103 : 38 M. L. T. 64 : 8 P. L. T. 155 : 4 O. W. N. 283 : 6 Bur. L. J. 65 : 5 Rang. 53 : 52 M. L. J. 585 : 29 Bom. L. R. 813 : 45 C. L. J. 441 : 7 A. I. Cr. R. 362 : 54 I. A. 96 : A. I. R. 1927 P. C. 44.

CONSENT OF COUNSEL.

See Cr. P. C., 1898, S. 537.

CONSENT OF PARTIES.

See Cr. P. C., 1898, Ss. 133, 137.

CONSPIRACY.

See also (i) Cr. P. C., S. 234.

(ii) Criminal Trial.

(iii) Penal Code, Ss. 34, 120-A, 121.

———*Criminal conspiracy when gives rise to Civil liability.*

A criminal conspiracy gives rise to civil liability if special damage has been suffered by the plaintiff. *Peary Mohan Das v. Weston.*

13 Cr. L. J. 65 : 16 C. W. N. 145 : 13 I. C. 721.

———*Limitation Act, Sch. I, Arts. 23, 36, —Suit for damage for conspiracy—Special damage to be proved by plaintiff—Pecuniary loss to be proved.*

A suit to recover damages resulting from a conspiracy, falls within Article 36 or Article 120 of the Limitation Act, 1908, and not within Article 23.

In order to sustain such a suit, the plaintiff must prove special damage, and the conspiracy must be the proximate cause of the damage or the damage must be such as to have been in the contemplation of the parties.

Pecuniary loss caused directly by the conduct to the defendants must be proved in order to establish a cause of action ; but the amount of damage need not be limited to the precise sum so proved. *Peary Mohan Das v. Weston.*

13 Cr. L. J. 65 : 16 C. W. N. 145 : 13 I. C. 721.

———*Plaintiff to be kept strictly to cause of action set forth in plaint—Pleadings.*

The plaintiff in a suit on a conspiracy must be kept strictly to the cause of action that he has set out in his plaint. *Mohan Das v. Weston.*

13 Cr. L. J. 65 : 16 C. W. N. 145 : 13 I. C. 721.

———*Proof—Association with conspirators, if enough.*

To convict a person of being one of the parties to a conspiracy, it is not enough merely to prove his association with some of the conspirators. *Kali Das Basu v. Emperor.* 26 Cr. L. J. 33 : 83 I. C. 513 : 39 C. L. J. 151.

———*Proof of.*

There need not be proof of direct meeting or

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combination, nor need the parties be brought into each other's presence; the agreement may be inferred from circumstances raising a presumption of common concerted plan to carry out the unlawful design. *Barindra Kumar v. Emperor*. 11 Cr. L. J. 453 : 7 I. C. 359 : 37 Cal. 469.

———Proof of conspiracy—Evidence.

A conspiracy may be proved by other than oral evidence; by the evidence of surrounding circumstances and the conduct of the accused both before and after the commission of the crime. *Emperor v. Annappa*. 5 Cr. L. J. 323 : 9 Bom. L. R. 347.

———Suit for damages for injury—Nature of proof.

There is no rule in the Indian Evidence Act that the standard of proof of a conspiracy in a suit for damages in consequence of injury resulting from the conspiracy, must be the same as if the defendants were being tried on a criminal charge. *Peary Mohan Das v. Weston*. 13 Cr. L. J. 65 : 13 I. C. 721 : 16 C. W. N. 145.

———Suit for damage whether maintainable.

A suit to recover damages resulting from conspiracy is maintainable in British India. *Peary Mohan Das v. Weston*. 13 Cr. L. J. 65 : 13 I. C. 721 : 16 C. W. N. 145.

———Trial for—Overt act—Offence—Procedure.

When the proof of a conspiracy depends upon proof of the participation of the accused in an overt act which itself amounts to an offence, the proper course is to put the accused on their trial for that offence. *Kali Das Basu v. Emperor*. 26 Cr. L. J. 33 : 83 I. C. 513 : 39 C. L. J. 151.

———To wage war.

See Penal Code, S. 121-A.

CONSTITUTIONAL LAW.

———Governor—Powers of—Self-governing dominion—Extraordinary powers in cases of grave crisis.

The Governor of a small colony inhabited by primitive and backward peoples has very much less power than the Governor-General of a self-governing dominion, in the case of a self-governing dominion where the Government is, in practice, in the hands of the people, the Governor needs extraordinary powers to interfere when a grave crisis arises; but these extraordinary powers he rarely uses. *In re : S. S. Batticala*. 39 Cr. L. J. 938 : 177 I. C. 747 : 1938 M. W. N. 529 : 48 L. W. 170 : (1938) 2 M. L. J. 416 : 11 R. M. 375 : A. I. R. 1938 Mad. 758.

CONSTRUCTION OF STATUTES.

See Interpretation of Statutes.

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See also (i) Contempt of Courts Act.

(ii) Penal Code, Ss. 172 to 190.

———Advocate expressing at meeting of Bar Association that the man in the street

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has lost confidence in the administration of justice in the Province—*Held*, contempt of Court—Unconscious use of expression—Written apology—*Held* sufficient. *In re : Muhammad Wasin*. 34 Cr. L. J. 726 (2) : 144 I. C. 63 (2) : I. R. 1933 Oudh 220 : A. I. R. 1933 Oudh 118.

———Allegation that litigant is attempting to get Bench constituted in his favour, whether contempt.

An allegation in an article against a litigant that he is attempting to get a Bench constituted in such a way as would, in his opinion, give him a favourable decision, is calculated to obstruct or interfere with the course of justice and is, therefore, a contempt. *In the matter of Amrita Bazar Patrika*. 19 Cr. L. J. 530 : 45 I. C. 338 : 21 C. W. N. 1161 : 26 C. L. J. 459 : 45 Cal. 169 : A. I. R. 1918 Cal. 988.

———Anonymous letters—Responsibility of authors.

If anonymous letters are sent to the press containing false statements, the press is responsible for them if the name of the author is not given up. *In the matter of Banks and Fenwick*. 19 Cr. L. J. 449 : 1918 C. 249 (2).

———Any act or writing tending to undermine the authority of Courts of Justice, or to influence the result of pending litigation, is a most serious offence. *In the matter of Contempt of High Court*. 36 Cr. L. J. 837 : 155 I. C. 695 : 37 P. L. R. 73 : 16 Lah. 266 : 7 R. L. 765 : A. I. R. 1935 Lah. 212.

———Apology—Effect of—Per Curiam

—The fact of his making an apology does not entitle the person charged with contempt of Court to his discharge as a matter of right. *In the matter of Banks and Fenwick*. 19 Cr. L. J. 449 : 45 I. C. 113 : 26 C. L. J. 401 : A. I. R. 1918 Cal. 249 (2).

———Apology—Effect on Punishment.

In cases of contempt of Court by means of misrepresentation or wilful concealment of the true state of facts, a proper apology may mitigate but it cannot form a ground for a total exemption from punishment. *In the matter of William Taylor*. 19 Cr. L. J. 402 : 44 I. C. 930 : 26 C. L. J. 345 : A. I. R. 1918 Cal. 713.

———Apology—Sentence.

Where the accused, while submitting an unqualified apology, challenged the jurisdiction of the Court, special costs were awarded against them. *Rajah v. Witherington*. 35 Cr. L. J. 962 : 149 I. C. 238 : 66 M. L. J. 650 : 39 L. W. 680 : 1934 M. W. N. 607 : 57 Mad. 831 : 6 R. M. 613 : A. I. R. 1934 Mad. 423.

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———*Apology, whether sufficient satisfaction—Repetition.*

The publication of an apology is not necessarily a sufficient satisfaction for a contempt of Court which has been committed. While it may, to some extent, be a reparation on the part of the offender, it becomes little more than an idle form when the publication is due to a repetition of negligence which has been condoned in the past. *Emperor v. Marmaduke Pickthall.*

25 Cr. L. J. 388 :

77 I. C. 436 : A. I. R. 1923 Bom. 242.

———*Apology, whether sufficient where contempt is serious and grave.*

An apology is not sufficient reason to secure impunity from punishment for contempt. *In the matter of Habib.*

26 Cr. L. J. 1409 :

89 I. C. 833 : 6 Lah. 528 :

A. I. R. 1926 Lah. 1.

———*Articles exceeding limits of bona fide criticism—Imputation of improper conduct and unfitness of Judge—Gross contempt.*

Where the words used in an article in a newspaper meant and were intended to mean that the conduct of cases before a Judge of a High Court were such that the arguments and authorities were ignored and that for that reason the life and liberty of the subject brought before that Judge were in peril. *Held*, that the article was a contempt of Court of the gravest character. Where certain passages in an article in a newspaper distinctly imputed to the judge the reproach of passing monstrous sentences, of unjustifiably convicting a man on the uncorroborated testimony of an approver and with accusing the people of India of habitual liars, and the effect of the article was to suggest that the Judge was unfit for his office and to debase his authority : *Held*, that the writer of the article was guilty of gross contempt. *Emperor v. Murlī Manohar Prasad.*

30 Cr. L. J. 741 :

117 I. C. 180 : 9. P. L. T. 837 :

A. I. R. 1929 Pat. 72 : 8 Pat. 323 :

I. R. 1929 Pat. 338.

———*Article in newspaper—Held, on construction of article, that contempt was committed. In the matter of Jushar Kanti Ghosh, Editor, Amrita Bazar Patrika.*

36 Cr. L. J. 1053 :

156 I. C. 1055 : 61 C. L. J. 376 :

39 C. W. N. 770 : 8 R. C. 53 :

A. I. R. 1935 Cal. 419.

———*Article in newspapers suggesting that prosecution evidence in action either contemplated or proceeding is obtained unfairly—Whether contempt of Court.*

Any act done or writing published which is calculated to obstruct or interfere with the due course of justice or the legal process of the Court is contempt of Court. Proceedings in contempt are not taken merely in respect of technical offences. To suggest in a newspaper article that evidence intended to be used in a prosecution which is either proceeding or is plainly contemplated, has been obtained by improper means and is unreliable or to suggest

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that admissions by the accused have been improperly obtained, is conduct calculated to interfere with the due course of justice. *Government Pleader, Bombay v. Shankar Dattatraya Javadekar.*

39 Cr. L. J. 424 :

174 I. C. 520 : 40 Bom. L. R. 73 :

I. L. R. 1938 Bom. 176 : 10 R. B. 476 :

A. I. R. 1938 Bom. 198.

———*Article undermining authority of Court of Justice—Held, the article amounted to gross contempt of Court. In the matter of Contempt of High Court. (S. B.)*

36 Cr. L. J. 837 :

155 I. C. 695 : 37 P. L. R. 73 :

16 Lah. 266 : 7 R. L. 765 :

A. I. R. 1935 Lah. 212.

———*Aspersions not against a particular Judge or Bench or in connection with a particular case—Proceedings for contempt, can lie. In the matter of an Advocate of Allahabad.*

154 I. C. 955 : 1935 A. L. J. 125 :

4 A. W. R. 1155 : 7 R. A. 827 :

A. I. R. 1935 All. 1.

———*Aspersions not against a particular Judge or Bench or in connection with a particular case—Proceedings for contempt, if can lie.*

Proceedings for contempt can lie even in a case where the aspersion on the Court is not against a particular Judge or Bench and in connection with a particular case. Because a particular type of contempt of Court is unusual or unprecedented, it does not follow that the Court has no power to punish such a contempt if it is committed. The power to punish for contempt of Court is a drastic power exercisable summarily and should not, therefore, be resorted to lightly. *In the matter of an Advocate of Allahabad.*

154 I. C. 955 :

1935 A. L. J. 125 : 7 R. A. 827 :

4 A. W. R. 1155 : A. I. R. 1935 All. 1.

———*Attack on competency of Judge, if contempt.*

An allegation that there has been a failure of justice owing to the incompetence of the Judge on account of his youth and inexperience, would amount to a contempt. *Government Advocate, Burma v. Saya Sein.*

31 Cr. L. J. 367 :

122 I. C. 282 : 7 R. 844 :

A. I. R. 1930 Rang. 124.

———*Because a particular type of contempt of Court is unusual or unprecedented, it does not follow that the Court has no power to punish such a contempt if it is committed. In the matter of an Advocate of Allahabad.*

154 I. C. 955 : 1935 A. L. J. 125 :

4 A. W. R. 1155 : 7 R. A. 827 :

A. I. R. 1935 All. 1.

———*Charge and opportunity to defend, necessity of.*

A person cannot be punished summarily for contempt unless the specific offence charged against him has been distinctly stated and unless he has had an opportunity of answering the charge. *Ebrahim Mumoojee Parekh v. Emperor.*

27 Cr. L. J. 1241 :

98 I. C. 57 : 4 R. 257.

A. I. R. 1925 Rang. 188.

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———*Comment on case pending before Mofussil Magistrate—Comment in newspaper published in Calcutta—Remonstrating against universal house-search—Protesting against harsh treatment of accused—Deprecating Police methods—Request that case should not be tried by Magistrate—Appeal to Government's recognised fairness—Whether contempt of High Court—Interference with due administration of justice—Deterring witnesses from giving evidence.*

Some of the articles relating to the pending case (1) remonstrated against universal house-searches, (2) protested against the harsh treatment of those arrested, (3) deprecated certain methods attributed to the Police, (4) requested that the case should not be tried before a Special Magistrate as a conviction by him would not command public confidence, and (5) appealed to the recognised fairness of the Government accompanied with advice: *Held*, that no suspicion of contempt of the High Court was to be found in the first, second and fifth of the topics even if there be involved in them what the prosecution alleged to be the inexcusable effrontery of presuming to offer advice to the higher authorities; that the fourth topic allowed that the writer knew very little about what he was discussing, for the case could not be tried and the accused convicted by a Special Magistrate, as their trial in the normal course could only come before a Sessions Judge sitting with assessors and against such a tribunal not a word had been said, and that there was nothing in the discussion of this topic that was in any degree a contempt of the High Court; that as to the third topic, although indiscriminate attacks on the Police are to be deprecated, there was nothing in the articles showing a contempt of the High Court; and that the only ground on which it could be suggested that there had been a contempt of the High Court, an interference with the due administration by it of justice, would be if it could be shown that witnesses might have been deterred from giving evidence by reason of this attack of Police methods or of anything contained in the articles. *Governor of Bengal v. Moti Lal*, (S. B.)

14 Cr. L. J. 321 :
20 I. C. 81 : 17 C. W. N. 1253.

———*Comment in newspaper on pending criminal case—Gross contempt.*

An article in a newspaper is calculated to prejudice the mind of the prosecution witnesses and the general public against the merits of a pending criminal prosecution is a gross contempt of Court and highly reprehensible. *In the matter of Ganesh Shanker Vidyarthi*.

30 Cr. L. J. 217 :
I. R. 1929 All. 178 : 26 A. L. J. 1307.
113 I. C. 734 : A. I. R. 1929 All. 81 :

———*Comments on pending cases deprecated.*

The propriety of abstaining from comments on pending cases in whatever Court they may be or whatever stage they may have reached, pointed out. *Governor of Bengal v. Moti Lal*, (S. B.)

14 Cr. L. J. 321 :
20 I. C. : 81 : 17 C. W. N. 1253.

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———*Comments in press by way of approval or disapproval of judgments.*

Comments in the press by way of approval or disapproval of the judgments of Courts of Session or of Commissioners in capital sentence cases made pending their disposal by the High Court constitute contempt. *Tushar Kanti v. Governor of Bengal*. 34 Cr. L. J. 662 :
143 I. C. 790 : 37 C. W. N. 276 : 60 Cal. 603 :
I. R. 1933 Cal. 485 :
A. I. R. 1933 Cal. 118.

———*Comment on decided case.*

The publication in a newspaper of an article referring to a case which has been decided may amount to and be treated as contempt. *In the matter of Habib*.

26 Cr. L. J. 1409 :
89 I. C. 833 : 6 Lah. 528 :
A. I. R. 1926 Lah. 1.

———*Comment on pending case—Abuse of parties holding them up to ridicule or contempt.*

All proceedings in suits pending in a Court are privileged, and any comment on the subject-matter of the suit, and any abuse of the parties or holding them up to ridicule and contempt in the eyes of the public whilst the suit is pending, are not allowed. *Demibai Gemji Sojpal v. Rowji Sojpal*. 38 Cr. L. J. 942.

170 I. C. 631 : 39 Bom. L. R. 471 :
10 R. B. 108 : A. I. R. 1937 Bom. 305 :

———*Comments on pending cases—Intention of offender—Prejudice trial—Intention to preserve honour being discussed in papers before judgment.*

Comments on cases pending or allegations against parties to suits that are pending, if published, amount to contempt. But it would not be right to lose sight of the intention by which a person giving publicity to a matter which is the subject of the charge of contempt, is actuated.

On the day after the suit against an Attorney by his daughter was instituted, there appeared in two newspapers a paragraph in each with a sensational heading "Suit against an Attorney", which made reference to some of the allegations set out in the plaint. The Attorney replied by two letters addressed to the Editor of the two newspapers, being only anxious to preserve his honour being discussed in the papers before a judicial declaration had been made by a competent Court. On the statement contained in those letters, an application had been founded for proceedings for contempt against him: *Held*, that as the intention of the defendant was not to pre-possess or prejudice the mind of any person in reference to the matter in dispute, and as the publications in question did not tend to prejudice a trial, the date of which was not yet fixed and which was very distant, the defendant (Attorney) was not guilty of contempt. *Ketra Moni Dasi v. Shamal Dhore Dutt*.

14 Cr. L. J. 267 :
19 I. C. 539.

———*Comment upon Advocate's political opinion, if contempt.*

Comment upon an Advocate's political opinions and activities would, in no way, be contempt of

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Court, but comment upon an Advocate which has reference to the conduct of his cases may amount to contempt of Court. *Ananta Lal Singh v. Alfred Henry Watson*.

32 Cr. L. J. 675 :
131 I. C. 267 :
35 C. W. N. 189 : 58 Cal. 884 :
I. R. 1931 Cal. 443 :
A. I. R. 1931 Cal. 257 :

———Commitment for contempt—Use of power.

The power to commit for contempt of Court is not to be lightly used and should be reserved for cases where the contempt is deliberate and of such a nature that committal is called for. *Tuljaram Rao v. Sir James Taylor, Governor of Reserve Bank of India*. (S. B.)

40 Cr. L. J. 533 :
181 I. C. 451 : 49 L. W. 29 :
1939 M. W. N. 113 : 11 R. M. 813 :
I. L. R. 1939 Mad. 466 :
1939 2 M. L. J. 843 :
A. I. R. 1939 Mad. 257.

———Contempt by speech, how committed.

Per *Mookerjee, J.*—Contempt by a speech or writing may be by scandalising the Court itself or by abusing parties to an action or by prejudicing mankind in favour of or against a party before the cause is heard. *In the matter of Amrita Bazar Patrika*.

19 Cr. L. J. 530 :
45 I. C. 338 : 21 C. W. N. 1161 :
26 C. L. J. 459 : 45 Cal. 169 :
A. I. R. 1918 Cal. 988.

———Contempt if can be committed when no case is pending.

It is no answer to an application for process for contempt that the proceedings had terminated when the Court was moved in the matter. Contempt can be committed when there is, technically speaking, no case pending. *Tushar Kanti v. Governor of Bengal*.

34 Cr. L. J. 662 :
143 I. C. 790 : 37 C. W. N. 276 :
60 Cal. 603 : I. R. 1933 Cal. 485 :
A. I. R. 1933 Cal. 118.

———Contempt of Court.

Comment which raises prejudicial atmosphere against persons who are on their trial constitutes contempt of Court. *Anant Lal Singh v. Alfred Henry Watson*.

32 Cr. L. J. 675 :
131 I. C. 267 : 35 C. W. N. 189 :
58 Cal. 884 : I. R. 1931 Cal. 443 :
A. I. R. 1931 Cal. 257.

———Contempt of Court—Complaint of abduction against certain persons—During pendency of matter in Courts—Editor of newspaper publishing complaint with scare headlines and comments—Publication held contempt of Court.

A person filed a complaint complaining that his wife had been enticed away by several persons. While the matter was pending in the Courts, the complainant took a copy of his complaint to an editor of a newspaper. Without making the least enquiry as to what had happened, the editor proceeded to publish the complaint with scare headlines: *Held*, that the publication was bound to tend to prejudice the hearing of the

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case and, therefore, amounted to contempt of Court. *In re : Vidya Sagar Kapur, Editor*.

40 Cr. L. J. 156 (b) :
178 I. C. 990 : 40 P. L. R. 791 : 11 R. L. 512 :
A. I. R. 1938 Lah. 815.

———Contempt of Court.

'Court' means Judges who constitute it; contempt of Court involves contempt of their authority and contempt of their power, kinds of contempts enumerated. *In the matter of Tushar Kanti Ghosh, Editor, Amrita Bazar Patrika*. (F. B.)

36 Cr. L. J. 1053 :
156 I. C. 1055 : 39 C. W. N. 770 :
61 C. L. J. 376 : 8 R. C. 53 :
A. I. R. 1935 Cal. 419.

———Contempt of Court of Record—Procedure to adopt.

When contempt of a Court of Record is committed, the Court may issue a rule calling upon the person charged to show cause why he should not be adjudged guilty of contempt or issue attachment under which that person might be arrested and brought into Court for a similar purpose. *In the matter of, William Taylor*.

19 Cr. L. J. 402 :
44 I. C. 930 : 26 C. L. J. 345 :
A. I. R. 1918 Cal. 713.

———Contempt of Munsif's Court—High Court—Jurisdiction—Common Law Jurisdiction—Charter Act (24 & 25 Vic. C. 104), S. 15.

In dealing with cases of the contempt of the lawful authority of the Civil and Criminal Courts subordinate to a High Court, the High Court possesses the same jurisdiction as the old Court of King's Bench in England but no such jurisdiction has been conferred on the High Court by virtue of S. 15 of the Charter Act. *In the matter of, Venkat Row*. 12 Cr. L. J. 525 :
12 I. C. 293 : 10 M. L. T. 209.

———Contempt proceedings—Nature of—Rule of evidence, applicable.

Per *Woodroffe, J.*—All proceedings, whether in respect of civil or criminal contempts, are of a criminal nature. But it does not follow that the procedure in such cases is in all respects the same as in an ordinary criminal case. In fact both the offence of contempt as also the jurisdiction and procedure under which it is tried are *sui generis*. There is but one rule of evidence which in India applies both to civil and criminal trials, and that is contained in the definition of "proved" and "disproved" in S. 3 of the Evidence Act. Per *Mookerjee, J.*—A criminal contempt is conduct that is directed against the dignity and authority of the Court. A civil contempt, on the other hand, is failure to do something ordered to be done by a Court in a civil action for the benefit of the opposing party therein. Consequently in the case of a criminal contempt, the proceeding conforms as nearly as possible to proceedings in criminal case. In the case of a civil contempt, the proceeding in its initial stages at least may be deemed as instituted at the instance of a party and thus to possess a civil character. But here also refusal to obey the order of the Court may render it necessary for the Court to adopt punitive measures against the persons who

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have defied its authority; at that stage at least the proceedings may assume a criminal character. In both the cases, a proceeding to punish for contempt has the essential qualities of a criminal proceeding. *In the matter of, Amrita Bazar Patrika.* 19 Cr. L. J. 530 :

45 I. C. 338 : 21 C. W. N. 1161 :

26 C. L. J. 459 : 45 Cal. 169 :

A. I. R. 1918 Cal. 988.

—————Counsel's privilege does not extend to stating his instructions when these instructions involve an attack on the dignity of the Court. *In the matter of Mr. Sham Lal.*

33 Cr. L. J. 675 :

138 I. C. 878 : 33 P. L. R. 785 :

I. R. 1932 Lah. 543 : A. I. R. 1932 Lah. 502.

—————Court, if can take action suo motu.

The charge of contempt may be made by the Court itself upon its own knowledge of facts which, if sworn to by any one to the best of his belief, would have made a *prima facie* case of contempt of Court. *In the matter of William Taylor.* 19 Cr. L. J. 402 :

44 I. C. 930 : 26 C. L. J. 345 :

A. I. R. 1918 Cal. 713.

—————Court ordering Anglo-Indian lady to deliver custody of child to his father—Deliberate disobedience—Contempt of Court.

The father of a Guzerati boy applied for the restoration to him of his child, and that the respondent to the application, one Anglo-Indian lady, who looked after the child for a long time with the applicant's concurrence should be committed to prison for contempt of Court. In a previous proceedings the applicant was appointed the guardian and was ordered to have the custody of the boy and was to take him out for a change. The lady, however, refused without reason to deliver the boy : *Held*, that the lady was guilty of contempt of Court. (The lady was ordered to pay costs and severely warned). *In re : Rajani Kanta Padia.* 39 Cr. L. J. 466 :

174 I. C. 785 : 10 R. C. 717 :

A. I. R. 1938 Cal. 38.

—————Court's jurisdiction, when can be invoked.

The Court's jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice. Court will not exercise its jurisdiction upon a mere question of propriety where the tendency of the article to do harm is slight and the character and circumstances of the comment are otherwise such that it can properly be ignored. *Ananta Lal Singh v. Alfred Henry Watson.* 32 Cr. L. J. 675 :

131 I. C. 267 : 58 Cal. 884 : 35 C. W. N. 189 :

I. R. 1931 Cal. 443 :

A. I. R. 1931 Cal. 257.

—————Criminal proceedings by mokhasadar against ryots—Pending proceedings, person issuing pamphlet accusing mokhasadar of having deliberately filed false cases and oppressed ryots—Contempt held was of grave nature.

A mokhasadar filed criminal proceedings against his ryots. While these proceedings

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were pending, a person issued a pamphlet accusing the mokhasadar of having deliberately launched false cases against his ryots, and in other ways, oppressing them : *Held*, that the contempt was of a very grave nature. *Gottipulla Bapayya Naidu v. Peta Bapayya.*

40 Cr. L. J. 169 :

179 I. C. 91 : 1938 M. W. N. 1008 :

11 R. M. 521 : 1938 2 M. L. J. 520 :

A. I. R. 1938 Mad. 975.

—————Criminal offence—Comment on pending case—Offence to be proved by legal evidence.

A contempt of Court for making comments in a newspaper on pending case is a criminal offence, and must be proved by legal evidence. The connection of the accused with the impugned article in the newspaper must be shown by legal evidence. *Governor of Bengal v. Moti Lal.* (S. B.) 14 Cr. L. J. 321 :

20 I. C. 81 : 17 C. W. N. 1253.

—————Criminal Proceedings pending—Member of Legislative Assembly writing letter requesting not to proceed with case—Copy of letter sent to Deputy Commissioner—Member held guilty of contempt of Court.

A member of Legislative Assembly wrote a letter to Sub-Divisional Officer in respect of proceedings pending before him against certain tenants under S. 107, Cr. P. C., requesting him not to proceed with the case. A copy of the letter was forwarded to Deputy Commissioner as well : *Held*, that the writing of the letter grossly offended against the law of contempt of Court. *Mahabir Prasad v. C. B. Gupta.* 181 I. C. 714 :

1939 O. W. N. 525 : 1939 O. L. R. 363 :

11 R. O. 323 (2) : 14 Luck. 653 :

A. I. R. 1939 Oudh 180.

—————Criticism of sentence.

To say that a sentence is "cruel," may be a contempt of Court, though it would be no contempt if the remark is merely that the sentence is a severe one. *In the matter of, Banks and Fenwick.* 19 Cr. L. J. 449 :

45 I. C. 113 : 26 C. L. J. 401 :

A. I. R. 1918 Cal. 249 (2).

—————Defendant's written statement containing defamatory matter regarding plaintiff's son—Plaintiff applying to Court for striking out these matters—Notice on defendant, by plaintiff's son, demanding payment of damages within certain time or else he would institute action for defamation—Application and notice held no contempt of Court.

Where in a suit, the defendant files a written statement describing the plaintiff's son with a defamatory and abusive epithet, and the plaintiff makes an application to the Court for striking out the defamatory epithet and his son serves a notice on the defendant demanding payment of damages for defamation within certain time or that an action would be brought for defamation, the application and the notice do not amount to contempt of Court 159 Ind. Cas. 193 (1), distinguished. *Baldeo Sahai v. Shiva Datt Sharma.* 41 Cr. L. J. 390 :

187 I. C. 65 : 1939 A. L. J. 1157 :

12 R. A. 486 : A. I. R. 1940 All. 114.

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—During pendency of proceedings under S. 107, Criminal Procedure Code (Act V of 1898), against certain persons, an M. L. A. writing to Magistrate to withdraw proceedings against one of them—Contempt of Court held committed.

No member of the Legislative Assembly has any right to interfere in the course of administration of criminal justice. While proceedings under S. 107, Cr. P. C., were pending, a member of the Legislative Assembly wrote a letter to the Magistrate with the intention that the proceedings against one of the persons should be withdrawn: *Held*, that the latter grossly offended against the law of contempt of Court. *District Magistrate, Sultanpur v. Ramjas Yadava*. 41 Cr. L. J. 233 : 185 I. C. 754 : 1940 O. L. R. 40 : 12 R. O. 280 : A. I. R. 1940 Oudh 178.

—Discussion of propriety of verdict or payment, when contempt.

It is lawful to discuss with decency and candour the propriety of the verdict of a Jury or the decision of a Judge but if a publication in a newspaper contains no reasoning or discussion but only declamation and invective and is written not with a view to elucidate the truth but to injure the character of individuals and to bring into hatred and contempt the administration of justice in the country, it will amount to contempt of Court. *Emperor v. Murl Manohar Prasad*. 30 Cr. L. J. 741 : 117 I. C. 180 : 9 P. L. T. 837 : 8 Pat. 323 : I. R. 1929 Pat. 338 : A. I. R. 1929 Pat. 72.

—Duty of Magistrates.

It is the duty of all Magistrates who receive letters attempting to prejudice their minds in regard to the pending trials before them or upon whom any attempt is made to bring improper influence to bear in connection with their magisterial work to bring the fact to the notice of the Chief Court. *Mahabir Prasad v. M. C. B. Gupta*.

181 I. C. 714 : 1939 O. W. N. 525 : 1939 O. L. R. 363 : 11 R. O. 323 (2) : 14 Luck. 653 : A. I. R. 1939 Oudh 180.

—Editor publishing articles—Test in such cases.

Where the question is only whether the editor has been guilty of abusing and vilifying the parties to a pending suit in relation to their defence and thereby prejudicing a fair trial, the test is not whether the writings have in fact obstructed or interfered with the administration of justice, or will obstruct or interfere with the administration of justice, but whether they are calculated to do so, or whether it is likely that they will have that effect. The intention of the writer may often be of secondary importance the question is, what is the effect of the articles and have they a tendency to obstruct and interfere with the due and proper course of administration of justice. *Demibai Gengji Sojpal v. Rowji Sojpal*.

170 I. C. 631 : 39 Bom. L. R. 471 : 10 R. B. 108 : A. I. R. 1937 Bom. 305.

—Evasion of warrant of Sessions

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Court by accused and misrepresentation in revision application that he was in jail.

The accused commits contempt of Court by evading the warrants of the Sessions Court and also by having the misrepresentation made in his application of revision to Court that he was in jail and should be released on bail. *Mumtaz v. Chhulwa*. 41 Cr. L. J. 741 : 189 I. C. 468 : 1940 A. L. J. 309 : I. L. R. 1940 All. 507 : 13 R. A. 115 : A. I. R. 1940 All. 386.

—Every private communication to Judge for influence his decision on pending matter is contempt of Court—Held on facts that there was no contempt of Court.

Every private communication to a Judge for the purpose of influencing his decision upon a pending matter is contempt of Court: *Held*, on facts that the letter in question was not written with the intention of influencing the Magistrate. *Ram Shankar v. Shukla*.

40 Cr. L. J. 566 (b) : 181 I. C. 466 : 1939 O. W. N. 522 : 1939 O. L. R. 314 : 11 R. O. 307 : 14 Luck. 649 : A. I. R. 1939 Oudh 182.

—Final judgment, delivery of, whether ousts Court's jurisdiction.

A final judgment does not oust the jurisdiction of the Court to protect its integrity and impartiality against scandalous attacks. *In re : Satyabodha Ramchandra*. 23 Cr. L. J. 644 : 69 I. C. 8 : 24 Bom. L. R. 928.

—Headlines in newspaper criticising pending case.

Headlines in a newspaper of reports of a case pending at the time constitute contempt of court when they would appear to a casual reader as comment, or when they amount to a criticism of the prosecution case under the guise of a summary of the day's proceedings. *Tushar Kanti v. Government of Bengal*.

34 Cr. L. J. 662 : 143 I. C. 790 : 60 Cal. 603 : 37 C. W. N. 276 : I. R. 1933 Cal. 485 : A. I. R. 1933 Cal. 118.

—Healthy criticism not discouraged.

Per Crump, J.—Healthy criticism pointing out the shortcomings of Courts should not be checked as long as it does not impute to them corrupt motives. *In re : Satyabodha Ramchandra*.

23 Cr. L. J. 644 : 69 I. C. 8 : 24 Bom. L. R. 928.

—High Court's inherent power to punish for contempt—Whether taken away by Contempt of Courts Act (XII of 1926).

The inherent power of the High Courts as superior Courts of Record to punish contempt of themselves has not been taken away by the Contempt of Courts Act. A non-Presidency High Court is a Superior Court of Record, and, this being so, the jurisdiction to punish for contempt of itself is inherently vested in every High Court. It is a necessary incidence of this jurisdiction that such contempts are

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punishable summarily by committal. *In the matter of : Lala Harkishen Lal.* (S. B.)

38 Cr. L. J. 883 :
170 I. C. 375 : I. L. R. 1937 Lah. 69 :
39 P. L. R. 733 : 10 R. L. 103 (2) :
A. I. R. 1937 Lah. 497.

———*High Court's power, extent of.*

Per Macpherson, J.—The High Court has power to proceed by way of contempt even when the contempt is not committed in Court or during the pendency of a suit. *In the matter of : Banks and Fenwick.* 19 Cr. L. J. 449 :
45 I. C. 113 : 26 C. L. J. 401 :
A. I. R. 1918 Cal. 249 (2).

———*High Court—Powers of—Superior Court of record.*

Per Curiam.—The High Courts in India are superior Courts of Record, like the superior Courts in England and the High Court has power to punish summarily a contempt of Court committed by the publication of a libel on the Court or on the Judges when the Court is not sitting. *In the matter of : Amrita Bazar Patrika.* 19 Cr. L. J. 530 :
45 I. C. 338 : 21 C. W. N. 1161 :
26 C. L. J. 459 : 45 Cal. 169 :
A. I. R. 1918 Cal. 988.

———*High Court, power of, to punish summarily for contempt—Advertisement for demonstration against Judge, whether contempt.*

Per Peacock, C. J.—An advertisement published in a newspaper for a demonstration against a Judge for acts done in Court may be a contempt of Court as well as defamation, although it cannot be said that in every case a demonstration got up in order to obtain an expression of public opinion concerning the acts of a Judge would be a contempt. *In the matter of : Banks and Fenwick.* 19 Cr. L. J. 449 :
45 I. C. 113 : 26 C. L. J. 401 :
A. I. R. 1918 Cal. 249 (2) :

———*High Court's summary jurisdiction.*

The High Court, as a Court of Record, has jurisdiction to deal summarily with contempts of the Court. *In the matter of : Habib.*

26 Cr. L. J. 1409 :
89 I. C. 833 : 6 Lah. 528 :
A. I. R. 1926 Lah. 1.

———*High Court—Jurisdiction—Power of High Court to commit for contempt of Mofussil Magistrate.*

The High Court has no jurisdiction to punish as an offence in a summary proceeding conduct in relation to a proceeding in the Mofussil Criminal Court, such as commenting on a case pending before that Court, as such jurisdiction is not inherited from any of the three abolished Courts—the Supreme Court, the Sudder Dewany and the Sudder Nizamut Adalats—and is not vested in the High Court by the Charter Act of 1861 or the Letters Patent under that Act, and as such, conduct is not contempt of the High Court, and the High Court's power of superintendence over the Mofussil Courts does not imply any power of protecting those Courts from improper interference. *Governor of Bengal v. Moti Lal.* (S. B.) 14 Cr. L. J. 321 :
20 I. C. 81 : 17 C. W. N. 1253.

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———*High Court's summary power to punish—Disobedience of summons to appear as witness, whether contempt—C. P. C. (Act V of 1908), O. XVI, rr. 12, 17—Cr. P. C. (Act V of 1908), S. 480—Penal Code (Act XLV of 1860), S. 174 Special penalties, whether effect summary jurisdiction of High Court—Summary procedure, when to be resorted to.*

Disobedience to a subpoena issued by a Court amounts to a contempt of the Court and neither the summary remedy provided by rr. 12 or 17 of O. XVI of the C. P. C., and S. 480, Cr. P. C., nor the penalty provided by S. 174, I. P. C., affects the special jurisdiction of the High Court to punish summarily such contempts of the authority. But the summary procedure is not to be resorted to if the ordinary methods provided by law can satisfactorily accomplish the desired result, namely, to put an efficient and timely check upon such malpractices. *Ebrahim Mamooje Parekh v. Emperor.* 27 Cr. L. J. 1241 :
98 I. C. 57 : 4 Rang. 257 :
A. I. R. 1925 Rang. 188.

———*Humorous comments.*

When, during the pendency of a trial, a serious charge made against an accused person is treated by a journalist as a humorous event on which the public are invited to laugh, it is a matter that must be dealt with seriously. To talk humorously of an accused person's ill-health and to make light of a serious matter, is a most objectionable practice on the part of a journalist. *In re : Claridge.*

13 Cr. L. J. 461 :
15 I. C. 93 : 14 Bom. L. R. 231.

———*Ill-treatment of process-server, whether contempt.*

It is contempt of Court to assault, ill-treat or threaten a process-server engaged in his duty. The object in punishing for contempt in such a case is not to vindicate the dignity of the Court but to prevent undue interference with the administration of justice. The law has armed the Court with the power and imposed on it the duty of preventing *breve manu* and by summary proceedings any attempt to interfere with the administration of justice. It is on that ground and not on any exaggerated notion of the dignity of individuals that insults to witnesses, jurymen and process-servers are not allowed. The principle is that those who have duties to discharge pursuant to orders of Court are protected by the law and shielded on their way to the discharge of such duties while discharging them and on their return therefrom in order that such persons may safely have resort to Courts of Justice and carry out their orders. The test in such matters is, did the person in question abuse or maltreat the serving clerk while he was engaged in the execution of his duty. *C. A. H. Skone v. F. N. Bason.*

26 Cr. L. J. 1205 :
88 I. C. 725 : 29 C. W. N. 766 :
41 C. L. J. 515 : A. I. R. 1925 Cal. 945.

———*Imputation of improper motives to a Judge—Action, when to be taken.*

It is no offence to subject the decisions of the Judges of the High Court to fair, honest and

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reasonable criticism. Such criticism may be couched in strong, perhaps, even extravagant language, but to ascribe their decisions not to error but to improper motives, is to bring the Judge himself and the whole Court into contempt. *In the matter of: Muslim Outlook, Lahore.*

28 Cr. L. J. 727 :

103 I. C. 775 : 8 A. I. Cr. R. 408 :

9 Lah. L. J. 455 : A. I. R. 1927 Lah. 610.

—In criminal case complainant's witness making defamatory statements against accused—Accused, if entitled to file defamation complaint against witness during trial of case—Such complaint filed before same Magistrate after examination and cross-examination of witnesses before charge—Complaint held bona fide and did not amount to contempt of Court.

Where in a criminal case against an accused, a complainant's witness during the course of his examination makes a defamatory statement against the accused, the accused is entitled to make a complaint of defamation against the witness to protect his good name. Where such a complaint is made by him to the same Magistrate trying the original case after six months of the incident and after the whole of the witnesses in the original case were examined and cross-examined before charge, the complaint is a *bona fide* act and not an act aimed at putting pressure to bear on witnesses or calculated to prejudice the trial of the original case against the accused. The accused is not, therefore, guilty of contempt of Court. In such a case, hearing of the case of defamation should not be taken up until such time as the original case against the accused has been disposed of. *Mohammad Yusuf v. Imtiyaz Ahmad Khan.*

40 Cr. L. J. 569 :

181 I. C. 575 : 1939 O. W. N. 467 :

1939 O. L. R. 336 : 11 R. O. 308 :

A. I. R. 1939 Oudh 225.

—Interference with property under Receiver amounts to contempt of Court—Act also punishable under Penal Code—Contempt does not become punishable under Penal Code—High Court can take cognizance of such contempt. *Narayan Chandra Chatterjee v. Panchu Pramanik.*

37 Cr. L. J. 65 :

159 I. C. 180 : 40 C. W. N. 413 :

8 R. C. 287 : A. I. R. 1935 Cal. 684.

—Interrogatories served—Answers defamatory of the presiding officer—No proceedings under Contempt of Courts Act should be taken—Remedy is under Penal Code. *Zia-ul Hasan v. Aziz Ahmed.*

36 Cr. L. J. 867 :

156 I. C. 542 : 1935 A. L. J. 950 :

8 R. A. 12 (1) : 1935 A. W. R. 934 :

A. I. R. 1935 All. 896.

—It is a contempt of Court to prejudice or attempt to prejudice a litigant before it and to interfere with the course of justice. *In the matter of: Amrita Bazar Patrika.*

19 Cr. L. J. 530 :

45 I. C. 338 : 21 C. W. N. 1161 :

26 C. L. J. 459 : 45 Cal. 169 :

A. I. R. 1918 Cal. 988.

—It is wrong to say that there can be no contempt of Court except in respect of a case which has been heard or is pending. *In the*

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matter of, Tushar Kanti Ghosh, Editor, Amrita Bazar Patrika.

36 Cr. L. J. 1053 :

156 I. C. 1055 : 61 C. L. J. 376 :

39 C. W. N. 770 : 8 R. C. 53 :

A. I. R. 1935 Cal. 419.

—Jurisdiction of Court to punish for contempt.

The jurisdiction to punish for contempt of Court is inherent in the Calcutta High Court as a Court Record. But the Court always exercises its power of punishing a contempt with great forbearance and acts with scrupulous care. It deals with such questions in the interest of the public. In other words, the Court does not interfere where the offence is of a slight or trifling nature and it only interferes where there is a real attempt to obstruct the course of justice. *A. H. Skone v. V. N. Bason.*

26 Cr. L. J. 1205 :

88 I. C. 725 : 29 C. W. N. 766 :

41 C. L. J. 515 : A. I. R. 1925 Cal. 945.

—Jurisdiction of Single Judge of High Court to issue writ.

A rule to show cause why a person should not be committed or otherwise dealt with for contempt of Court may be issued by any single Judge or a number of Judges of a Court of Record. *Emperor v. Murli Manohar Prasad.*

30 Cr. L. J. 741 :

117 I. C. 180 : 9 P. L. T. 837 :

8 Pat. 323 : I. R. 1929 Pat. 338 :

A. I. R. 1929 Pat. 72.

—Jurisdiction, when to be exercised.

The jurisdiction which the Court has in respect of a contempt of Court should only be exercised when the case is beyond all reasonable doubt, and this should especially be the case when the proceedings are at the instance of the Court itself. *In the matter of: Amrita Bazar Patrika.*

19 Cr. L. J. 530 :

45 I. C. 338 : 21 C. W. N. 1161 :

26 C. L. J. 459 : 45 Cal. 169 :

A. I. R. 1918 Cal. 988.

—Kinds of contempt—Object of punishment.

Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority, or calculated to obstruct or interfere with the due course of justice, or the lawful process of the Courts, is a contempt of Court. But if reasonable argument or any expostulation is offered against judicial act as contrary to law or the public good, a Court could or would treat that a contempt of Court. The jurisdiction to punish for contempt is a jurisdiction, to be exercised only when the case is clear and beyond reasonable doubt. The Judge of a superior Court is precluded by considerations of decency of taking proceedings for libel or slander before the ordinary tribunals which are subject to his own jurisdiction, and he requires, therefore, in the exercise of his office a special protection in order that his authority and dignity may be maintained. A Judge should neither fear nor resent public criticism, whether of his judgment in matters of law or his judgment in matters of fact but it is his duty to protect the dignity of

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his office and to punish those who offer it affront. Punishment is inflicted for attacks of this character upon Judges, not with a view to protect either the Court or the individual Judges but with a view to protect the public, and especially those who, either voluntarily or by compulsion, are subject to the jurisdiction of the Court, from the mischief they will incur. *Emperor v. Murli Manohar Prasad*.

30 Cr. L. J. 741 :
117 I. C. 180 : 9 P. L. T. 937 : 8 Pat. 323 :
I. R. 1929 Pat. 338 : A. I. R. 1929 Pat. 72.

—Language which strikes at the root of all respect for the Court and its authority amounts to contempt—Criticism of Judge or Court, how far justifiable.

Any act done or writing published, calculated to bring a Court or a Judge of the Court into contempt or to lower his authority, or to obstruct or interfere with the due course of justice or the lawful process of the Court, is a contempt of Court. But if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, it is not a contempt of Court. *In re : Narsinha v. Kelkar*.

8 Cr. L. J. 426 :
4 M. L. J. 359 : 10 Bom. L. R. 1010.

—Liability of directors of company carrying on newspaper.

Per Woodroffe.—The question whether persons in the position of directors of a company carrying on a newspaper are responsible for contemptuous articles published in the paper must depend upon the facts of each case. Per *Mookenjee*.—It cannot be held as a matter of law that the directors of a limited company which owns a newspaper are liable to be committed for contempt of Court on account of a libel published in the paper. *In the matter of Amrita Bazar Patrika*.

19 Cr. L. J. 530 :
45 I. C. 338 : 21 C. W. N. 1161 :
26 C. L. J. 459 : 45 Cal. 169 :
A. I. R. 1918 Cal. 169.

—Liability of Printer and Publisher.

The printer and publisher of a newspaper is liable for contempt even though he was not aware of the subject constituting such contempt. *In the matter of : Amrita Bazar Patrika*.

19 Cr. L. J. 530 :
45 I. C. 338 : 21 C. W. N. 1161 :
26 C. L. J. 459 : 45 Cal. 169 :
A. I. R. 1918 Cal. 988.

—Liability of Printer—Extent of.

If a printer prints anything that is libellous, it is no excuse to say that he had no knowledge of the contents of the paper and was entirely ignorant of its being libellous. *In the matter of, William Taylor*.

19 Cr. L. J. 402 :
44 I. C. 930 : 26 C. L. J. 345 :
A. I. R. 1918 Cal. 713.

—Libel on parties to suit not interfering with administration of justice—Remedy of aggrieved party.

A libel on the parties to a suit which does not amount to an interference with the course of administration of justice is a matter in respect of which aggrieved party can have his remedies elsewhere. But he cannot proceed in contempt

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against the author of the libel. *Danibai Genji Tejpal v. Raxji Tejpal*. 38 Cr. L. J. 942 :
170 I. C. 631 : 39 Bom. L. R. 471 :
10 R. B. 108 : A. I. R. 1937 Bom. 305.

—Mere statement in letter that view taken by Collector had emboldened opposite party to commit wrong—Held, on facts, did not constitute contempt.

The owners of two adjoining estates, A and B between which a river ran had given an undertaking to the Government that they would not add to or alter the embankments without permission of Government. On a breach having occurred on the embankment of estate B, a new embankment was constructed in a semi-circular fashion thus increasing the length. Thereupon the owner of the estate A complained to the Magistrate about the breach of the undertaking. While this was pending, the manager of B estate wrote a letter to the Collector. On receiving a copy of this the manager of estate A wrote to the Collector referring to the breach of the undertaking and stating that the Collector's view of the case had emboldened the people of estate B: *Held*, there was nothing in the nature of a criticism of a judicial decision which would tend to bring the Court into contempt or diminish its authority and hence it did not constitute contempt of Court. *Emperor v. Girindra Mohan Misra*. 38 Cr. L. J. 5412 :
167 I. C. 646 : 18 P. L. T. 113 : 9 R. P. 413 :
3 B. R. 305 : A. I. R. 1937 Pat. 124.

—M. L. A. issuing instructions to District Magistrate in respect of pending criminal case.

No member of the Legislative Assembly has any right to interfere in the course of the administration of criminal justice. Where therefore a member of a Legislative Assembly taking advantage of his position issues instructions to a District Magistrate in respect of a pending criminal case, which can only be issued by the High Court, he is guilty of contempt of Court. *Emperor v. Gajadhar Prasad*.

181 I. C. 558 : 1939 A. L. J. 99 : 11 R. A. 575 :
1939 A. W. R. 128 : A. I. R. 1939 All. 247.

—Nature of Proceedings.

An application in contempt of Court need not necessarily be heard by the High Court on its Crown Side and the party, if represented, need not necessarily appear through an Advocate instructed by an Attorney. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Khagendra Nath Das*. 32 Cr. L. J. 352 :
129 I. C. 366 : 34 C. W. N. 928 : 58 Cal. 458 :
I. R. 1931 Cal. 174 : A. I. R. 1930 Cal. 759.

—Newspaper article—Apology.

Accused, being the Editor, Printer and Publisher of a newspaper, published an article in his paper which was a gross libel on the Judges of the High Court. A few days afterwards he published an apology. In a proceeding for contempt: *Held*, that the apology could not be accepted, as, while it might be to some extent a reparation, it could not overtake and counteract the mischief already done by the original publication. *In re : Marmada's Pickthall*.

24 Cr. L. J. 313 :
72 I. C. 73 : 25 Bom. L. R. 107.

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—Necessity of punishment—Inherent power of Court to punish—Whether restricted by Criminal Procedure Code.

The inherent power of the Court to punish for contempt of Court is a power which is essential in the interests of the administration of justice and that that power is not restricted in any degree by the provisions in the Cr. P. C., relating to proceedings which may be instituted with the sanction of the Government where the Courts or His Majesty's Judges have been defamed. *In the matter of: An Advocate of Allahabad.*

154 I. C. 955 : 1935 A. L. J. 125 : 7 R. A. 827 :
4 A. W. R. 1155 : A. I. R. 1935 All. 1.

—Newspaper article attributing to Judge lack of experience and sense of responsibility—Enquiry into circumstances under which judgment was given suggested—Allegations held amounted to contempt.

In approaching an article with a view to attempting to ascertain what it means, the only rule is to ascertain and to place upon that article reasonable interpretation. A newspaper article while criticising the judgment delivered by a Judge of the Lahore High Court attributed to the Judge deplorable lack of experience and of a sense of responsibility and a remarkable want of competence and it went on to state that an inquiry should be made into the circumstances under which that extraordinary judgment was written because there was a *bona fide* apprehension that there must have been an extraordinary cause for its patent aberration which it was a public duty to expose: *Held*, that the allegations contained in the article amounted to clear contempt of Court. *Semble*.—It does not amount to contempt of Court to call upon a Judge to resign his seat on the Bench. *In the matter of: Muslim Outlook, Lahore.*

28 Cr. L. J. 727 :
103 I. C. 775 : 8 A. I. Cr. R. 408 :
9 Lah. L. J. 455 :
A. I. R. 1927 Lah. 610.

—Newspaper articles—Journalistic privilege—Imputation of discharge.

In determining whether an article published in a newspaper constitutes a contempt of Court, the point to be considered is the natural and probable effect of the article, and not only the avowed intention of the Editor. Where the article, as a whole, would leave on the mind of an ordinary reader the clear impression that injustice had been deliberately done in the trial of a case, the publication of such an article would constitute a contempt of Court. Judges and Courts are alike open to criticism, and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court. But it is to be remembered that in this matter, the liberty of the press is no greater and no less than the liberty of every subject. It is a jurisdiction, however, to be exercised only when the case is clear and beyond reasonable doubt. The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever lengths the subject in general may

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go, so also may the journalist, but apart from Statute Law his privilege is no other and no higher. No privilege attaches to his position. A journalist may say that a Judge is wrong or ignorant of law but if he accuses a Judge of dishonesty or corruption, transgresses the limit. *In re: Marmaduke Pickthall.*

24 Cr. L. J. 289 :
72 I. C. 17 : 25 Bom. L. R. 15 :
A. I. R. 1923 Bom. 8.

—Newspaper article publishing "....." when a comparatively undeserving lawyer is raised to the Bench which is a fairly frequent occurrence in our judicial history, it is generally claimed, etc.—Article held amounted to contempt—Fact that large population resorting to Court is illiterate is of no importance in considering question of contempt. *In the matter of: An Advocate of Allahabad.*

154 I. C. 955 :
1935 A. L. J. 125 : 4 A. W. R. 1155 :
7 R. A. 827 : A. I. R. 1935 All. 1.

—Newspaper Article—Rules of construction.

In proceedings for contempt of Court, it is for the Court issuing the writ of contempt as a matter of law to construe words and phrases which have no technical significance and to decide what is their meaning and what is the effect which they are calculated to produce. *Emperor v. Murli Manohar Prasad.*

30 Cr. L. J. 741 :
117 I. C. 180 : 9 P. L. T. 837 : 8 Pat. 323 :
I. R. 1929 Pat. 338 : A. I. R. 1929 Pat. 72.

—Newspaper article—What has to be seen.

Per Sanderson, C. J. and Mukerjee, J.—In deciding whether an article published in a newspaper is or is not a contempt, the question is not whether the article in fact obstructed or interfered with the due course of justice but whether it is "calculated" to do this. *In the matter of: Amrita Bazar Patrika.*

19 Cr. L. J. 530 :
45 I. C. 338 : 21 C. W. N. 1161 :
26 C. L. J. 459 : 45 Cal. 169 :
A. I. R. 1918 Cal. 988.

—Newspapers, charging Mufussil Court with partiality pending proceedings—Remark, whether amounts to contempt of High Court—Bombay High Court, jurisdiction of, to deal with contempts of inferior Courts.

Every contempt of an inferior Court will not necessarily constitute a contempt of the High Court. All such cases must be considered on their own facts. A newspaper in commenting upon a criminal trial pending against certain volunteers of a Temperance Committee in a Mufussil Court said : ".....there is a thick rumour that on the day on which the volunteers were arrested, the trying Magistrate ran up the stairs of the Collector's office and called on Mr. Painter and that some whisper took place between them. Again, Police Sahibs sit in chairs on the Magistrate's dais and wink at each other." The paper further alleged that when the Pleader for the accused observed that it was right that co-witnesses should be examined on the same day or else there was

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fear of the Police torturing them, the Court adjourned the hearing one hour earlier than the hour of closing of the Court prescribed by law. The Local Government moved the High Court to take proceedings against the Editor for contempt. An objection as to jurisdiction was raised: *Held*, (1) that the remarks constituted a contempt of the Court, (2) that the High Court had jurisdiction to deal with the matter for the remarks amounted to its own contempt. *Per Macleod, C. J. (Shah J., contra)*.—The High Court of Bombay has the same powers of punishing for contempt as the Court of the King's Bench by virtue of the Common Law of England. *Emperor v. Balkrishna Gabind Kulkarni*. 23 Cr. L. J. 177 :

65 I. C. 75 : 24 Bom. L. R. 16 :
46 Bom. 59 : A. I. R. 1921 Bom. 52.

———*Newspaper comments on pending proceedings—Ignorance of pendency of proceedings no excuse—Summary procedure, when to be resorted to.*

It is a contempt to publish an article in a newspaper commenting on the proceedings in a pending criminal prosecution or civil action. But the summary jurisdiction to punish for contempt of this nature ought only to be exercised when it is probable that the publication will substantially interfere with the due administration of justice. It is not enough that there should be a technical contempt of Court: The fact that the accused was not aware of the pendency of proceedings in a Court when he wrote the article is not a valid defence. Any act done or writing published, which is calculated to bring a Court or a Judge into contempt or to lower his authority, or to interfere with the due course of justice or the lawful process of the Court, is a contempt of Court. *Government Advocate, Burma v. Saya Sein*.

31 Cr. L. J. 367 :
122 I. C. 282 : 7 Rang. 814 :
A. I. R. 1930 : Rang. 124.

———*Newspaper—Principles of construction to see if contempt is committed.*

Per Maokerjee, J.—The offending articles must be read as they stand and the words should be given their natural meaning by a fair interpretation of the language used and by a consideration of the general tone of the writing. Disclaimer on the part of the publisher as to intentional disrespect to the Court is not a sufficient defence when the purpose and meaning of the writing is obviously of a contrary import. No doubt if the language is fairly capable of an innocent interpretation, the Court will not read into it a sinister import. *In the matter of : Amrita Bazar Patrika*.

19 Cr. L. J. 530 :
45 I. C. 338 : 21 C. W. N. 1161 :
26 C. L. J. 459 : 45 Cal. 169 :
A. I. R. 1918 Cal. 988.

———No litigant is entitled to have any say in the selection of the Judges who are to constitute any Bench. *In the matter of : Mr. Sham Lal*.

33 Cr. L. J. 675 :
138 I. C. 878 : 33 P. L. R. 785 :
I. R. 1932 Lah. 543 : A. I. R. 1932 Lah. 502.

———*Object of proceedings for contempt—Article in newspaper containing comments on*

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finding of Magistrate, held amounted to contempt of Court—Tendering of apology by accused, if sufficient for securing immunity from punishment.

Object of proceedings for contempt is not the protecting of either the Court or individual Judges from a repetition of the offence of contempt but the protecting of the public, and especially those who either voluntarily or by compulsion are subject to its jurisdiction, from the mischief they will incur if the authority of the tribunal be undermined or impaired. (117 I. C. 180 (1) and 89 I. C. 833 (4), relied on.) An article in a newspaper containing comments on the finding of the Magistrate in an inquest under S. 176, Cr. P. C., into the death of a person which are tantamount to imputations of deliberate perversity, incapability and partiality to the Police are calculated to bring into contempt, the Magistrate, in his capacity as such, and the editor and the publisher of the newspaper are liable. The mere fact that an apology has been tendered by the accused is not a sufficient reason for securing immunity from punishment. (89 I. C. 833 (4), relied on.) *Advocate-General, Burma v. Maung Chit Maung*.

41 Cr. L. J. 445.
187 I. C. 308 : 12 R. Rang. 330 :
A. I. R. 1940 Rang. 70.

———*Object of proceedings whether to vindicate honour of Court.*

The object of proceedings in contempt is not so much to vindicate the dignity of the Court or the person of the Judge, as to ensure that every litigant in a Court of Justice has a fair and unprejudiced hearing at the trial on the merits of his case. *Demibai Gengji Sojjal v. Rowji Sojjal*.

38 Cr. L. J. 249 :
170 I. C. 631 : 39 Bom. L. R. 471 :
10 R. B. 108 : A. I. R. 1937 Bom. 305 :

———*Object of punishment.*

The object which a Court has in view in punishing for contempt of Court, is the protection of the public from the evil which will result if their faith in the authority and justice of Tribunals of the land were impaired. *In re : Satyabodha Ramchandra*.

23 Cr. L. J. 644 :
69 I. C. 8 : 24 Bom. L. R. 928.

———*Offender residing outside Presidency.*

The Madras High Court, as a Court of Record, has jurisdiction in all matters of contempt of Court arising in the Madras Presidency, even though the offenders happen to reside outside the Presidency. *Rajah v. Witherington*.

35 Cr. L. J. 962 :
149 I. C. 238 : 66 M. L. J. 650 :
39 L. W. 680 : 1934 M. W. N. 607 :
6 R. M. 613 : 57 Mad. 831 :
A. I. R. 1934 Mad. 423.

———*On information complainant genuinely obtaining warrant against certain person on certain address but such person found to be wrong—Unsuccessful use of that warrant to influence that person—Complainant again obtaining another warrant on right person—Held no contempt of Court.*

A person genuinely, on the information given by another, obtained a warrant against a person

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who lived at address given by the informant but had subsequently found out that that was a wrong person. Then an idea occurred to him to attempt to use this warrant as a lever for influencing that person. Having failed to do so, he then went to the Court and applied for a warrant against the right person, without stating that the previous warrant had been obtained against a wrong person: *Held*, that this was not a case of contempt of Court though it was possible that there might be some other offence committed such as criminal intimidation. *Abdul Hamid Mohammad Din v. Iqbal Hussain Mohd. Hussain*. 40 Cr. L. J. 571 : 181 I. C. 861 : 41 P. L. R. 130 : 11 R. L. 893 : A. I. R. 1939 Lah. 143.

—————One cannot escape either contempt or libel merely by relying upon a rumour. *In the matter of Amrita Bazar Patrika*.

19 Cr. L. J. 530 :
45 I. C. 338 : 21 C. W. N. 1161 :
26 C. L. J. 459 : 45 Cal. 169 :
A. I. R. 1918 Cal. 988.

—————*Order of High Court staying proceedings—Telegram by Vakil informing Magistrate of stay order—Order not communicated officially—Magistrate, refusal of, to adjourn case—Bona fides.*

An order of the High Court cannot be defied with impunity by a party or an officer who having knowledge of it chooses to disregard it. Notice of an order can be given otherwise than by an official communication of it. Where the liberty of subject is involved and the Court is dealing with the conduct of a responsible officer such as a Magistrate of same standing, it shall give the benefit of every doubt to the respondent, and when no inferences are possible, shall accept that which is consistent with the *bona fides* uprightness of the Magistrate. The High Court having made an order staying further proceedings in a criminal case pending before a Sub-Divisional Magistrate, the Vakil for the accused sent a telegram to the Magistrate informing him of the order. A formal petition was also filed supported by an affidavit of a person who was instructing the Vakil for the accused and who was present when the stay order was made by the High Court. This application was rejected and judgment was delivered the same afternoon. The accused applied to the High Court asking that the Magistrate be committed to prison for contempt of the High Court's orders: *Held*, (1) that the Magistrate was bound to obey the High Court's order; (2) that as the Magistrate had not refused to adjourn the cases knowing or having reason to believe that the High Court had stayed proceedings, he could not be said to be guilty of contempt. *Ponnuswami Aiyar v. Ganpathy Iyer*.

25 Cr. L. J. 753 :
81 I. C. 241 : 18 L. W. 809 :
45 M. L. J. 742 : 33 M. L. T. 130 :
1923 M. W. N. 919 :
A. I. R. 1924 Mad. 393.

—————*Order of Court restraining party from proceeding with certain proceedings in other Province—Party, if can disobey on advice—Jurisdiction—Prohibitory order of one High Court—Breach committed in jurisdiction of other High*

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Court—Former High Court, if has jurisdiction to commit person for contempt.

Where a party to a suit is served with a prohibitory order restraining him from proceeding with certain proceedings in other Province with respect to the subject-matter of the suit, the party prohibited is not justified in disobeying the order merely because he is advised or thinks that the order is wrong in law. Where such person commits breach of the order in the jurisdiction of such other High Court, the former High Court has jurisdiction to commit such person for contempt. *All India Sugar Mills, Ltd. v. Sunder Singh*. 39 Cr. L. J. 654 : 175 I. C. 872 : 11 R. C. 7 : A. I. R. 1937 Cal. 601.

—————*Penal Code (Act XLV of 1860), S. 288—Criminal Procedure Code (Act V of 1898), Ss. 480 to 484.*

A coarse expression used by a litigant but addressed to the Court can scarcely be treated as an intentional insult to the Court or an interruption of its proceedings, under S. 228, I. P. C., even if the expression was actually overheard by the presiding officer. Litigants are bound to conduct themselves in an orderly manner, but too much notice should not be taken of a sudden lapse, during a moment of excitement, into language which is unfortunately too common among the lower class of rustics and is not meant to be taken seriously. Where a litigant is detained and adopts a submissive attitude when brought before the Court later after the excitement has worn off, a due admonition or a petty fine at the most is sufficient for preservation of order. *Jit Singh v. Emperor*. 13 Cr. L. J. 567 : 23 P. W. R. 1912 Cr. : 15 I. C. 923.

—————*Pending trial—Comments by paper likely to prejudice fair trial.*

It amounts to a contempt of Court to make comments on a pending case, when the comments can in the least be taken to have effect of prejudicing the fair trial of an accused person. *In re : Claridge*. 13 Cr. L. J. 461 : 15 I. C. 93 : 14 Bom. L. R. 231.

—————*Person addressing threatening notice to Counsel demanding withdrawal of certain allegations of fact made in written statement of his client held guilty of contempt of Court.*

The law of contempt covers the whole field of litigation itself. Various persons have their respective contributions to make in the proper fulfilment of the task. They are necessarily the Judges or the Magistrates, the parties to the proceeding, or their agents or Pleaders or Advocates, the witnesses and the ministerial or menial staff of the Court. All these persons can well be described as the limbs of the judicial proceeding. Anything that tends to curtail or impair the freedom of the limbs of the judicial proceeding must, of necessity, result in hampering the due administration of law and in interfering with the course of justice. It must, therefore, be held to constitute contempt of Court. A person addressed a notice to a Counsel demanding that certain allegations in the written statement of his client should be

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withdrawn unconditionally and an apology tendered on pain of legal proceedings being taken against him. Another letter was sent by him or some one interested in him to the client complaining against the Counsel: *Held*, that the addressing of the notice and the letter to the Counsel was calculated to interfere with and to obstruct or divert the course of justice. The sender was, therefore, clearly guilty of contempt of Court. (*Helmarc v. Smith* (1), *In re: Johnson* (2), *Smith v. Lakeman* (3) and 159 I. C. 193 (4), relied on.) *The Telhara Cotton Ginning Co., Ltd. v. Kashinath Gangadhar Namjoshi*.

41 Cr. L. J. 209 :
189 I. C. 58 : 1939 N. L. J. 461 :
I. L. R. 1940 Nag. 69 : 13 R. N. 43 :
A. I. R. 1940 Nag. 110.

———Printer, like the Editor is equally liable for contempt. He cannot escape liability because he has very imperfect knowledge of English, though he publishes English daily. *Tushar Kanta Ghosh, Editor, Amrita Bazar Patrika*. (F. B.)

36 Cr. L. J. 1053 :
156 I. C. 1055 : 39 C. W. N. 770 :
61 C. L. J. 376 : 8 R. C. 53 :
A. I. R. 1935 Cal. 419.

———Proceedings for contempt are not brought to vindicate the character of any particular Judge or Judges but to protect the administration of justice.

154 I. C. 955 : 1935 A. L. J. 125 :
7 R. A. 827 : 4 A. W. R. 1155 :
A. I. R. 1935 All. 1.

———Proceedings in contempt—Purpose of.

Per Woodroffe, J.—In contempt cases, the Court does not seek to vindicate any personal interest of the Judges but the general administration of justice, which is a public concern. Proceedings for contempt by scandalising the Court are not obsolete. *In the matter of: Amrita Bazar Patrika*.

19 Cr. L. J. 530 :
45 I. C. 338 : 21 C. W. N. 1161 :
26 C. L. J. 459 : 45 Cal. 169 :
A. I. R. 1918 Cal. 988.

———Proceedings for contempt—Object of—*Held*, on facts, newspaper article amounted to contempt—Fact that large population resorting to Court is illiterate, whether important in considering question of contempt.

Proceedings for contempt are not brought to vindicate the character of any particular Judge or Judges who have been assailed, but to protect the administration of justice. The question of sensitiveness does not arise. The only question which the Court has to decide is whether the published article lowers or tends to lower the dignity and prestige of the High Court: *Held*, that the passage in the article in the newspaper clearly constituted a contempt of Court of which the High Court in the interests of the administration of justice was bound to take cognizance: *Held*, also that the fact that a large proportion of the population who resort to the Court for the decision of their disputes are illiterate is of little importance in considering this matter. Once the impression gains ground that the High Court is, to a certain extent, composed of lawyers who are deficient in character or

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capacity, that impression will soon be conveyed to the section of the populace which is illiterate. *In the matter of: An Advocate of Allahabad*.

154 I. C. 955 :
1935 A. L. J. 125 : 7 R. A. 827 :
4 A. W. R. 1155 : A. I. R. 1935 All. 1.

———Process for contempt—When to be issued.

The process of contempt of Court for scandalizing the Court, a process in which the Court is in effect both Prosecutor and Judge and in which respondent is deprived of the ordinary methods of trial, is one which should be sparingly used. The process should be used in this country only where attacks are made on the personal character of a Judge, or where base or improper motives in the decision of a case are attributed to a Judge. *Government Pleader, Bombay v. Tulsidas Subhanrao Jadhav*.

39 Cr. L. J. 440 :
174 I. C. 492 : 40 Bom. L. R. 75 :
I. L. R. 1938 Bom. 179 : 10 Radg. 457 :
A. I. R. 1938 Bom. 197.

———Publication of document forming part of record of case, before hearing.

All proceedings in cases pending before a Court of Justice must not be published until the case comes on for hearing before the Court. *In re: Kalidas J. Shaveri*.

21 Cr. L. J. 782 :
58 I. C. 462 : 22 Bom. L. R. 31 :
44 Bom. 443 : A. I. R. 1921 Bom. 322.

———Publication of letters in newspaper—Responsibility of printer.

If the printer of a newspaper publishes a letter with the name of an author attached to it, he must bear the responsibility if he is unable, when required, to prove that it was published with the authority of the person by whom it purports to have been signed. When letters amounting to contempt of Court are published in a newspaper, the Court has its election to punish both the author and publisher of the newspaper or either of them. *In the matter of: William Taylor*.

19 Cr. L. J. 402 :
44 I. C. 930 : 26 C. L. J. 345 :
A. I. R. 1918 Cal. 713.

———Publication of matter in relation to pending case.

To charge a Judge with presumptuous tyranny in a matter pending before him or to publish anything respecting that matter, whilst it is under consideration, with a view to induce the Judge to alter his course, is a grave contempt of Court. *In the matter of: William Taylor*.

19 Cr. L. J. 402 :
44 I. C. 930 : 26 C. L. J. 345 :
A. I. R. 1918 Cal. 713.

———Publication of pamphlet during pendency of proceedings, when amounts to contempt of Court.

A pamphlet published during pendency of proceedings is contempt of Court, if (1) it assumes the truth of certain facts which are connected directly or indirectly with the matters under consideration and awaiting decision in the appeal itself, (2) the document

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contains reflections of the gravest possible nature upon the conduct and the character of certain of the persons in the appeal, and (3) the pamphlet purports to predict that the appellants will be or are likely to be successful in the appeal and adds the comment in effect that if they are successful, law and justice will be defeated. *Bibhabati Devi v. Kumar Ramendra Narayan Roy*. 41 Cr. L. J. 148 :

185 I. C. 286 : 43 C. W. N. 333 :
I. L. R. 1939 (1) Cal. 399 : 12 R. C. 354 :
A. I. R. 1939 Cal. 672.

—Publication of *plaint reflecting severely on defendant's conduct*—Whether amounts to contempt.

The publication of a *plaint* may amount to contempt where it amounts to publication of a document reflecting severely on the conduct of the defendant. *Bennett Coleman & Co., Ltd. v. G. S. Monga*. 38 Cr. L. J. 73 :

165 I. C. 813 : 9 R. L. 305 :
38 P. L. R. 1166 : I. L. R. 1937 Lah. 31 :
A. I. R. 1936 Lah. 917.

—Publication scandalising Court.

To scandalise the Court is a contempt and hence any publication which scandalises the Court and lowers its prestige, is clearly a contempt, even though there is no record that similar publications have been held by the Courts in the past to constitute contempt. *In the matter of : An Advocate of Allahabad*.

4 A. W. R. 1155 :
1935 A. L. J. 125 : 7 R. A. 827 :
154 I. C. 955 : A. I. R. 1935 All. 1.

—Publications, when constitute contempts—Three kinds of offences—Publishing injurious misrepresentations of party to action—Fact that trial Judge would not be affected by article has no bearing on matter—Belief of publisher while publishing article—Held, article constituted gross contempt of Court.

All publications which offend against the dignity of the Court, or are calculated to prejudice the course of justice, will constitute contempts. Offences of this nature are of three kinds—namely, those which (1) scandalise the Court; or (2) abuse the parties concerned in causes there; or (3) prejudice mankind against persons before the cause is heard. To publish injurious misrepresentations directed against a party to the action, especially when they are holding up that party to hatred or contempt, is liable to affect the course of justice, because it may, in the case of a plaintiff, cause him to discontinue the action from fear of public dislike, or it may cause the defendant to come to a compromise which he otherwise would not come to, for a like reason. The fact that the trial Judge would not be affected by the article has no bearing on the matter. Whatever might have been the belief of the publisher at the time he published these articles, that belief will not protect him from the consequences if his publication has been of such a nature as to disturb the free course of justice. Where, therefore, while a suit was pending, an article was published which stated the defendant's case and inferred it to be true; made accusations

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against the plaintiffs as having ruined the defendants and of having concocted false criminal cases against them and further accusations of plaintiff using his influence maliciously and ended in an appeal for assistance for the defendants : *Held*, article constituted gross contempt of Court. *Raja Velugoti Sarvagna Kumara Krishna Yachendra Bahadur Varu of Venkatagiri v. N. V. Rama Naidu*. 39 Cr. L. J. 328 :

173 I. C. 455 : 1937 M. W. N. 1193 :
10 R. M. 589 : I. L. R. 1938 Mad. 545 :
1938 2 M. L. J. 81 : 48 L. W. 444 (2) :
A. I. R. 1938 Mad. 248.

—Publication of will as paid advertisement in a newspaper, when a suit in which its genuineness is in dispute, amounts to contempt of Court. *Guru Charan Prasad v. Vishnu Parradar*. 33 Cr. L. J. 259 (2) :

136 I. C. 282 : 53 All. 712 : 1931 A. L. J. 647 :
I. R. 1932 All. 170 : A. I. R. 1931 All. 420.

—Publishing and commenting on document forming part of the record of a pending case—High Court, power and duty of, to protect inferior Courts.

It is not permissible to publish comments on or extracts from any pending proceedings in a Court unless the leave of the Court is first obtained. It is a contempt to publish any part of the record of a case while proceedings are pending. The High Court has power to protect Courts of inferior jurisdiction, and in proper cases, it should extend its protection to Courts in the *Mofussil*. A District Judge wrote a letter to the Registrar of the High Court for determination of the question whether certain conduct of some of the legal practitioners practising in the District Judge's Court, was consistent with their duties as Advocates and Pleaders. The respondents, who were the Editor and Publisher of a newspaper, printed the letter together with their own comments while the proceedings were pending before the High Court : *Held*, that the respondents were guilty of contempt. *In re : Mohandas Karamchand Gandhi*. 51 Cr. L. J. 835 :

58 I. C. 915 : 22 Bom. L. R. 368 :
A. I. R. 1920 Bom. 175.

—Punishment—Apology—Practice.

The power of committing a citizen or a journalist to jail or of inflicting a fine on him for contempt of Court, or punishing him in any other way, such as making him pay costs, should be exercised with the greatest caution. Contempt matters are matters not between parties but are matters between the respondents and the Court, and the Court can accept an apology which it considers sufficient. *In re : Claridge*. 13 Cr. L. J. 461 :

15 I. C. 93 : 14 Bom. L. R. 231.

—Punishment by summary procedure—Object of, stated—Essence of contempt indicated. *In the matter of : Tushar Kanti Ghosh, Editor Amrita Bazar Patrika*. 36 Cr. L. J. 1053 :

156 I. C. 1055 : 39 C. W. N. 770 :
61 C. L. J. 376 : 8 R. C. 53 :
A. I. R. 1935 Cal. 419.

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—Purpose of proceedings for contempt.

It is imperative that the judicial independence of the presiding officers of the Courts below be maintained with a strong hand. It is further imperative in the interest of the administration of justice that the public must be made to feel that the Courts are not amenable to political or executive influence. *Emperor v. Jagannath Prasad Swadhin.*

39 Cr. L. J. 677 :
176 I. C. 110 : 1938 A. L. J. 430 : 11 R. A. 46 :
A. I. R. 1938 All. 546 : 1938 A. W. R. 275 :
A. I. R. 1938 All. 358.

—Reasonable comment—Purpose of punishment for contempt.

If reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, no Court could or would treat that as contempt of Court. But to say of a Judge of the High Court that he had decided a case not according to the dictates of justice but in order to please and carry favour with others, or to say that the door of the High Court had been closed against a certain community, is a very grave and serious contempt of the Court. Underlying principle of punishment for contempt is not to protect either the Court as a whole or the individual Judges of the Court from a repetition of them, but to protect the public, and especially those who either voluntarily or by compulsion are subject to its jurisdiction, from the mischief they will incur if the authority of the Tribunal were undermined or impaired. Attacks upon Judges excite in the minds of the people dissatisfaction with all judicial determinations, and whenever men's allegiance to the laws is fundamentally shaken, it is the most fatal and dangerous obstruction of justice, calling out for a more rapid and immediate redress than any other obstruction; not for the sake of the Judges as private individuals, but because they are the channels by which the King's justice is conveyed to the people. *In the matter of : Habib.*

26 Cr. L. J. 1409 :
89 I. C. 833 : 6 Lah. 528 :
A. I. R. 1926 Lah. 1.

—Receiver—Obstruction of Receiver in discharge of duty—Costs against person obstructing.

The right of a stranger in possession of property to continue in possession is not affected by an order of a Court appointing a Receiver, but the fact of his possession does not give him the privilege to interfere with the Receiver directed to take possession of the property. His proper course is to apply to the Court to redress his grievance. The Court will not permit the Receiver appointed by its authority to be interfered with or dispossessed of the property, by any one, even though the order appointing him may be perfectly erroneous. A person, who is guilty of a contempt of this nature may be made to pay the costs as those of a hearing and not of a motion. *Roy Choudhury v. Nelini Prokash Sen.*

15 Cr. L. J. 65 :
23 I. C. 417 : 18 C. W. N. 289 :
A. I. R. 1914 Cal. 550.

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—Reflection on character of Magistrate, if contempt.

Any remarks reflecting on the character or impartiality of a Magistrate in the course of a trial must necessarily be contempt. *Emperor v. Balkrishna Gorind Kulkarni.*

23 Cr. L. J. 177 :
65 I. C. 75 : 24 Bom. L. R. 16 :
46 Bom. 59 : A. I. R. 1921 Bom. 52.

—Repetition of objectionable epithet.

The repetition by a paper of an offensive epithet against an accused person under trial is quite as objectionable as the original assertion of that epithet. *In re : Claridge.*

13 Cr. L. J. 461 :
15 I. C. 93 : 14 Bom. L. R. 231.

—Scandalising Court, what is.

Any act done or writing published, calculated to bring a Court or a Judge of the Court into contempt or to lower its authority, is a contempt of Court falling under the category "scandalising a Court or a Judge." *In the matter of : Habib.*

26 Cr. L. J. 1409 :
89 I. C. 833 : 6 Lah. 528 :
A. I. R. 1926 Lah. 1.

—Scandalous article affecting certain class of cases.

A scandalous article to the effect that in a certain class of cases the Courts are not giving independent and impartial decisions but are merely registering the wishes of the executive amounts to an interference with the due course of administration of justice. *In re : Satyabodha Ramchandra.*

23 Cr. L. J. 644 :
69 I. C. 8 : 24 Bom. L. R. 928.

—Sentence—Person committing contempt endowed with excitable temper—If justification for mitigation.

Where a person committing the contempt of Court is endowed with a somewhat excitable temper, this fact constitutes a justification for mitigation of maximum sentence. *Emperor v. Jagannath Prasad Swadhin.*

39 Cr. L. J. 677 :
176 I. C. 110 : 1938 A. L. J. 430 :
11 R. A. 46 : 1938 A. W. R. 275 :
I. L. R. 1938 All. 548 : A. I. R. 1938 All. 358.

—Sentence—Sentence of custody in jail for indefinite period—Legality of.

There is no limitation imposed on the High Courts in the matter of punishment. Consequently, the High Court is competent to pass an order committing a person to custody in jail until he apologises to the High Court and pays into Court the moneys received by him in defiance of the orders of the Court. *In the matter of : Harkishen Lal. (S. B.)*

38 Cr. L. J. 883 :
170 I. C. 375 : I. L. R. 1937 Lah. 69 :
39 P. L. R. 733 : 10 R. L. 103 (2) :
A. I. R. 1937 Lah. 497.

—Speech showing contempt for all Courts of Justice and not any particular Court—It should not be dealt with by process for contempt.

Where the speech contains matter which

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shows that the speaker entertains in the popular sense of the word a general expression of opinion, hostile to the utility of Courts of Justice not likely to affect the public, it is not such a contempt of Court as should be dealt with by the process for contempt. *Government Pleader, Bombay v. Tulsidas Subhanrao Jadhav*.

39 Cr. L. J. 440 :
174 I. C. 492 : 40 Bom. L. R. 75 :
I. L. R. 1938 Bom. 179 : 10 R. B. 457 :
A. I. R. 1938 Bom. 197.

—————*Speeches made in order to influence decision of pending criminal case and induce complainant to withdraw complaint.*

It is a contempt of Court to make a speech tending to influence the result of a pending trial, whether civil or criminal, or to deliver a speech at a meeting. It is contempt of Court to address public meetings, to influence the decision of the Criminal Court and prevent witnesses from giving evidence and to bring pressure on the complainant to withdraw his complaint. (*The Queen v. Thomas Castro* relied on). [The accused were convicted but discharged as they tendered an unqualified apology and gave an assurance for the future. But they were made to pay costs incurred by the applicant.] *Radha Krishna v. Raja Ram*.

41 Cr. L. J. 584 :
188 I. C. 408 : 1940 O. L. R. 355 :
1940 O. W. N. 491 : 12 R. O. 431.

—————*Summary proceedings—Jurisdiction of Lahore High Court.*

The Lahore High Court has jurisdiction to proceed summarily in cases of contempt of its authority. *In the matter of : Muslim Outlook, Lahore*.

28 Cr. L. J. 727 :
103 I. C. 775 : 8 A. I. Cr. R. 408 :
9 Lah. L. J. 455 : A. I. R. 1927 Lah. 610.

—————*Summary process of contempt—Technical contempt of Court not enough—Substantial interference with administration of justice necessary.*

In order to justify recourse to the summary process of contempt, it is not enough that there should be a technical contempt of Court; it must be shown that it was probable that the publication would substantially interfere with the due administration of justice. *Governor of Bengal v. Moti Lal*. (S. B.)

14 Cr. L. J. 321 :
20 I. C. 81 : 17 C. W. N. 1253.

—————*The inherent power of the Court to punish for contempt of Court is not restricted in any degree by the provisions in the Cr. P. C. In the matter of : An Advocate of Allahabad.*

4 A. W. R. 1155 :
154 I. C. 955 : 1935 A. L. J. 125 :
7 R. A. 827 : A. I. R. 1935 All. 1.

—————*The parties charged with contempt cannot be called upon to answer to anything which is not set out specifically in the grounds used before the Court at the time when the Rule was issued. Amulya Chandra v. Satis Chandra.*

33 Cr. L. J. 369 (2) :
136 I. C. 901 : 35 C. W. N. 1267 :
I. R. 1932 Cal. 253 : A. I. R. 1932 Cal. 255.

—————*The right to punish by summary procedure contempts of Court by scandalising the*

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Court still exists. *In the matter of : Tushar Kanti Ghosh, Editor, Amrita Bazar Patrika.*

36 Cr. L. J. 1053 :
156 I. C. 1055 : 39 C. W. N. 770 :
61 C. L. J. 376 : 8 R. C. 53 :
A. I. R. 1935 Cal. 419.

—————*There is inherent right to take such proceedings in the Calcutta High Court by virtue of its position as a Superior Court of Record. In the matter of : Tushar Kanti Ghosh. (F. B.)*

36 Cr. L. J. 1053 :
156 I. C. 1055 : 39 C. W. N. 770 :
31 C. L. J. 376 : 8 R. C. 53 :
A. I. R. 1935 Cal. 419.

—————*To scandalise the Court is a contempt, and hence any publication which scandalises the Court and lowers its prestige, is clearly a contempt. In the matter of : An Advocate of Allahabad.*

4 A. W. R. 1155 :
154 I. C. 955 : 1935 A. L. J. 125 :
7 R. A. 827 : A. I. R. 1935 All. 1.

—————*To suggest to Court to take certain course in case which is sub judice, when amounts to contempt.*

Reference made to pending cases or the publication of items of news which are connected with pending cases are not contempt. The intention and the bona fide nature of action have an important bearing on the question whether the Court should take action on the petition, but good intention is not the deciding factor. To comment on a case which is sub judice or to suggest that the Court should take a certain course in respect of a matter before it, undoubtedly constitutes contempt and honesty of motive cannot remove it from this category. The criterion is not whether the Court will be influenced, but whether the action complained of is calculated to prejudice the course of justice. Similarly, to comment on a case which is about to come before the Court with knowledge of the fact is just as much a contempt as a comment on a case actually launched. *P. S. Tuljaram Rao v. Sir James Taylor, Governor of Reserve Bank of India*. (F. B.)

40 Cr. L. J. 533 :
181 I. C. 451 : 49 L. W. 29 :
1939 M. W. N. 113 : 11 R. M. 813 :
I. L. R. 1939 Mad. 466 :
1939 2 M. L. J. 843 :
A. I. R. 1939 Mad. 257.

—————*Unfounded defamation of judge.*

Judges are subject to be criticised but they must be protected from unfounded defamation. *In the matter of : William Taylor.*

19 Cr. L. J. 402 :
44 I. C. 930 : 26 C. L. J. 345 :
A. I. R. 1918 Cal. 713.

—————*Writing article to newspaper relating to pending case.*

Writing an article in a newspaper relating to a pending case which is likely to prejudice the course of justice amounts to contempt of Court. *In the matter of : An Advocate.*

29 Cr. L. J. 801 :
111 I. C. 305 : A. I. R. 1928 All. 673.

—————*When a contempt is committed in the face of a court, it is that court which is the pro-*

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per Tribunal to decide the whole matter. *In the matter of : Mr. Sham Lal.* 33 Cr. L. J. 675 : 138 I. C. 878 : 33 P. L. R. 785 : I. R. 1932 Lah. 543 : A. I. R. 1932 Lah. 502.

———Writer believing all that he stated to be true—If amounts to contempt.

There can be no justification of contempt of Court even assuming that the writer of an election manifesto believed all he stated therein to be true. If anything in the manifesto amounts to contempt of Court, he is not permitted to lead evidence to establish the truth of his allegations. *In the matter of : Ram Mohan Lal Agarwala.* 36 Cr. L. J. 620 :

155 I. C. 33 : 1935 A. L. J. 46 : 7 R. A. 858 : A. I. R. 1935 All. 38.

———Writing and publishing article likely to prejudice pending case—Accused held guilty of contempt but was discharged under S. 3, Proviso 1, Contempt of Courts Act (XII of 1926).

The special privilege of the press is a time-worn fallacy, and the sooner the misconception that the press is not accountable to the law is removed the better it will be. No editor has a right to assume the role of investigator or try to prejudice the Court against any person. This amounts to a contempt of Court : *Held*, that the article grossly offended against the law of contempt of Court. (The accused was, however, discharged on his tendering unqualified apology, under first Proviso to S. 3, Contempt of Courts Act.) *The District Magistrate, Kheri v. M. Hamid Ali Gardish.* 41 Cr. L. J. 169 :

185 I. C. 342 : 1939 O. W. N. 1132 : 1939 O. L. R. 734 : 15 Luck. 268 : 12 R. O. 242 : A. I. R. 1940 Oudh 137.

CONTEMPT OF COURT.

See (i) Contempt.

(ii) Criminal trial.

(iii) Penal Code, Ss. 172 to 190.

CONTEMPT OF COURTS ACT (XII of 1926)

See also Contempt.

———Comment in newspaper on past life and antecedent character of accused—Contempt of Court—Punishment—Power to condone trivial offences.

Matter published in a newspaper relating to the past life of an accused or to his antecedent character, particularly if it suggests an offence similar to that with which he is charged, is contempt of Court. But contempt of Court is not a matter of mere form or technicality, but of substance and the Court may not interfere, if it is not satisfied that such comments were calculated to prejudice the fair trial. [Having regard to all the circumstances of the case, the High Court refused to issue notice to show cause, but warned the accused.] *S. A. Dange v. S. T. Sheppard.* 32 Cr. L. J. 78 :

128 I. C. 14 : 1930 A. L. J. 665 : I. R. 1931 All. 14 : L. R. 11 All. 115 Cr. : A. I. R. 1930 All. 483.

———Contempt under Penal Code—Whether can be punished under contempt of Courts Act.

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When the act which has constituted the contempt of Court also constitutes an offence under the Indian Penal Code; it may be punished under the Contempt of Courts Act. *Kaulashia v. Emperor.* 34 Cr. L. J. 770 :

144 I. C. 351 : 1933 Pat. 142 : 12 Pat. 1 : 14 P. L. T. 605 : A. I. R. 1933 Pat. 231. A. I. R. 1933 Pat. 142.

———S. 2—Chief Court has jurisdiction in respect of contempt of Courts subordinate to it—Chief Court has position akin to that of Court of King's Bench—It has inherent power to protect Subordinate Courts and prevent interference with course of justice—Such power is not negatived by S. 2—Act merely defines and limits such powers.

The Contempt of Courts Act is an Act which creates no fresh powers at all, but seeks to define and limit them. In the first place, sub-cl. (1) of S. 2, does not define the powers of the High Courts in respect of contempts of themselves at all but merely speaks vaguely of the jurisdiction, powers and authority which the High Courts already have and exercise in respect of such contempts. In the second place, sub-s. (2), which relates to Chief Court, contains a patent inconsistency. The Contempt of Courts Act far from being an exhaustive enactment, indeed contains provisions consistent with the view that it does not negative the powers and authority of the Chief Court to deal with contempts of inferior Courts, and cannot, therefore, be said that it would be contrary to the canons of construction for summary powers to be exercised in the name of inherent powers in disregard of the machinery contemplated by the Act. The Chief Court is by virtue of Ss. 8 and 9 of the Oudh Courts Act, and Ss. 219 and 220 of the Government of India Act, 1935, the High Court of Oudh and the one and only Court of record, and by virtue of its position, it is a superior Court of record with a position akin to that of the Court of King's Bench, and has an inherent power and authority to protect its Subordinate Courts and to prevent interference with the course of justice in any way which may be necessary. Its powers in that respect are defined and limited by the Contempt of Courts Act of 1926. That Act is silent as to the power of the Chief Court to deal with contempt of Courts subordinate to it but such a power cannot be negatived by silence and is to be inferred from the wording of sub-cl. (2) of S. 2. The Chief Court has, therefore, jurisdiction in respect of contempt of Courts subordinate to it. *Mohammad Yusuf v. Imtiaz Ahmad Khan.* (F. B.)

40 Cr. L. J. 421 : 180 I. C. 745 : 1939 O. W. N. 296 : 1939 O. L. R. 194 : 11 R. O. 248 : 14 Luck. 492 : A. I. R. 1939 Oudh 131.

———S. 2—Sub-Divisional Magistrate holding enquiry under S. 176, Criminal Procedure Code (Act V of 1898), is Court Subordinate to High Court.

The Sub-Divisional Magistrate when holding an enquiry under S. 176, Cr. P. C. is acting as a Court subordinate to the High Court

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for the purposes of the Contempt of Courts Act. *Advocate-General v. Maung Chit Maung.*

41 Cr. L. J. 470 :

187 I. C. 573 : 1940 Rang. 188 :

12 R. Rang 337 : A. I. R. 1940 Rang. 68.

—S. 2 (1).

Attempt to interfere with Receiver's possession constitutes contempt of Court. *Dharindhar Singh Roy v. Satish Chandra Giri.*

33 Cr. L. J. 945 :

140 I. C. 140 : 36 C. W. N. 645 :

I. R. 1932 Cal. 690 :

A. I. R. 1932 Cal. 705.

—S. 2 (1)—Contempt of Court of Commissioners under Bengal Civil Law Amendment Act.

A Court of Commissioners appointed under the Bengal Criminal Law Amendment Act is a Court subordinate to the High Court within the meaning of S. 2 (1), and the High Court is, therefore, competent to punish persons who are guilty of contempt of such court. *Tushar Kanti v. Governor of Bengal.*

34 Cr. L. J. 662 :

143 I. C. 790 : 37 C. W. N. 276 : 60 Cal. 603 :

I. R. 1933 Cal. 485 :

A. I. R. 1933 Cal. 118.

—S. 2 (1).

In cases of contempt of a Mofussil Court which has no jurisdiction in the matter, application must be made to the High Court by the party aggrieved. The High Court may, however, treat a petition made to the lower Court as a petition to itself. *Amulya Chandra Bhaduri v. Satish Chandra Giri.*

33 Cr. L. J. 444 :

137 I. C. 238 : 35 C. W. N. 1265 :

I. R. 1932 Cal. 281 :

A. I. R. 1932 Cal. 254.

—S. 2 (1).

Obstruction of Court's Officers—Personal service of order appointing officer is not necessary. *Dharindra Singh Roy v. Satish Chandra Giri.*

33 Cr. L. J. 945 :

140 I. C. 140 : 36 C. W. N. 645 :

I. R. 1932 Cal. 690 :

A. I. R. 1932 Cal. 705.

—S. 2 (1)—Petition of Governor—Affidavit signed by Assistant Secretary—Effect.

Where the petition under the contempt of Courts Act is made by the Governor-in-Council but the Affidavit appended to it is signed by an Assistant Secretary, the latter must be presumed to be acting within the scope of the authority conferred upon him until the contrary is shown. *Tushar Kanti v. Governor of Bengal.*

34 Cr. L. J. 662 : 143 I. C. 790 :

37 C. W. N. 276 : I. R. 1933 Cal. 485 :

60 Cal. 603 : A. I. R. 1933 Cal. 118.

—S. 2 (3)—Meaning of—Punishment for contempt.

The contempt must be punishable as a contempt under the Penal Code, and not only because it otherwise is an offence. *Bennet Coleman & Co., Ltd. v. G. S. Monga.*

38 Cr. L. J. 73 :

165 I. C. 813 : 9 R. L. 305 : 38 P. L. R. 1166 :

I. L. R. 1937 Lah. 31 :

A. I. R. 1936 Lah. 917 :

CONTRACT

—Ss. 2 (3), 3—Acts of contempt also constituting offence of defamation—High Court, if has still jurisdiction to take proceedings under Act.

Clause (3) of S. 2 is applicable only to cases in which the offence referred to in that clause is punishable under the Penal Code, as contempt. The offence of defamation is made punishable by the Penal Code, not as an offence of contempt of Court but as an offence of defamation. If, therefore, the acts alleged to constitute contempt also constitute an offence of defamation punishable under the Penal Code, the jurisdiction of the High Court to take proceedings under the contempt of Courts Act, is not barred. *Emperor v. Jagannath Prasad Swadhin.*

39 Cr. L. J. 677 :

176 I. C. 110 : 1938 A. L. J. 430 :

11 R. A. 46 : I. L. R. 1938 All. 548 :

1938 A. W. R. 275 :

A. I. R. 1938 All. 358.

—S. 3.

Advocate threatening Judge that suit for damages will be filed if execution be not stayed, commits contempt and can be convicted under S. 3. *In the matter of : Mr. A. P. Varma.*

35 Cr. L. J. 433 :

147 I. C. 330 : 1934 A. L. J. 145 :

6 R. A. 524 : 3 A. W. R. 384 :

A. I. R. 1934 All. 317.

—S. 3—Comments on pending proceedings—Contempt of Court—Youth and inexperience, whether grounds for excuse—Liability of Printer.

The publication of comments on a case which is pending trial, amounts to a contempt of Court, if the comments are such as are likely to prejudice the administration of justice in the case. The plea of ignorance and inexperience is not in itself a ground for passing over a contempt of Court. The Printer of an article cannot get rid of his responsibility for the matter printed by him by informing the Publisher beforehand that he would not accept any responsibility for such matter. *Emperor v. Maung Tin Saw.*

29 Cr. L. J. 595 :

109 I. C. 675 : 6 Rang. 39 :

I. L. T. 40 Rang. 37 : 10 A. I. Cr. Rang. 266 :

A. I. R. 1928 Rang. 115.

CONTEMPT OF HIGH COURT.

See Contempt.

CONTEMPT OF LAWFUL AUTHORITY.

See Penal Code, S. 185.

CONTINUING OFFENCE.

See Penal Code, S. 363.

CONTRACT.

—Breach of own Contract.

No one, by his own default, can be allowed to defeat his own contract. *In the matter of : Conductor Alfred.*

36 Cr. L. J. 737 :

155 I. C. 444 (b) : 7 R. L. 717 :

A. I. R. 1934 Lah. 845.

CONTRACT ACT (IX OF 1872)

—Contract to cut trees whether agreement relating to movable property.

A contract for cutting of trees to be converted into chareonl is an agreement relating to movable property. *Manchersha Ardeshir Deviercala v. Ismail Ibrahim Patel*.

37 Cr. L. J. 577 :
162 I. C. 310 : 38 Bom. L. R. 168 :
60 Bom. 706 : 8 R. B. 412 :
A. I. R. 1936 Bom. 167.

CONTRACT ACT (IX OF 1872).

—S. 16.

See Workmen's Breach of Contract Act, S. 2.

—S. 17—Fraud—Silence.

It is doubtful whether the definition of 'fraud' in S. 17 is intended to apply to the word 'fraud' in S. 178—Essentials pointed out—Mere silence is not fraud unless there is a duty to speak, or unless it is equivalent to speech. *Chartered Bank of India, Australia and China v. Imperial Bank of India*.

149 I. C. 903 : 60 Cal. 262 :
6 R. C. 652 : A. I. R. 1933 Cal. 366.

—S. 23.

See Bombay Prevention of Gambling Act, 1887.

Y —S. 23—Bribe, if can be recovered.

Money paid as bribe is not legally recoverable. *U San Win v. U Hla*.

32 Cr. L. J. 934 :
132 I. C. 553 : I. R. 1931 Rang. 185 :
A. I. R. 1931 Rang. 83.

—Ss. 23, 65—Criterion which makes Court to assist or not to assist party in recovering money paid under unlawful agreement.

S. 65 includes and applies to contracts void *ab initio*. The criterion, which causes the Court to say that it will or will not assist the parties to recover the money paid under an unlawful agreement, is not whether they have had a *locus penitentiae* before carrying out the purposes of the fraud, but whether it would be contrary to morality and public policy to give the parties assistance in a Court of Law, where the purpose of the fraud has actually been wholly or partially successfully carried out. *S. Jone Bin v. A. Nannel*.

164 I. C. 522 : 9 R. Rang. 107 :
14 Rang. 597 : A. I. R. 1936 Rang. 358.

—S. 30.

See Penal Code, 1860, S. 405.

—S. 45—Promissory note—Co-promises—One of them, whether can bring suit on it without joining the other.

Where a promissory note is executed in favour of two brothers forming a joint Hindu family, the one, who is not the *karta* of the family is not entitled to bring a suit on the basis of the note without joining the other. *Munshi Sahu v. Bhupal Mahton*.

37 Cr. L. J. 848 :
163 I. C. 405 : 2 B. R. 595 (1) :
9 R. P. 6 (1) : 17 P. L. T. 879 :
A. I. R. 1936 Pat. 274.

CONTRACT ACT (IX OF 1872)

—S. 78.

See Penal Code, 1860, S. 406.

—S. 108.

See Cr. P. C., Ss. 517 and 514.

—Ss. 114, 160—Company depositing as security in respect of warehouse—Government promissory note—Position of Government—Return of note—Interest of third party in note, effect of.

Where Government accepts a Government promissory note deposited by a company with the Excise authorities as a security in respect of a private warehouse, the Government becomes under S. 114, the bailee and must return the note to the bailor without demand after the termination of the license, even if some third person has interest in the note. *N. Ezekiel v. The Province of Bengal*.

41 Cr. L. J. 134 :
185 I. C. 214 : I. L. R. 1939 (2) Cal. 52 :
12 R. C. 350 : A. I. R. 1939 Cal. 746.

—S. 171—Factor, meaning of—Factor's lien.

The word "factor" in India as in England means an agent entrusted with the possession of goods for the purpose of selling them for his principal. A factor is entitled under S. 171 of the Contract Act to retain as security for a general balance of account, any goods bailed to him. *Parakh v. Emperor*. 27 Cr. L. J. 328 :
92 I. C. 744 : 3 O. W. N. 160 :
1 Luck. 133 : A. I. R. 1926 Oudh 202.

—S. 178—Applicability.

The question whether a case falls within S. 178, depends on the circumstances of each case. *Sharaj Din v. Gokal Chand*.

32 Cr. L. J. 960 :
132 I. C. 835 : 12 Lah. 304 :
32 P. L. R. 724 : I. R. 1931 Lah. 675 :
A. I. R. 1931 Lah. 526.

—S. 178.

Broker is a mercantile agent—He can make valid pledge if pledgee acts in good faith and had not at time of pledge notice that pledger had no authority to pledge. *Maung Aung Mye v. Emperor*.

35 Cr. L. J. 1375 :
151 I. C. 413 : 7 R. Rang. 72 :
A. I. R. 1934 Rang. 198.

—S. 178—Object of S. 178—Pledgee taking goods from person of whom he knows nothing—Pledge turning out to be offence and pledger agent—Property, if can be retained by pledgee.

S. 178, Contract Act, protects those persons who in good faith deal with persons whom they know to be mercantile agents but of the details of whose agency they are not and cannot be expected to be aware. It is relied upon only in cases where the pledgee is aware that the pledger is a mercantile agent with power to pledge. If he takes goods from a person of whom he knows nothing whatsoever, and if it turns out that the person's pledging of the goods with him was a criminal offence, then he can have no claim to retain the property. *Ah Cheung v. Ah Wain*.

39 Cr. L. J. 784 :
176 I. C. 703 : 11 R. Rang. 76 :
A. I. R. 1938 Rang. 243.

CONTRACT ACT (IX OF 1872)

S. 178.

Pledgee keeping goods in trust for plaintiff—Pledge to defendant—Defendant acting *bona fide* and without knowledge of trust—Pledgee becoming insolvent—Plaintiff's suit for recovery of goods is not maintainable as property in goods vested in Official Assignee: *Held*, there was no intention to deceive. *Chartered Bank of India, Australia and China v. Imperial Bank of India*. 149 I. C. 903 : 60 Cal. 262 : 6 R. C. 652 : A. I. R. 1933 Cal. 366.

S. 178.

Pledger pledging ornaments of which he has acquired possession in rightful manner, but later on misappropriating them—Pledgee acting in good faith is entitled to possession of ornaments in dispute. *Sharaf Din v. Gokal Chand*. 32 Cr. L. J. 960 : 132 I. C. 835 : 12 Lah. 304 : 32 P. L. R. 724 : I. R. 1931 Lah. 675 : A. I. R. 1931 Lah. 526.

S. 178—"Possession", meaning of.

The word 'possession' in S. 178 means juridical possession. *Sharaf Din v. Gokal Chand*. 32 Cr. L. J. 960 : 132 I. C. 835 : 12 Lah. 304 : 32 P. L. R. 724 : I. R. 1931 Lah. 675 : A. I. R. 1931 Lah. 526.

S. 178 proviso—*Pawnee*—Right to goods obtained fraudulently.

M. obtained the loan of a pair of diamond *nagats* promising to return them the same day. He did not return them, having pawned them to C. M was convicted of criminal breach of trust and C was directed to return the diamond *nagats* to the owner. C applied in revision contending that the *nagats* had not been obtained by offence or fraud: *Held*, that the proviso to S. 178 did not apply and the order of the Magistrate was justifiable. *Palaniappa Chetty v. Po Saye*. 12 Cr. L. J. 88 : 8 I. C. 1204 : 6 Bur. L. T. 111.

S. 178-A.

Ornaments given for use misappropriated—Pledge of ornaments by accused—Conviction—Pledgee, if not entitled to retain them—Delay by owner in bringing proceedings is not material. *P. A. P. L. Chettyar Firm v. Ma Mau*. 36 Cr. L. J. 1106 : 157 I. C. 184 : 8 R. Rang. 84 : A. I. R. 1935 Rang. 205.

Ss. 182, 178—Person employed to sell unredeemed goods from pawn shop—Whether "agent" of employer.

A person employed to sell unredeemed articles from a pawn shop on behalf of his employer is an agent within the meaning of S. 182, Contract Act, although he is a servant or a shop assistant. *Ah Cheung v. Ah Wain*. 39 Cr. L. J. 784 : 176 I. C. 703 : 11 R. Rang. 76 : A. I. R. 1938 Rang. 243.

S. 187—Person in possession of goods for sale, whether can pledge goods.

The possession required in S. 178 of the

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Contract Act is juridical possession of the goods and not mere custody of them. A person who is given possession of goods by the owner in order that he might sell them for and on behalf of the latter, has such possession of the goods as is contemplated in S. 178 of the Contract Act, and a pledge made by him of the goods in favour of a person who acts in good faith is valid. *Emperor v. Nga Po Chil*. 24 Cr. L. J. 858 : 74 I. C. 1050 : 1 Rang. 199 : 2 Bur. L. J. 241 : A. I. R. 1923 Rang. 227.

S. 231.

Contract with undisclosed principal—Breach by reason of default of an agent of undisclosed principal—Proper section for principal to proceed under is S. 231 and not S. 211—He can get decree against other contracting party and not against agent. *Emperor v. D., A Pleader*. 59 Cr. L. J. 419 : 152 I. C. 43 : 7 R. C. 221 : A. I. R. 1934 Cal. 794.

CONTRADICTORY STATEMENTS.

See Penal Code, S. 193.

CONVERSATION.

See Penal Code, S. 405.

CONVICTION.

- See (i) Cattle Trespass Act, S. 22.
(ii) Confession—Basis of conviction. ✓
(iii) Cr. P. C., S. 243.
(iv) Criminal Trial.

CO-OPERATIVE SOCIETIES ACT (II OF 1912).

S. 43 (1)—Rules framed under by Punjab Government—R. 26 (c)—Scope of—Liquidator summoning person whether has power to ask for security from such person or impose sentence of imprisonment or fine for failure to furnish security.

Rule 26 (c), of rules framed under S. 43 (1), Co-operative Societies Act, restricts the powers given by S. 32, Civil Procedure Code, to those given in the sub-rule. Hence in whatever capacity a person may have been summoned, the Liquidator has no power either to ask for security or to impose a sentence of imprisonment or fine for his failure to furnish security. *In re Hakim Wasan*. 40 Cr. L. J. 791 : 183 I. C. 414 : I. L. R. 1939 Lah. 192 : 41 P. L. R. 503 : 12 R. L. 114 : A. I. R. 1939 Lah. 357.

S. 52—U. P. Co-operative Societies (Amendment) Act (III of 1919), S. 2—U. P. Land Revenue Act (III of 1901), S. 146—Liquidation of Society—Heir of deceased member, liability of, to be arrested.

A Liquidator of a Co-operative Society can arrest the heir of a deceased member of the Society for an arrear due from his deceased father. *Gulab v. Emperor*. 29 Cr. L. J. 244 : 107 I. C. 243 : L. R. 8. A. 173 Cr. : 26 A. L. J. 95 : 9 A. I. Cr. R. 16 : A. I. R. 1928 All. 128.

CO-PROMISEES.

See Contract Act, S. 45.

COPYRIGHT.

—In the case of a prosecution for alleged infringement of copyright of a book published before 1914, the question to be considered is, therefore, not whether the copyright under Act of 1847 was subsisting at the time of infringement, but whether it was subsisting when Act III of 1914 came into force. *Emperor v. Shchocharan Lal*. 32 Cr. L. J. 814 :

131 I. C. 865 : 1931 A. L. J. 304 :
L. R. 12 A. 54 Cr. : I. R. 1931 All. 433 :
A. I. R. 1931 All. 353.

COPYRIGHT ACT (XX OF 1847)

—S. 14.

See Cr. P. C., S. 439—Acquittal.

—Ss. 14, 18—*Copyright Act (III of 1914), S. 7—Omission to register under S. 14 of Act of 1847, whether debars prosecution for infringement of copyright under Act III of 1914.*

Failure to pay the registration charges under Ss. 14 and 18 of the Copyright Act XX of 1847, does not deprive a person of the copyright altogether. It is only the right to sue under the Act that is prohibited if the registration fee has not been paid. Omission does not also bar the institution of proceedings under the later Copyright Act of 1914. *Venkatrao v. Padmanabha Raju*. 28 Cr. L. J. 957 :

105 I. C. 669 : 53 M. L. J. 529 : 26 L. W. 489 :
1927 M. W. N. 772 : 39 M. L. J. 328 :
51 Mad. 180 : A. I. R. 1927 Mad. 981.

—S. 7, (III OF 1914)

See Copyright Act, XX of 1847, S. 14.

—S. 7.

See Cr. P. C., S. 98.

—S. 7—*Pictures representing common stock ideas—Infringement of copyright—Tests—Copy, meaning of.*

Where a picture is a copy of substantial portions of another copyright picture, it will amount to an infringement of copyright even if the pictures represent common stock ideas. A copy is that which comes so near the original as to suggest the original to the mind of the spectator. *Mohendra Chandra Nath Ghose v. Emperor*. 30 Cr. L. J. 16 :

112 I. C. 781 : 33 C. W. N. 172 :
I. R. 1929 Cal. 43 : A. I. R. 1928 Cal. 359.

—S. 7 (a)—*Copyright—Translation by author, right in—Copyright Act (XX of 1847).*

Under the old Copyright Act "copyright" did not include the exclusive right of translation but the author of a book who made a translation of it was entitled to a copyright in it as if it were an original work. *Hira Lal v. Saraswati*. 16 Cr. L. J. 656 :

30 I. C. 480 : 13 A. L. J. 636 :
A. I. R. 1915 All. 331.

—S. 7 (a).

The offence described in S. 7 (a) is complete as soon as the book is printed. It does not depend for its completion upon the ensuing of any consequence, such as is contemplated by S. 170, Cr. P. C. *Kali Dass v. Karam Chaud*. 18 Cr. L. J. 353 :

38 I. C. 737 : 28 P. R. 1916 Cr :
A. I. R. 1917 Lah. 335.

CORONERS' ACT (IV OF 1871)

—S. 7 (b).

Order not showing under what clause of S. 7 prosecution started—Trial, held not fair. *Behari Lal v. Rampirit Lal*. 36 Cr. L. J. 30 :
152 I. C. 248 : 16 P. L. T. 138 : 7 R. P. 158 :
A. I. R. 1934 Pat. 522.

—S. 10.

So far as the order under S. 10 (1) is concerned, there is a special appeal provided by cl. (2). *Bihari Lal v. Rampirit Ram*. 36 Cr. L. J. 30 :
152 I. C. 248 : 16 P. L. T. 138 : 7 R. P. 158 :
A. I. R. 1934 Pat. 522.

—S. 24.

In prosecution for infringement of copyright if the complainant produces the book and certificate of registration of copyright, burden of proof that there was no subsisting copyright at time of infringement is on defence. *Emperor v. Shchocharan Lal*. 32 Cr. L. J. 814 :

131 I. C. 865 : 1931 A. L. J. 304 :
L. R. 12 A. 54 Cr. : I. R. 1931 All. 433 :
A. I. R. 1931 All. 353.

CORONERS' ACT (IV OF 1871).

—Ss. 8, 19, 20—*Coroner's inquiry, statements made in admissibility of, in subsequent trial—Evidence Act (I of 1872), Ss. 144, 155—Previous statement, when admissible.*

A statement made by a witness in an inquiry before a Coroner is admissible in evidence at a subsequent trial of the accused, and under Ss. 144 and 155 of the Evidence Act, it is not necessary in order to make the previous statement of the witness in the inquiry admissible for the purpose of impugning his credit, that the accused should have had an opportunity to examine him. *Emperor v. Raghoo Ganpat*. 27 Cr. L. J. 1061 :

97 I. C. 37 : 28 Bom. L. R. 775 :
A. I. R. 1926 Bom. 404.

—Ss. 19, 20—*Statement by accused on oath—Admissibility.*

A statement made by an accused person on oath before a Coroner cannot be admitted as evidence against him at the trial in respect of a charge arising out of the incident which formed the subject-matter of the inquiry by the Coroner. Nor can such a statement be admitted as a confession. *Emperor v. Kazi Dawood*. 27 Cr. L. J. 433 :

93 I. C. 225 : 28 Bom. L. R. 79 :
50 Bom. 56 : A. I. R. 1926 Bom. 144.

—Ss. 19, 20—*Statement made by accused person before Coroner, whether admissible at trial.*

The whole spirit of the Coroners' Act is that all persons acquainted with the circumstances and cause of the death of a deceased person, excepting persons implicated in a crime in respect of such death, shall be examined as witnesses on oath by the Coroner, and that any person who is suspected of being so implicated, shall not be examined. If by an inadvertance any such person is put on oath and examined, such a statement, immediately it is found that the person is in the position of the accused, should be struck of record or if he wishes to

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give evidence it should be taken after due warning. It would be wrong of a Coroner to examine an accused person on oath on the ground that he did not know that the person was the accused person and thereafter use that evidence, and on such evidence, come to the conclusion that that person is guilty of an offence in respect of the death of the deceased person. *Emperor v. Kazi Darwood*.

27 Cr. L. J. 433 :
93 I. C. 225 : 28 Bom. L. R. 79 :
50 Bom. 56 : A. I. R. 1926 Bom. 144.

—S. 20—Confessions made to Coroner during inquest, admissibility of.

A statement made on oath by a suspected person before a Coroner in inquest proceedings, voluntarily and after due warning is admissible in evidence against him at the trial. *Emperor v. Azimkhan Zainkhan*.

29 Cr. L. J. 651 :
110 I. C. 107 : 30 Bom. L. R. 84 :
10 A. I. Cr. R. 419 : A. I. R. 1928 Bom. 52.

—S. 20—Statement of accused on oath before Coroner, admissibility of.

A statement made by an accused before a Coroner after due warning, can be admitted in evidence against him at his trial, and the mere fact that the statement was made on oath, does not render it inadmissible. *Emperor v. Mohammad Hasan Ghanchi*.

29 Cr. L. J. 234 :
107 I. C. 272 : 30 Bom. L. R. 86 :
9 A. I. Cr. R. 494.

—S. 24—Inquisition by Coroner—Commitment to High Court—Power of Presidency Magistrate to enquire or try—Effect of acquittal or discharge by such Magistrate.

The drawing up of an inquisition by the Coroner does not of itself oust the Magistrate of his jurisdiction to inquire into or try the case of an accused person, though it may have the effect of a valid commitment upon which the High Court in the exercise of its Original Criminal Jurisdiction may act. But it has not that effect until it has been accepted by the High Court, and the officers of the Court have drawn up a charge in accordance with it. And until the High Court has accepted the inquisition drawn up by the Coroner as a commitment, the Magistrate's order of acquittal or discharge that he may make will be operative, subject to the discretion of the High Court, when the time comes for it to consider, whether it should take action upon the Coroner's inquisition as an effective commitment. *Emperor v. Jogeshwar Passi*.

1 Cr. L. J. 13 :
7 C. W. N. 889 : I. L. R. 31 Cal. 1.

—S. 29—Inquisition—Verdict of Jury against weight of evidence—Coroner, whether can refer to High Court.

The Coroners' Act does not contemplate a reference by a Coroner to the High Court where he disagrees with the verdict of the Jury, but it is open to the High Court to interfere on application by parties. An inquisition under the Coroners' Act cannot be quashed by the High Court on the ground that the findings of the Jury are against the evidence. The power to amend an inquisition is restricted to technical

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defects. *In re : Umar Sobani*. 28 Cr. L. J. 385 :
100 I. C. 1041 : 29 Bom. L. R. 196 :
51 Bom. 300 : 7 A. I. Cr. R. 477 :
A. I. R. 1927 Bom. 163.

CORPORATION.

—Municipality.

It is a recognized rule of law that bye-laws should not be unreasonable and they may be held *ultra vires* on the grounds of unreasonableness. *Brij Mohan v. Emperor*.

35 Cr. L. J. 931 :
149 I. C. 11 : 1934 A. L. J. 244 : 6 B. A. 879 :
3 A. W. R. 592 : A. I. R. 1934 All. 497.

See Criminal Liability.

CORROBORATION.

See (i) Accomplice.

(ii) Approver.

(iii) Confession.

(iv) Criminal Trial—Evidence.

(v) Evidence.

(vi) Evidence Act, Ss. 30, 133, 141.

CO-SHARER.

—Rights of co-sharer.

One co-owner cannot give possession of joint property to agent for cultivation—Contribution of expenses of cultivation does not entitle him to exclude joint owner from exercising rights of joint possession. *Bhura Singh v. Emperor*.

36 Cr. L. J. 1310 :
158 I. C. 282 : 29 S. L. R. 121 :
A. I. R. 1935 Sind 115.

COSTS.

See also (i) Cr. P. C., 1898, Ss. 145, 259, 344, 526, 528.

(ii) Criminal Trial.

—Accused, in case under Contempt of Courts Act, directed to pay costs—Costs not paid within time allowed—Power of High Court to consider the matter—Costs can be realized as decree of Civil Court. *Emperor v. Wahid Ullah*.

36 Cr. L. J. 1365 :
158 I. C. 428 : 1935 A. L. R. 971 :
1935 A. L. J. 1153 : 8 R. A. 300 :
1935 A. W. R. 1092 : A. I. R. 1935 All. 1013.

—Adjournment—Revision—Criminal Procedure Code (Act V of 1898), Ss. 344, 439, 526.

The order of a Criminal Court directing an accused person to pay costs of adjournment under S. 344, Cr. P. C. on an application made by the former under S. 526 is obviously improper and unjustifiable and though not appealable, is liable to be set aside on revision by the High Court. *Fata v. Emperor*.

12 Cr. L. J. 274 :
8 I. C. 851 : 8 P. W. R. 1911 Cr.

—District Judge acting under S. 22 of the Bombay District Municipalities Act III of 1901.

A District Judge when acting under S. 22 of the Bombay District Municipal Act, is a Court within the meaning of S. 195 (b), Cr. P. C. *In re : Manchand Shivchand*.

14 Cr. L. J. 72 :
18 I. C. 408 : 15 B. L. R. 45 : 37 Bom. 365.

COUNSEL

Where a petition for the issue of a writ of *habeas corpus* was withdrawn: *Held*, that the High Court had no power to grant costs *proprio motu*. *Ramammal v. Vijayaraghavalu Naidu*. (F. B.)

140 I. C. 530 (1) : 36 L. W. 718 :
63 M. L. J. 867 : 55 Mad. 1049 :
I. R. 1933 Mad. 27 :
[A. I. R. 1933 Mad. 102.]

COSTS OF ADJOURNMENT.

See Cr. P. C., Ss. 145 and 344.

COTTON DUTIES ACT (II OF 1896).

Ss. 16, 25 (9)—Meaning of word "place" in definition of "mill"—Inspector of Cotton Excise—Right of free access to godown—Owner refusing to have locked up godown opened—Wilful obstruction—Subsequent offer of access, whether condones obstruction.

Under S. 16 of the Cotton Duties Act, the Inspector of Cotton Excise has a right of free access to the godown of a mill. Therefore, if the owner of a mill does not, after due notice, get the locked door of a godown of the mill opened to give access to the Inspector of Cotton Excise, the owner is guilty of wilful obstruction under S. 25 (9) of the Act, the particular purposes for which the Inspector wanted access being immaterial so long as his object was to perform a duty under the Act. Once access is refused, and thus intentional obstruction is caused, a subsequent offer to give access is not sufficient to condone the obstruction. *Mukundlal Bansilal v. Emperor*.

25 Cr. L. J. 1281 :
82 I. C. 353 : 26 Bom. L. R. 721 :
1924 A. I. R. Bom. 492.

COUNCILS ACT, 1861 (24 AND 25 VICT. C. 67).

S. 22—High Courts Act, 1861 (24 and 25 Vict. C. 101, S. 9—Defence of India (Criminal Law Amendment) Act (IV of 1915), S. 4—Governor-General, power of, to create Courts—Jurisdiction—High Court, power of, to declare an Act ultra vires.

S. 22 of the Indian Councils Act, 1861, read with S. 9 of the Indian High Courts Act, 1861, is in terms amply wide to give the Governor-General of India in Council power to create new tribunals such as those contemplated in S. 4 of the Defence of India (Criminal Law Amendment) Act, 1915. Per *Chapman, J.*—A Court cannot be constituted otherwise than in the name of the Sovereign, and before it can be held that the Indian Legislature can create a Court, it must be clear beyond doubt that the power to create a Court has been properly delegated. *Parmeshwar Ahir v. Emperor*. 19 Cr. L. J. 281 :

44 I. C. 185 : 4 P. L. W. 157 : 1918 Pat. 97 :
3 P. L. J. 537 : A. I. R. 1918 Pat. 155.

COUNSEL.

See also Legal Practitioner.

Affidavit by Counsel, propriety of.

A Counsel should never file an affidavit in a case in which he is appearing professionally, as by doing so he gives up his dignified position of

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detachment as an Advocate and lowers himself to the level of either a *pairakar* or a witness who has to support the case of a particular party by giving evidence on his behalf. *Mashar Khan v. Emperor*. 29 Cr. L. J. 220 :

107 I. C. 108 : 9 A. I. Cr. R. 514 :
A. I. R. 1928 Lah. 276.

Retained by party—Examination of Counsel as witness, if proper—Professional ethics.

It is a rule of professional ethics that having taken up the position of an Advocate, he should refrain from testifying on a trial which was being conducted by him. *Peary Mohan Das v. Weston*. 13 Cr. L. J. 65 :

13 I. C. 721 : 16 C. W. N. 145.

COUNSEL AND CLIENT.

Duties of Advocate—Counsel assigned by Government to defend accused, duties of.

Entire devotion to the interest of the client, warm zeal in the maintenance and defence of his rights, and the exercise of his utmost learning and ability are the points which can only satisfy the truly conscientious Advocate. Every man accused of an offence has a constitutional right to a trial according to law, and the duty of his Counsel requires him to scan with legal knowledge the forms of proceedings against the accused. A Counsel assigned for the defence of an accused charged with the offence of murder, cannot decline the office nor can he abate a jot of his duty to the accused and to the Court, because of the querulous attitude taken by another Counsel who is asked to associate himself with the Counsel assigned to the accused. *Bazlar Rahman v. Emperor*.

30 Cr. L. J. 494 :
115 I. C. 561 : 48 C. L. J. 307 :
33 C. W. N. 136 : I. R. 1929 Cal. 385 :
A. I. R. 1929 Cal. 1.

Duty of Counsel to advise his client not to answer questions put by Court.

A Counsel may legally advise his client at his trial for an offence not to answer questions put to him by Court. *Mr. A. v. Emperor*.

3 Cr. L. J. 134 :
6 P. L. R. 671.

COUNSEL'S RIGHT TO ARGUE.

See Practice.

COUNTER-CASES.

See Counter Criminal Cases.

COUNTER-CRIMINAL CASES.

Procedure—Counter-cases, whether should be tried simultaneously.

The Cr. P. C. being silent as to whether two counter-criminal cases should be tried simultaneously, each case must be decided according to its requirements. If the complainant in one of the two counter-cases wishes that his case may be taken up after the case against him has been decided, on the ground that in the case against him, a large number of witnesses have been examined and he does not want to be subjected to his adversary's cross-examination in the other case in which he is the complainant, it will serve the ends of justice if the case against

COURT-FEES ACT

him is disposed of first. *Makhan Mapa v. Mohindra Nath Bose.* 26 Cr. L. J. 1615 : 90 I. C. 719 : 42 C. L. J. 83 : A. I. R. 1925 Cal. 1260.

COUNTERFEITING COIN.

See Penal Code, 1860, Ss. 232, 235.

COURT.

See (i) Cr. P. C., Ss. 195, 476.

(ii) Practice—Duty of Court.

COURT-FEES.

—Administration Suit—Preliminary decree passed—Another creditor claimant has to pay no court-fee afterwards. *Ramaswami Ayyar v. Rangaswami Ayyar.* 32 Cr. L. J. 48 : 134 I. C. 1137 : 34 L. W. 377 : 1931 M. W. N. 1061 : 61 M. L. J. 914 : 55 Mad. 178 : I. R. 1932 Mad. 1 : A. I. R. 1931 Mad. 778.

COURT-FEES ACT.

—Interpretation of Act.

The Court Fees Act deals purely with fiscal matters and must be interpreted in favour of the subject. *Jagannath Kahar v. Emperor.*

23 Cr. L. J. 121 : 65 I. C. 553 : 4 U. B. R. 1921 72 : A. I. R. 1922 U. B. 14.

—S. 7 (4) (c).

Suit for declaration that certain leases of *debuttar* property are illegal and invalid and for possession of property—Value of subject-matter is value of leasehold interest created by leases. *Sailendra Nath Kundu v. Surendra Nath Sarkar.*

60 Cr. L. J. 469 : 156 I. C. 431 (2) : 39 C. W. N. 248 : 62 Cal. 417 : 7 R. C. 712 : A. I. R. 1935 Cal. 279.

—S. 19, cl. xvii—Application by Counsel of prisoner in Jail for adjournment of case to suit personal convenience, whether exempt from Court-fees.

An application made by an Advocate on behalf of a prisoner in Jail for adjournment of the case in order that the appeal should not be heard in his absence, is an application made 'by the prisoner' within the meaning of S. 19 (xvii) and is not chargeable with any Court-fees. In such a case, he would be considered to be acting in the interests of his client if he asks for an adjournment in order to enable him personally to argue the case as desired by his client. *Bhaya Lal v. Emperor.*

31 Cr. L. J. 1121 : 126 I. C. 827 : 1930 A. L. J. 682 : A. I. R. 1930 All. 261.

—S. 19, cl. xvii—Application for bail by Advocate.

An application for bail signed only by the Advocate of a prisoner is an application made by the prisoner himself and, under S. 19, Cl. xvii, Court-Fees Act, does not require to be stamped. *Jagannath Kahar v. Emperor.*

23 Cr. L. J. 121 : 65 I. C. 553 : 4 U. B. R. 1921 72 : A. I. R. 1922 U. B. 14.

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—S. 19, cl. xvii—Petition of appeal by prisoner presented by his Pleader, whether requires to be stamped.

A petition of appeal presented by a prisoner through his Pleader is exempted from Court-fees under cl. xvii of S. 19. *Emperor v. Maroti Teli.* 19 Cr. L. J. 494 : 45 I. C. 158 : 14 N. L. R. 77 : A. I. R. 1918 Nag. 125.

—S. 19 (17)—Prisoner not claiming relief on behalf of himself, but asking for setting aside acquittal orders against others—Application, whether does not come under S. 19 (17). *Moti Pansari v. Usman.* 37 Cr. L. J. 566 : 162 I. C. 298 : 1936 A. L. J. 453 : 8 R. A. 860 : A. I. R. 1936 All. 318.

—S. 19, cl. xvii, Sch. II, Art. 1—Petition of appeal or revision filed by Pleader on behalf of prisoner—Court-fee, whether payable.

A petition for appeal or revision signed and filed by Pleader on behalf of a prisoner under an authority signed by the prisoner is exempted from the payment of a Court-fee stamp under S. 19, cl. xvii of the Court-Fees Act. *In re : Court Fees Act.* 25 Cr. L. J. 277 : 76 I. C. 869 : 1 Rang. 510 : A. I. R. 1924 Rang. 160.

—S. 30—Stamps when said to be used—Endorsement by stamp vendor—Erasure of—Whether offence under S. 263, Part two.

S. 30 requires that the Officer of the Court or the head of the office on receiving any document requiring to be stamped under the Act, shall forthwith effect a cancellation of the stamp by punching out the figurehead so as to leave the amount designated on the stamp untouched and the part removed by punching shall be burnt or otherwise destroyed. The endorsements put upon a stamp by the stamp-vendor are the name of the vendor, the name of the vendee and the date of sale. These endorsements are not put upon the stamp for the purpose of showing that it has been used, and, therefore, erasure of it and its possession do not come within the purview of the second Part of S. 263 of the Penal Code. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Bazlar Rahman.*

37 Cr. L. J. 923 : 164 I. C. 12 : 39 C. W. N. 542 : 9 R. C. 193 (2).

—S. 31.

See (i) Cattle Trespass Act, S. 20.

(ii) Complaint.

(iii) Cr. P. C., S. 423.

(iv) Workmen's Breach of Contract Act (XIII of 1859).

—S. 31—Applicability of—Cognizable case—Accused, whether can be directed to pay costs of Court-fees.

An order under S. 31 directing an accused person to pay to a complainant the costs incurred by the latter in respect of Court-fee stamps can only be passed where the offence complained of was a non-cognizable one. *Mingan v. Emperor.*

25 Cr. L. J. 568 : 81 I. C. 56 : A. I. R. 1923 All. 86.

CRIMINAL APPEAL

—S. 31—*Direction as to refund—Applicability to complaints under S. 20, Cattle Trespass Act.*

The direction contained in S. 31 for the refund of complaint and process-fees in case of conviction applies to complaints made under S. 20 Cattle Trespass Act, of illegal seizure or detention of cattle. *Emperor v. Tha Nyo U.*

6 Cr. L. J. 122 :
4 L. B. R. 11.

—S. 31—*Erroneous order—Revision.*

An erroneous order under S. 31 can be rectified by the Appellate Court, and, in cases where no appeal lies, by the High Court in revision. *Mingau v. Emperor.*

25 Cr. L. J. 568 :
81 I. C. 56 : A. I. R. 1923 All. 86 :

—S. 34.

The case of a *Mukhtear* who purchases a Court-fee stamp for a client and transfers it to another client is not covered by S. 34, Court-fees Act. *Emperor v. Abdul Hakim.*

32 Cr. L. J. 1051 :
133 I. C. 645 : 32 P. L. R. 432 :
I. R. 1931 Lah. 821 : A. I. R. 1931 Lah. 337.

—S. 34 (3)—*Stamps sold should be identified.*

To establish a charge under S. 34 (3), Court Fees Act, it is necessary for the prosecution to identify the stamps alleged to have been so sold. *Ram Krishna Sinha v. Emperor.*

39 Cr. L. J. 417 :
174 I. C. 513 : 42 C. W. N. 246 :
10 R. C. 693 : A. I. R. 1938 Cal. 195.

—Sch. 1, Art. 17.

If witnesses are examined by one or more Magistrates in the absence of others constituting the Bench, the witnesses cannot be considered to have been examined by the Bench and a conviction based on such evidence is unsustainable. *Chitleshwar Dube v. Emperor.*

33 Cr. L. J. 200 :
135 I. C. 835 : 1932 A. L. J. 42 :
L. R. 13 A. 15 Cr. : I. R. 1932 All. 99 :
A. I. R. 1932 All. 127.

CRIMINAL APPEAL.

See also Criminal Trial—Appeal.

—Dismissal for default, legality of—*Procedure.*

An appeal cannot be dismissed for non-appearance of the appellant or his Pleader. The Court is bound to peruse the record and decide the appeal judicially even if the appellant is absent. *Nihal v. Emperor.*

30 Cr. L. J. 902 :
118 I. C. 391 : I. R. 1929 Lah. 743 :
30 P. L. R. 589 : A. I. R. 1929 Lah. 849.

—Dismissal of, for default—*Fresh appeal, maintainability of.*

Once a criminal appeal has been dismissed, another appeal cannot be heard on the ground that on the previous occasion, owing to some mistake, Counsel did not appear for the appellant. *In re : Arumuga Padayachi.*

27 Cr. L. J. 184 :
91 I. C. 1000 : 23 L. W. 56 :
50 M. L. J. 51 : 1926 M. W. N. 147 :
A. I. R. 1926 Mad. 420.

CRIMINAL APPEAL ORDINANCE OF TRINIDAD AND TOBAGO (1931).

—Court of Criminal Appeal established under—*Whether branch of Supreme Court—Person appointed as acting Judge under S. 7 (1) of Judicature Ordinance of Trinidad and Tobago (1880) as amended in 1936, if can act as member of Court of Criminal Appeal—Court of Criminal Appeal composed of Chief Justice and two acting Judges held not properly constituted—Interpretation Ordinance (XIX of 1933), Ss. 17, 20—Applicability—Constitution of Court.*

The Court of Criminal Appeal established under Criminal Appeal Ordinance, 1931, of Trinidad and Tobago, is not established as a branch of the existing Supreme Court ; but as a separate Court of Record, the Judges of which are stated to be the Chief Justice of Trinidad and Tobago and the Puisne Judges of Trinidad and Tobago. A person appointed under S. 7 (3) of the Judicature Ordinance of Trinidad and Tobago (1880), cannot, therefore, sit as a member of Court of Criminal Appeal. Ss. 17 and 20 of the Interpretation Ordinance, 1933, deal with the case of one individual being appointed to take the place of another individual and to act as a substitute for him. An acting Judge is not a Puisne judge of the Colony, for the number of Puisne Judges is fixed and cannot be exceeded. Where, therefore, an appeal from conviction of the accused is heard by the Court of Criminal Appeal composed of the Chief Justice of the Colony and two acting Judges of the Supreme Court appointed under S. 7 (3) of the Judicature Ordinance, the Court is not properly constituted and its judgment is void and of no effect. *Tubal Uriah Butler v. The King.* (P. C.)

41 Cr. L. J. 206 :
185 I. C. 461 : 1939 M. W. N. 1005 :
43 C. W. N. 1121 : 1940 O. L. R. 33 :
6 B. R. 287 : 12 R. P. C. 113.

CRIMINAL BREACH AND CONTRACT.

See also (i) Penal Code, Ss. 490 to 492.

(ii) Workmen's Breach of Contract Act.

CRIMINAL BREACH OF TRUST.

See also Penal Code, Ss. 405 to 409.

—*Advance taken by a broker on a pro-note promising to buy paddy for the firm making the advance—Loan or Trust.*

Where the accused took an advance from a trading firm on a pro-note promising in writing to use the money solely in buying paddy and to deliver the paddy to the firm's mill within 25 days—the value of the paddy to be credited at the market-rate of the day of delivery : *Held*, (1) that such a dealing amounted to a loan accompanied with an undertaking by the accused to buy paddy with the money and to sell the paddy to the firm at the current market-rate; (2) that the advance was taken and made, as much for the accused's benefit as for the benefit of the firm; (3) that the accused became owner of the money borrowed and could not be liable for criminal breach of trust on account of his failure to purchase paddy with the money. *Wong Yone Wain v. Emperor.*

13 Cr. L. J. 269 :
14 I. C. 653 : 5 Bur. L. T. 11.

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———*Property in possession of third person—Order directing detention of property, legality of.*

In a case of a criminal breach of trust in respect of a motor car, which it appeared, had been sold by the accused to a third person, the Magistrate made an order directing that the car should remain in Court until further orders: *Held*, that as regards the purchaser of the car, there was a gross abuse of the process of a Criminal Court. *Kedar Nath Dey v. Mohammed Siddik.* 24 Cr. L. J. 695 : 73 I. C. 807.

CRIMINAL CASE.

———*Non-prosecution for two years—Case, whether can be allowed to be re-started.*

A criminal case should not be buried for two years or more and then brought to life again, either in order to extract blackmail from the other side or to satisfy private feelings of revenge. *Harkishan Lal v. Khushabi Ram.* 27 Cr. L. J. 932 : 96 I. C. 388 : A. I. R. 1926 Lah. 213.

CRIMINAL CIRCULAR 1—6 OF NAGPUR JUDICIAL COMMISSIONER'S COURT.

See Criminal Trial.

CRIMINAL CONSPIRACY.

See Penal Code, S. 120 (a).

CRIMINAL LAW.

———*Abuse of process—Civil claim—Men of position.*

While it is undesirable that the Criminal process of the Courts should be abused with the object of merely furthering a Civil claim, it would be intolerable, if by any reason of the position of any individual whatever, he was allowed to evade the law. *Mustafa Rahim v. Motilal.* 10 Cr. L. J. 160 : 2 I. C. 825.

———*Procedure—Notice to Police Inspector in charge of case, before disposing of it, necessity of.*

A Magistrate is bound to give notice to the Police Inspector in charge of a case before disposing of it. *Chemikkala Chinna Reddi v. Emperor.* 16 Cr. L. J. 736 : 31 I. C. 176 : 1915 M. W. N. 554.

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———*Delegation of powers to the Local Government to declare what associations are to be deemed to be unlawful, is not ultra vires.* *Mathra Das v. Emperor.* 34 Cr. L. J. 1178 : 146 I. C. 15 : 34 P. L. R. 923 : 6 R. L. 160 : A. I. R. 1933 Lah. 387 (2).

———*Ss. 15, 17—Unlawful Association—Calling upon persons to form themselves into unlawful association—Assisting operations of association—Offence.*

A person who calls upon others to form jathas in connection with an unlawful association, assists the operations of that association within

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the meaning of S. 17 (1). *Hari Singh v. Emperor.* 27 Cr. L. J. 913 :

96 I. C. 257 : 8 Lah. L. J. 242 : 7 Lah. 348 : 27 P. L. R. 555 : A. I. R. 1926 Lah. 357.

———*S. 16.*

A declaration by the Local Government under S. 16, Criminal Law Amendment Act, 1908, that an association is unlawful does not become effective until it is notified in the Gazette. *Roshan Lal v. Emperor.* 32 Cr. L. J. 653 :

131 I. C. 108 : 32 P. L. R. 130 (2) :

12 Lah. 471 : I. R. 1931 Lah. 380 :

A. I. R. 1931 Lah. 107.

———*Ss. 16, 17.*

The mere receipt of a letter addressed to a person as Secretary to an association cannot make him liable as a member of the association. *Shripad Ramchandra Jog v. Emperor.* 32 Cr. L. J. 472 :

130 I. C. 27 : 33 Bom. L. R. 90 : 55 Bom. 484 :

I. R. 1931 Bom. 235 : A. I. R. 1931 Bom. 129.

———*Ss. 16, 17.*

The powers given by Ss. 16 and 17 of the Act, are not intended to be used so as to make people liable to penalties for having been members of associations at a time when they were lawful, and not unlawful. *Shripad Ramchandra Jog v. Emperor.* 32 Cr. L. J. 472 :

130 I. C. 27 : 33 Bom. L. R. 90 : 55 Bom. 484 :

I. R. 1931 Bom. 235 : A. I. R. 1931 Bom. 129.

———*Ss. 16, 17.*

There can be no justification whatever for presuming that because a person was a member of an association which was lawful, he remained a member of that association after it had been declared unlawful. On the other hand, when the Local Government declares a particular association to be unlawful, the Courts must presume that the citizens will recognize that declaration, which is made, after all, for their good, to preserve the public safety, and will loyally carry it out, and that they will cease absolutely to be members of the association declared unlawful, or in any way to act as such. *Shripad Ramchandra Jog v. Emperor.* 32 Cr. L. J. 472 :

130 I. C. 27 : 33 Bom. L. R. 90 : 55 Bom. 484 :

I. R. 1931 Bom. 235 : A. I. R. 1931 Bom. 129.

———*Ss. 16, 17.*

There is nothing in S. 17, Criminal Law Amendment Act, to impose upon the members of the association declared unlawful, the obligation of doing anything specific to terminate their membership. *Shripad Ramchandra Jog v. Emperor.* 32 Cr. L. J. 472 :

130 I. C. 27 : 33 Bom. L. R. 90 : 55 Bom. 484 :

I. R. 1931 Bom. 235 : A. I. R. 1931 Bom. 129.

———*Ss. 16, 17 (1).*

Association declared unlawful—Prosecution must prove connection between person proceeded against with such association subsequent to notification declaring it unlawful. *Parsram v. Emperor.* 32 Cr. L. J. 700 :

131 I. C. 353 : 32 P. L. R. 71 :

I. R. 1931 Lah. 449 : A. I. R. 1931 Lah. 145.

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—Ss. 16, 17 (1).

In order to prove that an association has been declared unlawful under the Criminal Law Amendment Act of 1908, the Government must not only insert the declaration in the Official Gazette, but must also publish the Gazette in the manner usually adopted for publishing such Gazette and allow a reasonable opportunity to people concerned to see the Gazette.

Balkrishna Anant Hirlekar v. Emperor.

32 Cr. L. J. 572 (2) :

130 I. C. 577 : 33 Bom. L. R. 82 : 55 Bom. 356 :
I. R. 1931 Bom. 257 : A. I. R. 1931 Bom. 132.

—Ss. 16, 17 (1), (2)—*Exhortation to form unlawful association—Promoting meeting of unlawful association, what amounts to—Authority of accused to act on behalf of unlawful association, proof of.*

A person who merely urges the forming of an association cannot be said to promote or assist in promoting a meeting of that association, when the association itself had not come into existence, within the meaning of S. 17 (2) of the Criminal Law Amendment Act. A certain association and all *jathas* organized by it or affiliated to it had been declared by the Government to be unlawful associations within the meaning of S. 16. Accused addressed a meeting in which he exhorted those present to organise themselves into *jathas* and to proceed to certain places in the name of the unlawful association. Accused gave out that he was acting on behalf of the association but there was no proof that he had been authorized by the association to act on its behalf : *Held*, (1) that even if a *jatha* had been formed in response to the appeal of the accused, it would not have been an unlawful association unless it was organized by or affiliated to the particular unlawful association which had been so declared by Government, and that in the absence of evidence that the accused was authorized by that unlawful association to act on its behalf, it could not be said that any *jatha* so formed was organized by or affiliated to that association ; (2) that it could not be said that the accused had promoted or assisted in promoting a meeting of the *jathas* which had not come into existence within the meaning of S. 17 (2) ; (3) that the accused could not be said to have committed an offence under Sub-s. (1) of S. 17.

Attar Singh v. Emperor. 26 Cr. L. J. 1135 :
88 I. C. 367 : 2 L. C. 17 : 6 Lah. 349 :
7 L. L. J. 521 : A. I. R. 1925 Lah. 522.

—Ss. 16, 17 (1), (2)—*Penal Code (Act XLV of 1869), S. 117—Exhorting people to form themselves into unlawful association—Appeal for contribution towards funds of association—Offence.*

A certain association and all *jathas* organized by or affiliated to it had been declared to be unlawful associations within the meaning of S. 16. Accused acting under the orders of the unlawful association, addressed a meeting calling upon those present to organize *jathas* to act under the orders of the unlawful association, and at a subsequent meeting, he read a *communiqué* from the unlawful association to the effect that the persons present should contribute a certain amount towards the funds

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of the association and proceeded actually to collect money for that fund : *Held*, (1) that the accused was not guilty of an offence either under sub-s. (1) or under sub-s. (2) of S. 17 of the Criminal Law Amendment Act ; (2) however, that the accused was guilty of an offence under S. 117 of the Penal Code.

Kirpal Singh v. Emperor. 26 Cr. L. J. 1374 (b) :
89 I. C. 462 : 2 L. C. 19 :
A. I. R. 1926 Lah. 115.

See Cr. P. C., 1898, S. 255.

—S. 17.

Accused reproducing extract from Congress bulletin—Prosecution has to prove three things: (1) association is unlawful, (2) it publishes Congress Bulletin, and (3) accused assisted operations of War Council. *Sadanand v. Emperor.*

32 Cr. L. J. 1158 :
134 I. C. 357 : 33 Bom. L. R. 652 :
I. R. 1931 Bom. 469 : A. I. R. 1931 Bom. 413.

—S. 17.

Notification declaring all associations having certain unlawful objects is sufficient—Person making speech at meeting of such association is guilty under S. 17. *Sivadash Ranjan Dutt v. Emperor.*

35 Cr. L. J. 605 (2) :
148 I. C. 155 : 37 C. W. N. 964 :
6 R. C. 438 : A. I. R. 1934 Cal. 161.

—S. 17—*Scope and applicability.*

Clause (1) of S. 17 makes it an offence not only to be a member of an unlawful association or to take part in its meetings, but also to help such association in any way, and it is immaterial whether the person who renders such help has been authorised to do so or not. Clause (1) of S. 17 is intended to deal with members and all other persons identifying themselves with an unlawful body of persons as defined by S. 15. Clause (2) of S. 17 is directed against the persons who actually control or direct the activities of the association or who organise or help to organise any of its meetings.

Hari Singh v. Emperor. 27 Cr. L. J. 913 :
96 I. C. 257 : 8 Lah. L. J. 242 :
7 Lah. 348 : 27 P. L. R. 555 :
A. I. R. 1926 Lah. 357.

—S. 17 (1).

See (i) General Clauses Act, S. 26.

(ii) Letters Patent (Lahore), Cl. 8.

(iii) Press Emergency Powers Act,
1931, Ss. 4 (1), 8, 23.

—S. 17 (1).

A warning by the District Magistrate by public notification, in the absence of any order, forbidding that the public are assisting the operations of the Congress by setting up flags over their shops, cannot make such an act an offence. *Ram Prasad v. Emperor.*

34 Cr. L. J. 22 :
140 I. C. 497 : I. R. 1932 All. 652 :
A. I. R. 1933 All. 95.

—S. 17 (1).

Assisting operations—Association declared unlawful—Procession taken out singing political songs : *Held*, accused taking part in procession

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were assisting the operations of that Association. *M. S. Adhikari v. Emperor*.

32 Cr. L. J. 723 :
131 I. C. 477 : 33 Bom. L. R. 325 :
I. R. 1931 Bom. 301 : A. I. R. 1931 Bom. 202.

—S. 17 (1).

Assisting operations—Notice in paper circulating in Bombay stating that a meeting is to take place in Bombay giving time and place 'assists' the promoters of meeting within S. 17 (1). Publication of Police Commissioner's ban side by side with notice does not make any difference. *Sohrab Palanji Kapadia v. Emperor*.

32 Cr. L. J. 804 :
131 I. C. 889 : 33 Bom. L. R. 314 :
I. R. 1931 Bom. 313 :
A. I. R. 1931 Bom. 206 (2).

—S. 17 (1).

Assisting operations—There must be such a connection between acts of accused and operations of unlawful association, that an intention to assist its operations may be properly inferred—Mere existence of common aim is not sufficient. *Gangubai Ramdas Khemji v. Emperor*.

32 Cr. L. J. 717 :
131 I. C. 470 : 33 Bom. L. R. 319 :
55 Bom. 442 : I. R. 1931 Bom. 294 :
A. I. R. 1931 Bom. 200.

—S. 17 (1).

Case under S. 117, P.C. and S. 17 (1), Cr. L. A. Act is triable as a summons case. *Narsinha Narayan Chandra v. Emperor*.

32 Cr. L. J. 718 :
131 I. C. 472 : 33 Bom. L. R. 353 :
I. R. 1931 Bom. 296 : A. I. R. 1931 Bom. 199.

—S. 17 (1)—Continuing membership.

It is not right to presume from the fact that a man is a member of an association when it is lawful, that he continues to be a member after it is declared unlawful. *Emperor v. Dharmnand Kosambi*.

32 Cr. L. J. 725 :
131 I. C. 479 : 33 Bom. L. R. 333 :
I. R. 1931 Bom. 303 : A. I. R. 1931 Bom. 203.

—S. 17 (1).

Hoisting of the national flag over a shop or refusal to take it down at the request of the Police, does not amount to assisting the operations of an unlawful association nor is it an offence under S. 17 (1). *Jogendra Mohan Choudhury v. Emperor*.

34 Cr. L. J. 925 (2) :
145 I. C. 240 : 37 C. W. N. 992 :
6 R. C. 84 (1) : A. I. R. 1933 Cal. 695 (1).

—S. 17 (1).

"Merely preaching boycott of British goods is not an offence under S. 17 (1) as boycott of British goods is not the monopoly of the associations declared unlawful by the Government." *Vidyawati v. Emperor*.

34 Cr. L. J. 87 :
141 I. C. 33 : 34 P. L. R. 32 :
I. R. 1933 Lah. 51 : A. I. R. 1932 Lah. 613.

—S. 17 (1).

Persons painting words "Boycott British Goods" in roadway is not guilty under S. 18 (1), Press (Emergency Powers) Act, but may be convicted under S. 17 (1) Criminal Law

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Amendment Act, as assisting operations of unlawful association : *In re: M. K. Panduranga Mudali*.

34 Cr. L. J. 90 :
140 I. C. 767 : 63 M. L. J. 906 :
1932 M. W. N. 1357 : I. R. 1933 Mad. 35 :
A. I. R. 1933 Mad. 123.

—S. 17 (1)—Publication.

The fact that the Gazette in which the notification declaring an association unlawful was printed had not been issued to the public, is immaterial so long as a copy of the Gazette containing the notification was actually shown to the accused. *Emperor v. Dharmnand Kosambi*.

32 Cr. L. J. 725 :
131 I. C. 479 :
33 Bom. L. R. 333 : I. R. 1931 Bom. 303 :
A. I. R. 1931 Bom. 203.

—S. 17 (1).

Simply because object of unlawful association and object of some individual person are identical, such person cannot be held to be assisting the association unless connection between two is proved. *Iswarudu v. Emperor*.

34 Cr. L. J. 823 :
144 I. C. 765 : 1932 M. W. N. 1265 :
6 R. M. 2 : A. I. R. 1933 Mad. 369.

—S. 17 (1).

The mere display of a Congress flag over a shop and refusal to take it down at the request of the Police, does not amount to 'assisting the operations of an unlawful association'. *Ramprasad v. Emperor*.

34 Cr. L. J. 22 :
140 I. C. 497 : I. R. 1932 All. 652 :
A. I. R. 1933 All. 95.

—S. 17 (1).

The word 'assists' in S. 17 (1) must be construed in a reasonable way and means 'intentionally assists.' *In re: Panduranga Mudali*.

34 Cr. L. J. 90 :
140 I. C. 767 : 63 M. L. J. 906 :
1932 M. W. N. 1357 : I. R. 1933 Mad. 35 :
A. I. R. 1933 Mad. 123.

—S. 17 (1).

There is a distinction between "assisting the operation" and promoting or carrying out of the same or similar objects. *Bhagwanti v. Emperor*.

34 Cr. L. J. 72 :
140 I. C. 608 : 33 P. L. R. 1002 :
I. R. 1933 Lah. 20 : A. I. R. 1932 Lah. 578.

—S. 17 (1).

Where accused was prosecuted for being member of an unlawful association, but none of the witnesses had personal knowledge of the fact of his membership thereof, and their statements were based on conjectures : *Held*, that the mere fact that he was a delegate to the Congress of 1929 was not sufficient to prove that he was a member of the Congress Committee after 3rd July 1930, on the date of declaration of the Committee as unlawful. *Bhim Sen Sachar v. Emperor*.

32 Cr. L. J. 708 :
131 I. C. 360 : I. R. 1931 Lah. 456 :
A. I. R. 1931 Lah. 15.

—S. 17 (1).

Where the accused reproduced in his newspaper an appeal to stop trading in foreign

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cloth, made by a person describing himself as the President of the War Council: *Held*, that the article did not advocate any unlawful action and no offence was made out under S. 17 (1). *Sadanand v. Emperor*.

32 Cr. L. J. 1158 :
134 I. C. 357 : 33 Bom. L. R. 652 :
I. R. 1931 Bom. 469 :
A. I. R. 1931 Bom. 413.

S. 17 (1), (2).

People asked to join Congress—Boycott of British goods preached—Civil Disobedience promoted—Speaker is not guilty under S. 17 (1) or (2)—Speaker, however, resisting being apprehended is guilty under S. 224, I. P. C. *Partap Singh v. Emperor*.

34 Cr. L. J. 25 :
140 I. C. 442 : 33 P. L. R. 1071 :
I. R. 1932 Lah. 712 :
A. I. R. 1932 Lah. 615 (2).

S. 17 (1), (2), scope of Penal Code (Act XLV of 1860), S. 117—Instigation to form unlawful association—Offence.

Sub-ss. (1) and (2) of S. 17, postulate the existence of an unlawful association at the time when the acts specified in the sub-sections are committed. Anything done before the coming into existence of such an association, therefore, does not fall within the purview of either Sub-s. (1) or Sub-s. (2) of S. 17. A person, however, who instigates the formation of an unlawful association, abets such formation, and as any one becoming a member of such association or contributing towards the funds of such association, would be guilty of an offence under S. 17, the person who abets the formation of such an association is guilty of the abetment of an offence, and if the number of persons who are instigated exceeds ten, the instigation brings him within the ambit of S. 117 of the Penal Code and renders him liable to the punishment provided therein. *Emperor v. Mihan Singh*.

26 Cr. L. J. 1352 :
89 I. C. 392 : 5 Lah. 1 :
A. I. R. 1924 Lah. 440.

S. 17 (2).

See Ordinance (X of 1932), S. 17.

S. 17 (2).

An ordinary procession, in which no members of an unlawful association take part, does not fall within the definition of a meeting of an unlawful association. *Bahadur Singh v. Emperor*.

25 Cr. L. J. 225 :
76 I. C. 689 : A. I. R. 1923 Lah. 342.

S. 17 (2)—Managing or taking part in meeting of unlawful association.

To substantiate a charge under Sub-s. (2) of S. 17, it is necessary to prove that the association in question was an unlawful one and that the accused managed or assisted in its management, or promoted or assisted in promoting a meeting of the association, or of any of its members as such members. *Sarup Singh v. Emperor*.

26 Cr. L. J. 1078 :
88 I. C. 22 : 1 L. C. 538 : 7 L. L. J. 264 :
A. I. R. 1925 Lah. 299.

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S. 17 (2)—Offence under—Prima facie case.

A Police Report which merely states that action should be taken against a person on the ground that he had been assisting volunteers by giving them shelter in his house, is insufficient upon which to institute proceedings against that person under S. 17 (2). *Parmanand v. Emperor*.

24 Cr. L. J. 1 :
71 I. C. 49 : 36 C. L. J. 179 :
A. I. R. 1922 Cal. 538.

S. 17 (2)—Person taking part in management of meeting of unlawful association, whether guilty of promoting such meeting—Offence.

A person who takes an active part in organizing or assisting to organize a meeting, must be regarded as promoting or assisting to promote the meeting. A person who assists in the arrangements for the reception of the audience at a meeting of an unlawful association, assists in keeping order in a procession in connection with the meeting and takes charge of sums of money which are raised on the occasion, is guilty of an offence under S. 17 (2). *Mehr Singh v. Emperor*.

27 Cr. L. J. 911 :
96 I. C. 223 : 8 Lah. L. J. 255 :
7 Lah. 357 : 27 P. L. R. 529 :
A. I. R. 1926 Lah. 405.

S. 17 (2)—Prevention of Seditious Meetings Act (X of 1911), S. 6—Conviction under latter Act whether bars conviction under former.

Where a person has been convicted and punished for an offence under S. 6 of the Prevention of Seditious Meetings Act, he cannot be convicted subsequently for the same acts under S. 17 (2) of the Criminal Law Amendment Act. *Bahadur Singh v. Emperor*.

25 Cr. L. J. 225 :
76 I. C. 689 : A. I. R. 1923 Lah. 342.

S. 17 (2).

The leader of a party, which induces certain boys to take out and publicly exhibit Congress flags in lieu of clothes and some cash for the services rendered, is guilty under S. 17 (2). *Mathra Das v. Emperor*.

34 Cr. L. J. 1178 :
6 R. L. 160 : 146 I. C. 255 : 34 P. L. R. 923 :
A. I. R. 1933 Lah. 387 (2).

(XXIII of 1932), S. 7.

A procession, passing a shop in a particular mohalla and possibly repeating the procession a week later, cannot be construed into loitering or an act similar to loitering. In order to commit an offence under S. 7, the loitering must be done with the intention that any person is deterred from entering or approaching or dealing at the particular place near which such loitering occurs. Halting for the purpose of distributing handbills, announcing a meeting for a later hour, cannot be interpreted as being with the object of deterring any prospective purchaser from entering or dealing at the particular shop near which the halt was made. *Radhika Kivan v. Emperor*.

37 Cr. L. J. 10 :
158 I. C. 1008 : 18 N. L. R. 22 :
8 R. N. 112.

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—S. 7.

Application of S. 7 is not excluded from cases arising out of industrial disputes. *R. S. Ruikar v. Emperor*. 36 Cr. L. J. 1153 :

157 I. C. 618 : 31 N. L. R. 318 :
A. I. R. 1935 Nag. 149.

—S. 7.

In interpreting S. 7, the Court is precluded from considering any statements made in the Legislative Assembly or elsewhere on behalf of Government. *R. S. Ruikar v. Emperor*.

36 Cr. L. J. 1153 :
157 I. C. 618 : 31 N. L. R. 318 :
A. I. R. 1935 Nag. 149.

—S. 7.

It is not the law that in order to establish what a speaker did say at a certain meeting, a verbatim report is necessary. *R. S. Ruikar v. Emperor*.

36 Cr. L. J. 1153 :
157 I. C. 618 : 31 N. L. R. 318 :
A. I. R. 1935 Nag. 149.

—S. 7.

Neither the ordinance, out of which S. 7 arose, nor the Act lays down any limitation as to the circumstances in which molestation becomes an offence. *R. S. Ruikar v. Emperor*.

36 Cr. L. J. 1153 :
157 I. C. 618 : 31 N. L. R. 318 :
A. I. R. 1935 Nag. 149.

—S. 7.

S. 7 is part of the Criminal Law of the land, and an offence committed as defined in that section, is an offence to which the concluding sentence of S. 17 of the Trade Unions Act applies as much as it would do to an agreement to commit murder. *R. S. Ruikar v. Emperor*.

36 Cr. L. J. 1153 :
157 I. C. 618 : 31 N. L. R. 318 :
A. I. R. 1935 Nag. 149.

—S. 7—S. 7 (1) (a), whether applies to picketing of house of public servant—Loitering before Premier's house for forcing him to get cancelled certain order passed by Government, if falls under S. 7 (1) (a).

There is no indication within the Criminal Law Amendment Act, that a public servant whose house is picketed, cannot claim the benefit of the section. The Criminal Law Amendment Act of 1932 deals with picketing and makes picketing in certain circumstances an offence. The Criminal Law Amendment Act is, therefore, to be deemed to be a special law within the meaning of S. 41, Penal Code, and there can, therefore, be an abetment of an offence under S. 7 (1) (a), Criminal Law Amendment Act. The language employed in S. 7 is clear and admits of only one meaning. In these circumstances, it is unnecessary to speculate on the intention of the framers of the Act. The Premier is entitled to move the Legislature or the Government to repeal the order which was passed by the Government, and if people loiter in front of his house with the object of forcing him to move in the matter in order to have the order cancelled, which he has a right to do or abstain from doing, the action imputed to the accused would apparently fall within the

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mischief which S. 7 (1) (a) is designed to prevent. *In re: Swami Arungirinatha*.

40 Cr. L. J. 224 :
179 I. C. 605 : 1938 M. W. N. 1105 (2) :
1938 2 M. L. J. 863 : 48 L. W. 813 :
11 R. M. 603 : I. L. R. 1939 Mad. 87 :
A. I. R. 1939 Mad. 21.

—S. 7.

The section makes no limitation in respect of the parties disputing or the nature of the disputes giving rise to a situation where picketing is employed, and from the wording of the section itself, it is clear that its application is universal. *R. S. Ruikar v. Emperor*.

36 Cr. L. J. 1153 :
157 I. C. 618 : 31 N. L. R. 318 :
A. I. R. 1935 Nag. 149.

—S. 7—Whether repealed by Repealing and Amending Act (XX of 1937)—Notification applying S. 7 to Madras—Re-notification after amendment of Act in 1935, whether necessary.

In the face of S. 4 of the Repealing and Amending Act of 1937 and of S. 6-A of the General Clauses (Amendment) Act of 1936, it is not open to contend that the Criminal Law Amendment Act, 1932, has been repealed in its entirety. These sections leave the Criminal Law Amendment Act of 1932, so far as S. 7 is concerned, intact. The notification which was issued by the Government of Madras applied S. 7, and the Criminal Law Amendment Act, 1932, so far as S. 7 was concerned, was still on the Statute Book: *Held*, also that there was no necessity for re-notification and that S. 7 applied to the Madras Presidency. *In re: Swami Arungirinatha*. 40 Cr. L. J. 224 :
179 I. C. 605 : 1938 M. W. N. 1105 (2) :
1938 2 M. L. J. 863 : 48 L. W. 813 :
11 R. M. 603 : I. L. R. 1939 Mad. 87.
A. I. R. 1939 Mad. 21.

—S. 16 (h).

Pamphlet referring to kisan labourers as against rich persons—Classes are sufficiently well defined for the purpose of S. 16. *Ram Saran Das v. Emperor*. 35 Cr. L. J. 1000 :
149 I. C. 710 : 6 R. A. 960 : 3 A. W. R. 831 :
A. I. R. 1934 All. 717.

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—Corporation, whether can be prosecuted.

It is only in a limited class of cases that a Corporation can commit an offence. These must be cases in which *mens rea* is not essential, and in which it is possible for the Court to pass a sentence of fine only. The act charged should be one which is contemplated in the Charter or Articles of Corporation as being capable of being performed by the Corporation, or must be intimately connected with its statutory or legal obligations. *Punjab National Bank v. Bunder Inspector, Karachi Port Trust*. 26 Cr. L. J. 137 :
33 I. C. 697 : 16 S. L. R. 169.

—Criminal liability is a creation of statute and cannot be created by agreement. *Ram Prasad v. Emperor*. (F. B.)

39 Cr. L. J. 796 :
176 I. C. 787 : 19 P. L. T. 461 :
4 B. R. 772 : 11 R. P. 107 : 17 Pat. 632 :
A. I. R. 1938 Pat. 403.

CRIMINAL MISAPPROPRIATION.

See also Penal Code, Ss. 403 to 409.

—By administrator—No finding—General observation in judgment.

In the absence of an express finding that an administrator and others are guilty of criminal misappropriation as to any of the sums, the general observations in the judgment which go to show that in the opinion of the Judge the administrators had acted dishonestly are no evidence that as to any particular claim the person was criminally liable. *Erasala Gurunatha Chetty v. Addippally Raghavulu Chetty*.

8 Cr. L. J. 147 :
3 M. L. T. 394.

CRIMINAL PROCEDURE.

See also Practice.

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—Bond taken under—Requisites.

Every bond taken under Cr. P. C., as security for the performance of a promise, must include a stipulation for the payment of a sum of money by way of penalty for the breach of the promise. *Emperor v. Katay Kisan*.

1 Cr. L. J. 854 :
17 C. P. L. R. 113.

—Construction.

So far as the Cr. P. C. deals with any point specifically, it must be deemed to be exhaustive, and the law must be ascertained by reference to it but where a case arises which demands interference and it is not specifically provided by the Code, it would not be reasonable to say that the Court had not the power to make such order as the ends of justice require. *Nagen Kundu v. Emperor*.

35 Cr. L. J. 941 :
149 I. C. 345 : 38 C. W. N. 501 :
61 Cal. 498 : 59 C. L. J. 516 : 6 R. C. 565 :
A. I. R. 1934 Cal. 428.

—Ganjam Collectorate—Division into Agency District and non-Agency District—Sessions Court—Agent—Deputy Magistrate—General Deputy Magistrate—Jurisdiction.

For Magisterial as well as for Judicial and Revenue Administration, the old Ganjam Collectorate was long ago divided into an Agency District and a non-Agency District. The Magistrates of the Agency District are not, as such, in any way subordinate to the Sessions Court of the non-Agency Sessions Division of Ganjam, nor does the fact that the same person is a first class Sub-Divisional Magistrate in both Districts, make him subordinate to the Sessions Court of the Ganjam Sessions Division in regard to the Magistrate's jurisdiction in the Agency District. The Agency District is also a Sessions Division, the Sessions Judge of which is the Agent himself. *Public Prosecutor v. Sadananda Patnaik*.

13 Cr. L. J. 850 :
17 I. C. 786 : 23 M. L. J. 670 :
12 M. L. T. 601.

—Interpretation—Sub-sections in Code are not clauses.

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The sub-sections of the Cr. P. C. are referred to as "sub-sections" and not as "clauses" and it is only in the case of a Bill that a reference is made to clauses. *Sayama Pado Deb v. Sunder Das*.

39 Cr. L. J. 928 :
177 I. C. 978 : 1938 A. L. J. 767 :
11 R. A. 241 : I. L. R. 1938 All. 794 :
1938 A. W. R. 492 : A. I. R. 1938 All. 536.

—Investigation, personal, by Magistrate, legality of.

In a case under S. 297, Penal Code, the charge was that the accused had ploughed up a graveyard. The Trial Magistrate accompanied by the Pleaders proceeded to the spot and caused excavations to be made on the land in order to ascertain whether it was or was not a graveyard and based his conclusions on the observations which he had made on the spot: *Held*, that the action of the Magistrate was entirely illegal and vitiated the trial. *Jailal Jha v. Emperor*.

25 Cr. L. J. 954 :
81 I. C. 602 : 1 Pat. L. R. 256 Cr :
A. I. R. 1923 Pat. 537.

—Jury—Member of District Board—Association of, to serve on Jury.

A member of the District Board who is appointed to carry out certain public functions is not an unsuitable person to be nominated by the District Board to serve on a Jury for purposes of seeing whether there is an encroachment on the public property under the control of the District Board.

32 Cr. L. J. 565 :
130 I. C. 627 : 1930 A. L. J. 1335 :
L. R. 12 All. 13 Cr. : I. R. 1931 All. 291 :
A. I. R. 1931 All. 257.

—Rules framed under S. 16 requiring quorum of two Magistrates—Trial commencing before three Magistrates—Presence of two only throughout trial—Judgment signed by only those two—Trial, not irregular. *Mathura v. Emperor*.

34 Cr. L. J. 701 :
144 I. C. 123 : 1933 A. L. J. 547 :
L. R. 14 All. 114 Cr. : 55 All. 459 :
I. R. 1933 All. 379 :
A. I. R. 1933 All. 355.

—S. 1—Village Magistrates—Complainant by—Application of Code.

S. 1 of the Cr. P. C. which makes the Act inapplicable to heads of villages in the Madras Presidency, simply means that in his official capacity as Village Magistrate, i. e. in proceedings he takes as such, he is not governed by the Code. It has nothing to do with his initiating proceedings before a Magistrate as a complainant himself. *Public Prosecutor v. Mari Mudali*.

25 Cr. L. J. 221 :
76 I. C. 653 : 19 L. W. 30 :
1924 M. W. N. 145 : 1924 A. I. R. Mad 730.

—Ss. 1, 83—Warrant issued by Court in Quetta,—Execution in British India—Procedure.

Quetta does not form part of British India and consequently a warrant issued by a Court in Quetta cannot be executed in British India. The Court in Baluchistan must proceed under S. 7, Extradition Act. (155 I. C. 677 (1) and

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173 I. C. 322 (2) relied on). *Devki Nandan Nathuram v. Emperor*. 41 Cr. L. J. 857 :

190 I. C. 203 : 13 R. Pesh. 24 :
A. I. R. 1940 Pesh. 30.

—S. 1 (2).

The rule laid down in S. 1 (2), "Nothing herein contained shall affect any special law now in force" is an application of the maxim *generalia specialibus non derogant*. In re : *Subbiah Tenar*. 41 Cr. L. J. 41 :

184 I. C. 593 : 50 L. W. 318 :
1939 2 M. L. J. 455 : 1939 M. W. N. 1000 .
I. L. R. 1939 Mad. 947 : 12 R. M. 469 :
A. I. R. 1939 Mad. 856.

—S. 1 (2). Specific provision to the contrary.

Per *Braund, J.*—The words specific provision in S. 1 (2) really mean that the particular provision of the Cr. P. C. must, in order to "affect" the "special.....law," clearly indicate, in itself and not merely by implication to be drawn from the statute generally, that the "special law" in question is to be affected without necessarily referring to that "special law" or the effect on it intended to be produced in express terms. (*Thomas Challoner v. Henry W. F. Bolikow* (8), 102 I. C. 832 (9) and *Henderson v. Bank of Australasia* (10), referred to.) *Baldeo v. Emperor*. (F. B.) 41 Cr. L. J. 627 :

183 I. C. 562 : 1940 A. L. J. 241 :
I. L. R. 1940 All. 396 : 13 R. A. 48 :
A. I. R. 1940 All. 263.

—Ss. 1 (2), 498—Sind Frontier Regulation (Act V of 1872) S. 11 (Sind Frontier Regulation (Act III of 1892)—Bail—Accused tried by Jirgah—Power of High Court to grant bail.

The revisional powers of a High Court under Cr. P. C. do not apply to proceedings under Sind Frontier Regulations V of 1872 and III of 1892. An application for bail on behalf of an accused, who is being tried by a *Jirgah* or Council of Elders, under S. 8 of the Regulation of 1892 cannot be made to the High Court under S. 498. *Imperator v. Ghulam Kadir*. 12 Cr. L. J. 568.

12 I. C. 656 : 5 S. L. R. 105.

—S. 4—Statement that certain person keeps common gaming-house, whether "complaint".

A statement made before a Magistrate, with the object of inducing him to take action under the Bombay Prevention of Gambling Act, that a certain person keeps a common gaming-house, does not amount to a "complaint," within the meaning of Section 4. *Hotu v. Emperor*. 15 Cr. L. J. 657 :

25 I. C. 985 : 8 S. L. R. 66 :
A. I. R. 1914 Sind 121.

—Trial when begins (a) in warrant-cases, (b) in summons, cases—Competency of Court to order.

In a warrant-case, the trial does not begin till a charge has been framed and the accused claims to be tried. In summons cases the intimation prescribed by S. 242 of the Code

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takes the place of a formal charge. *Manna v. Emperor*. 14 Cr. L. J. 230 :

19 I. C. 326 : 9 N. L. R. 42.

—Ss. 4, 190—Report of Police Officer, meaning of—Allegation of non-cognizable case by Police Officer also Public Prosecutor, whether "complaint."

The words "report of a Police Officer" as used in Cr. P. C. mean the report of a Police Officer in cases in which he is authorized to, investigate by the Code. Therefore, a written allegation of a non-cognizable case made by a Police Officer who is also a Public Prosecutor with a view to the Court's taking action is not the report of a Police Officer but is a "complaint" as defined in S. 4 and the Court is competent to take action thereon. *Emperor v. Ghulam Hussain*. 25 Cr. L. J. 1361 :

82 I. C. 753 : 1. L. C. 16 : 6 L. L. J. 606 :
A. I. R. 1925 Lah. 237.

—Ss. 4, 195, 200—Penal Code, S. 211—Complaint and Personal presentation.

To invest a Magistrate with jurisdiction to take cognizance of a case on a complaint made to him, it is not essential that such a complaint should be presented to him by the complainant personally, and when it is not so presented, the Magistrate may call upon the complainant to appear before him on a date to be fixed by him and may examine him under S. 200. *Chuhermal v. Emperor*. 30 Cr. L. J. 732 :

117 I. C. 117 : I. R. 1929 Sind 131 :
A. I. R. 1929 Sind 132.

—Ss. 4, 202, 476—Penal Code, Ss. 193, 211—Complaint—Perjury—Hearsay evidence—Procedure.

C sent a telegram to the Collector to the following effect: That while he was on duty, certain officers broke open his house door and beat his family and inoculated plague *tika*. The Collector sent the telegram to a Magistrate who, instead of examining the complainant at once on oath, ordered an enquiry to be made in the case by a *Tahsildar*. The *Tahsildar*, after enquiry, reported that the case was a false one. The Magistrate then sent for C and recorded his statement. C admitted having sent the telegram to the Collector and said that he had heard that the occurrence was a true one. The Magistrate examined several witnesses who also deposed that they had heard that the officials concerned had beaten the wife of C: Held, that (1) C could not be said to have made any complaint to the Magistrate. Under the circumstances, no offence under S. 211, Penal Code, was committed by C; (2) Hearsay evidence given by the witnesses could not be made the subject of a prosecution under S. 193, Penal Code; (3) under the circumstances, the Magistrate was not justified in taking action under S. 476, Cr. P. C. *Chhedi Kandu v. Emperor*. 11 Cr. L. J. 351 :
6 I. C. 390.

—S. 4 (1)—"Collection of evidence conducted by Police Officer", interpretation of.

The expression 'collection of evidence con-

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ducted by a Police Officer' in S. 4 (1) is a short way of saying collection of material to be used as evidence conducted by a Police Officer. The expression "giving or taking evidence" is nowhere used in reference to Police Officers. *A. F. G. Price v. Emperor*. 38 Cr. L. J. 435 : 167 I. C. 555 : 17 Lah. 593 : 38 P. L. R. 1042 : 9 R. L. 515 : A. I. R. 1937 Lah. 160.

S. 4 (1).

Complaint not inculcating complainant—Magistrate deputed for local investigation—Report recommending prosecution of complainant—Report whether complaint. *Sukha Sahu v. Emperor*. 34 Cr. L. J. 237 : 141 I. C. 810 : 13 O. L. T. 791 : I. R. 1933 Pat. 91 : A. I. R. 1933 Pat. 87.

Ss. 4 (1), 4 (k), 242—A conviction set aside for misjoinder—ordering re-trial after framing fresh charge on recorded evidence.

An Appellate Court, when setting aside the conviction and sentence in a warrant-case on the ground that the accused has been illegally tried along with another person, is competent to direct that the accused be re-tried on a fresh charge framed on the evidence already recorded for the prosecution. *Manna v. Emperor*.

14 Cr. L. J. 230 : 19 I. C. 326 : 9 N. L. R. 42.

Ss. 4 (1) (b), 195—Complaint, what is—Document addressed by Police Officer to superior officer and produced before Court.

A Superintendent of Police granted sanction for the prosecution of the accused under S. 195 in respect of an offence under S. 182, Penal Code, and directed a Sub-Inspector to prepare a complaint and a calendar of witnesses. These documents were prepared and submitted to the Superintendent of Police and were subsequently produced before a Magistrate who took cognisance of, and tried the case : *Held*, that the complaint, prepared by the Sub-Inspector although not addressed to a Magistrate, was a complaint within the meaning of S. 195 and the Magistrate was, therefore, competent to take cognisance of the case. *Chiragh Din v. Emperor*.

25 Cr. L. J. 125 : 76 I. C. 189 : 4 Lah. 359 : A. I. R. Lah. 258.

S. 4 (1) (c).

The words "or under any law for the time being in force" in S. 4 (c) refer to offences punishable with imprisonment for less than three years.

35 Cr. L. J. 1097 : 150 I. C. 623 : 30 N. L. R. 269 : 7 R. N. 10 : A. I. R. 1934 Nag. 71.

S. 4 (1) (f)—Cognizable offence, meaning of.

The words "a Police Officer may arrest" in S. 4 (1) (f) do not mean any and every officer, and if the law provides that in a particular offence, a Police Officer of particular grade may arrest without a warrant, the offence

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is still a cognizable one. *Emperor v. Abasbhai Abdulhussain*.

27 Cr. L. J. 503 : 93 I. C. 967 : 28 Bom. L. R. 272 : 50 Bom. 344 : A. I. R. 1926 Bom. 195.

S. 4 (1) (h) Application for maintenance, whether complaint—Sending application for report, competency of.

An application under S. 488, is not a complaint as defined in the Code and, therefore, cannot be sent under S. 202, for report. *Makhan Singh v. Harnamo*.

29 Cr. L. J. 909 : 111 I. C. 669.

Ss. 4 (1) (b) Application under S. 107, whether complaint—Summary dismissal—Inherent power of Magistrate.

An application under S. 107 does not fall within the definition of a "complaint," and S. 203 has, therefore, no applicability to such an application. But every Magistrate possesses the inherent power of refusing an application which he finds to be groundless, and in the case of an application under S. 107, if a Magistrate is satisfied, after making an enquiry himself or through some other agency that the apprehension of a breach of the peace complained of does not exist, he need not make an order under S. 112 and must dismiss the application. *Shamas-ud-Din v. Ram Dyal Singh*.

25 Cr. L. J. 89 : 76 I. C. 25 : A. I. R. 1924 Lah. 630.

S. 4 (1) (h)—Charge-sheet under S. 379, Penal Code, setting out facts constituting offence under S. 163 (a) (2), Madras Local Boards Act, whether amounts to complaint.

Where the charge-sheet filed by the Police under S. 379, Penal Code, sets out the facts which constitute the offence under S. 163, cl. (a) (2), Madras Local Boards Act, it amounts to a complaint as defined in S. 4, cl. (h), Cr. P. C. *Public Prosecutor v. Ratnavelu Chetty* (1) relied on. *In re : Muthuswamy Pillai*.

41 Cr. L. J. 20 : 184 I. C. 471 (1) : 1939 M. W. N. 615 : 1939 2 M. L. J. 39 : 50 L. W. 219 : 12 R. M. 463 : A. I. R. 1939 Mad. 839.

S. 4 (1) (h)—Complaint.

A "complaint" within the meaning of S. 4 (h) can only be made to a Magistrate. *Arumuga Mudaliar v. Emperor*.

23 Cr. L. J. 592 : 68 I. C. 624 : 16 L. W. 491 : 31 M. L. T. 254 : 43 M. L. J. 564 : 1922 M. W. N. 801 : A. I. R. (1923) Mad. 59.

S. 4 (1) (h)—Complaint—Application to Deputy Commissioner making complaints against Manager, Court of Wards, if complaint.

Where the accused submitted a petition to the Deputy Commissioner while he was on tour making certain complaints against a Manager of the Court of Wards and the accused was convicted of an offence under S. 211, Penal Code, for making a false charge against the Manager: *Held*, that the petition submitted by accused not being a complaint and there being no institution of Criminal proceedings, the con-

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viction was illegal. *Ahmad Khan v. Emperor.*
1 Cr. L. J. 957 :
5 P. L. R. 397.

—S. 4, (1) (h)—*Complaint*—'Committal sheet' issued by Superintendent, Salt Revenue Department,—whether complaint.

A "committal sheet" signed by a Superintendent of the Salt Department, and sent to a Magistrate, setting out the date and particulars of an offence under the Salt Act, the names of the accused persons, and the names of the witnesses, and containing a definite request to the Magistrate to summon the witnesses and try the accused for the offence set out in the sheet, is a complaint. *Phagu Sahu v. Emperor.*

18 Cr. L. J. 366 :
38 I. C. 750 : I. P. L. J. 592 :
3 P. L. W. 29 : A. I. R. 1916 Pat. 129.

—S. 4 (1) (h)—*Complaint*—*Complaint need not necessarily be made by injured party.*

A complaint may be made by any person who knows about the commission of the offence and not necessarily by the injured party. *Basirulla v. Asadulla.* 30 Cr. L. J. 1013 :
119 I. C. 130 : 33 C. W. N. 576 :
I. R. 1929 Cal. 738 :
A. I. R. 1929 Cal. 639.

—S. 4 (1) (h)—*Complaint*—*Mention of all accused.*

In filing a complaint in a Criminal Court, it is not necessary that the complainant should name all the accused persons. *Emperor v. Shamacharan.* 13 Cr. L. J. 588 :
15 I. C. 1004.

—S. 4 (1) (h)—*Complaint*—*Personal knowledge of complainant, necessity of case.*

A complaint which is otherwise a proper complaint is not illegal because the person making it has no personal knowledge of the offence committed. *Suresh Chandra Deb v. Emperor.*

21 Cr. L. J. 346 :
55 I. C. 682 : 1 P. L. T. 531 :
A. I. R. 1920 Pat. 163.

—S. 4 (1) (h)—*Complaint*—*Petition asking for Police warning upon accused.*

A petition making certain charges against a person and asking for an order on the Police to warn that person in the first instance, is not a "complaint" within the meaning of S. 4, clause (h) and no sanction to prosecute the petitioner under S. 211, Penal Code, can be granted. *Purno Chandra Ghosh v. Hurish Chandra Ghosh.*

12 Cr. L. J. 535 :
12 I. C. 303 : 15 C. W. N. 1051.

—S. 4 (1) (h)—*Complaint*—*Petition to Magistrate regarding false entry in Public Register.*

Petition to Magistrate that false entry was caused to be entered in Death Register. Court ordering enquiry by Police—Forged document used during enquiry : *Held*, petition was complaint and user of forged document was in proceeding before Magistrate : *Held*, also

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Fresh proceedings could not be taken. *Raghunandan Lal v. Emperor.*

35 Cr. L. J. 1309 :
151 I. C. 320 : 15 P. L. T. 18 ;
7 R. P. 77 : A. I. R. 1934 Pat. 156.

—S. 4 (1) (h)—*Complaint*—*Police Report*—*Charge of sedition.*

The report of a Police Officer must be some statement made in connection with or at least under the colour of the duty of the maker as a Police Officer. It is not the duty of a Police Officer to make reports of offences to Magistrates under S. 124-A, I. P. C.

Therefore if he puts in a complaint under the instructions of a District Magistrate directed by Government to institute a prosecution, his complaint virtually is the statement of the District Magistrate in compliance with the order of Government; and it is nonetheless a complaint because he is a Police Officer. Where a Police Officer files a formal complaint in a non-cognizable case, he cannot be said to make a police report and his complaint falls within the definition of "complaint" *In re : Subramania Siva.*

9 Cr. L. J. 108 :
3 I. C. 22 : 5 M. L. J. 1 : 32 Mad. 3.

—S. 4, (1) (h)—*Complaint*—*Police Report.*

The definition of complaint in S. 4 (h) excludes only such Police reports as are made under S. 173 after the conclusion of the Police investigation. *Imperator v. Khushal Das.* 13 Cr. L. J. 752 :
17 I. C. 64 : 6 S. L. R. 82.

—S. 4, (1) (h)—*Complaint*—*Report of peon containing no request to take action.*

The report of a peon, containing no express or implied request to the Magistrate to take any action, does not come within the definition of "complaint." *Ahmad Hussain v. Emperor.* 14 Cr. L. J. 462 :
20 I. C. 622 : 17 C. W. N. 980.

—S. 4 (1) (h)—*Complaint*—*Report of Police Officer.*

Report of Police Officer, whether in cognizable or non-cognizable case, does not amount to a complaint. *In re : Babu Lal.* 37 Cr. L. J. 587 :
162 I. C. 308 : 19 N. L. J. 120 :
I. L. R. 1936 Nag. 50 : 8 R. N. 258 :
A. I. R. 1936 Nag. 86.

—S. 4 (1) (h)—*Complaint*—*Report of Excise Officer.*

The report of an Excise Officer is a complaint within S. 4 (h), and is a Police Report only for the purposes of S. 190. *Radhika Mohan Das v. Hamid Ali.* 28 Cr. L. J. 316 :
100 I. C. 540 : 54 Cal. 371 :
A. I. R. 1927 Cal. 405.

—S. 4 (1) (h)—'Complaint,' essentials of—*Allegation made to Executive Officer for getting protection from offender, whether complaint.*

The mere fact that a document in writing contains an allegation that a specific offence has been committed does not necessarily constitute that document a complaint. It is

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necessary that the allegation of the offence must be made with a view to action being taken against the offender, and it must further be made to a Magistrate in his judicial capacity. A document addressed to a Deputy Commissioner in his executive capacity in which an allegation of an offence is made against a person merely with a view to illustrate the conduct of that person and for taking measures to prevent the repetition of such conduct, is not a complaint. *Bharat Kishore Lal Singh Deo v. Judhistir Modah.* 30 Cr. L. J. 1056 :

119 I. C. 413 : I. R. 1929 Pat. 589 :
10 P. L. T. 779 : A. I. R. 1929 Pat. 473.

S. 4 (1) (h)—Complaint, essentials of.

The essence of the complaint is the statement of facts relied upon as constituting the offence. It is sufficient that the complainant shall state the true facts in his own language and it is for the Magistrate to apply the law to these facts. *Emperor v. Bal Mukand.*

29 Cr. L. J. 652 :
110 I. C. 108 : 10 A. I. Cr. R. 474 :
9 Lah. 678 : A. I. R. 1928 Lah. 510.

S. 4 (1) (h)—“Complaint,” meaning of.

A petition addressed to a Magistrate which describes an offence, names the offender, and asks for his trial and punishment under a specific provision of the law, amounts to a complaint. *Shanker v. Manni.*

18 Cr. L. J. 459 :
39 I. C. 299 : 13 N. L. R. 13 :
A. I. R. 1916 Nag. 117.

Ss. 4 (1) (h)—‘Complaint,’ meaning of.

A petition in which no allegation that an offence has been committed, is made with a view that the Magistrate should take action in respect of such an offence but which merely requests the Magistrate to take some preventive action is not a complaint. *Sarfaraz Singh v. Emperor.*

32 Cr. L. J. 124 (b) :
128 I. C. 279 : 7 O. W. N. 947 :
I. R. 1930 Oudh 39 : 6 Luck. 354 :
A. I. R. 1930 Oudh 500.

S. 4 (1) (h)—Complaint, meaning of—Petition to Collector—Collector taking action thereon as District Magistrate—Petitioner not protesting to magisterial inquiry on his petition.

The applicants made a petition to the Collector alleging that a certain *Tahsildar* had been guilty of acts, some of which amounted to offences under the Penal Code. The Collector acting in his capacity as a District Magistrate, ordered magisterial inquiry to be made in matter of the petition. The petitioner produced evidence before the Inquiring Magistrate. On report of the inquiry, the District Magistrate dismissed the petition under S. 203. The petitioner took the matter up to the Sessions Judge and asked for further magisterial inquiry : *Held*, that under the circumstances, the petition was a complaint. *Bullan v. Emperor.*

14 Cr. L. J. 425 :
20 I. C. 409 : 11 A. L. J. 529.

S. 4 (1) (h)—Complaint under S. 41, Bombay District Police Act.

A complaint filed under S. 41 of the Bombay

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District Police Act, is not a complaint of an offence within the meaning of S. 4 (h). *Imparator v. Mussammatt Khairi.* 14 Cr. L. J. 320 :
19 I. C. 1008 : 6 S. L. R. 254.

S. 4 (1) (h)—Complaint, what is.

Held, that the petition was a complaint as defined in S. 4 (h). *Muhammad Gul v. Haji Fazley Karim.* 31 Cr. L. J. 369 :

122 I. C. 205 : 33 C. W. N. 446 :
56 Cal. 1013 : A. I. R. 1929 Cal. 346.

S. 4 (1) (h)—Complaint, what is—Petition making specific allegations of bribery against Tahsildar.

Accused presented a petition in the Court of a District Magistrate and Collector in which he made various allegations against a *Tahsildar*, which, if true, constituted offences under various sections of the Penal Code. The Magistrate treated the petition as a complaint and recorded the statement of the accused on oath in which the latter made specific allegations of bribery and extortion against the *Tahsildar* : *Held*, that the petition amounted to a complaint. *Thakar Das v. Emperor.*

19 Cr. L. J. 12 :
42 I. C. 924 : 15 A. L. J. 841 : 40 All. 41 :
A. I. R. 1918 All. 945.

S. 4 (1) (h)—Complaint, who can make.

It is not necessary that the complainant should always be the party directly aggrieved by the commission of the offence. *Dedar Bux v. Syamafada Malakar.* 15 Cr. L. J. 546 :

24 I. C. 954 : 18 C. W. N. 921 : 41 Cal. 1013 :
A. I. R. 1914 Cal. 801.

S. 4 (1) (h)—Complainant, whether can delegate his right.

A person cannot delegate to another the right to file a complaint. A District Magistrate cannot, therefore, authorise the Public Prosecutor to file a complaint on his behalf. *Ludha Singh v. Emperor.* 16 Cr. L. J. 251 :

28 I. C. 107 : 13 P. R. 1915 Cr. :
20 P. W. R. 1915 Cr. : 184 P. L. R. 1915 :
A. I. R. 1915 Lah. 259.

S. 4 (1) (h)—Fresh complaint—Necessity of after order of discharge.

A fresh complaint within the meaning of that term in the Cr. P. C. after an order of discharge, is not necessary. An application that the case might be revived, is sufficient. *Nga Nyun Bu v. Emperor.*

5 Cr. L. J. 478 :
13 Bur. L. R. 141.

S. 4 (1) (h)—Joint complaint, legality of.

A joint complaint by two persons is not contemplated by the Code. *Sushadhar Acharyya v. Charles Tegart.* 33 Cr. L. J. 83 :

134 I. C. 1189 : 35 C. W. N. 782 :
I. R. 1931 Cal. 69 : A. I. R. 1931 Cal. 646.

S. 4 (1) (h)—Oral allegations of complaint.

Oral allegations are also included in the definition of “complaint” contained in S. 4 (1) (h). *Arunathalam Chetty v. Emperor.*

24 Cr. L. J. 837 :
74 I. C. 949 : 45 M. L. J. 543 :
1923 M. W. N. 876 : A. I. R. 1924 Mad. 323.

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—S. 4 (1) (h)—*Penal Code, S. 211—Complaint to Police—Subsequent complaint to Magistrate—Report of Police that complaint is false—Prosecution of complainant under S. 211, Penal Code.*

The accused lodged an information of arson before the Police. The Police reported the charge laid by him to be false and asked for his prosecution under S. 211 of the Penal Code. The accused filed a petition before the Magistrate protesting against the Police and requesting that the complaint laid by him may be proceeded with, but he was summoned by the Magistrate under S. 211 of the Penal Code and committed to the Sessions: *Held*, that the petition filed by the accused before the Magistrate amounted to a complaint within the meaning of S. 4 (h) which had to be disposed of before an action against him could be taken under S. 211 of the Penal Code. *Ramdhari Gope v. Emperor.* 29 Cr. L. J. 660 : 110 I. C. 212 : 9 P. L. T. 236 : 10 A. I. Cr. R. 417.

—S. 4 (1) (h)—*Police Officer, if can present complaint in non-cognizable case.*

The Cr. P. C. does not prohibit a Police Officer from presenting a complaint to the Magistrate in a case non-cognizable by the Police. *Emperor v. Ghulam Hussain.* 25 Cr. L. J. 1361 : 82 I. C. 753 : 1 L. C. 16 : 6 L. L. J. 606 : A. I. R. 1925 Lah. 237.

—S. 4 (1) (h)—*Sanction to prosecute—Complaint of Court.*

A Revenue Court, being satisfied from the perusal of documents tendered in evidence and previously tendered in another case, that the documents were forgeries, sent the case for inquiry to the Magistrate of the District, who was also Collector of the District. The latter sent the case for trial to a Subordinate Magistrate, who pointed out that sanction under S. 195 had not been granted. The Collector, as the Court superior to the Revenue Court in which the documents were first tendered in evidence, granted sanction under S. 195 : *Held*, that the communication by the Revenue Court to the Magistrate of the District was a complaint on which the latter could act. *Inder Bhan v. Emperor.* 2 Cr. L. J. 687 : 6 P. L. R. 416 : 30 P. R. Cr. 1905.

—Ss. 4 (1) (h), 107—*“Complaint,” what is—Request for security proceedings.*

The definition of “complaint” in S. 4, does not require that the action asked for should be under any particular provision of the Code and does not exclude a request for action under S. 107, provided the facts alleged to amount to a substantive offence. *Khacho Mal v. Emperor.* 27 Cr. L. J. 405 : 93 I. C. 69 : L. R. 7 A. 76 Cr. : A. I. R. 1926 All. 358.

—Ss. 4 (1) (h), 155, 190—*Non-cognizable case—Report made by Police Officer—Cognizance of case—Complaint—Police Officer—Examination of.*

The report of a Police Officer in respect of a

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non-cognizable offence, if it contains an allegation in writing to a Magistrate with a view to his taking action under Cr. P. C., that some person has committed an offence, amounts to a complaint of which cognizance can be taken under S. 190 (1) (a) and S. 200, cl. (aa). It is not necessary in such a case to examine the Police Officer who is a public servant acting or purporting to act in the discharge of his official duties. Where a Police Officer makes a report after investigation under S. 155 (2) under the orders of a Magistrate, the report would fall under Cl. (b) of S. 190, even though the offence was a non-cognizable one. The wording of S. 190 is quite general and would include even a non-cognizable offence being taken cognizance of by a Magistrate upon a report in writing by a Police Officer. *Emperor v. Shivaswami Guruswami.* 28 Cr. L. J. 939 : 195 I. C. 459 : 29 Bom. L. R. 742 : 51 Bom. 498 : 9 A. I. Cr. R. 110 : A. I. R. 1927 Bom. 440.

—Ss. 4 (1) (h), 190—*Cognizance of offence by Magistrate—Complaint.*

A petition was filed by certain persons that the accused were interfering with persons who came to sell cattle, and had assaulted them as well as the complainants, with a view that the Magistrate might take action against the accused : *Held*, that the petition was a complaint within the Cl. (h) of S. 4. The Magistrate acting upon this complaint acted under Cl. (a) and not under Cl. (c) of S. 190. *Jhau Lal v. Pir Bakhsh.* 10 Cr. L. J. 18 : 2 I. C. 453.

—Ss. 4 (1) (h), 190—*Complaint, meaning of.*

The definition of complaint in S. 4 (h) does not contain any limitation that, before a Magistrate can take cognizance of an offence on complaint, he ought to have before him, as complainant, some one with a personal knowledge of the facts, nor does S. 190 of the Code contain any such limitation. *Sukumar Chatterjee v. Mufti-ud-Din Ahmed.* 22 Cr. L. J. 455 : 61 I. C. 839 : 25 C. W. N. 357 : A. I. R. 1921 Cal. 561.

—Ss. 4 (1) (h), 190—*‘Complaint’—‘Police Report’—Report made by Police Officer in non-cognizable case, whether complaint or ‘Police Report’.*

The Superintendent of Police by a letter to the Deputy Commissioner made charges of extortion against the petitioner who was a Police Officer under suspension, and this letter was placed before a Magistrate empowered under S. 190, who issued a warrant for the arrest of the petitioner and thereby instituted proceedings against him without examining the Superintendent on oath : *Held*, that if the Police Superintendent's letter was not a ‘Police Report’, it was a ‘complaint’ within the meaning of S. 4 (1) (h), and the proceedings were not liable to be quashed, whether the letter was a ‘Police Report’ or a ‘complaint.’ *Harihar Ray v. Emperor.* 20 Cr. L. J. 675 : 52 I. C. 595 : 23 C. W. N. 481 : 29 C. L. J. 383 : A. I. R. 1919 Cal. 383.

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—Ss. 4 (1) (h), 190, 191—*Complaint, who can file—Complaint by Public Prosecutor—Jurisdiction of Magistrate.*

Every member of the public has a right to set the law in motion by complaint, whether he is himself a witness of the facts which *prima facie* constitute an offence or not. Where, therefore, a complaint is filed by a Public Prosecutor, the Magistrate does not take cognizance on his own knowledge, or suspicion or information and the accused has no right to claim to be tried before another Court. *Emperor v. Shcckram*. 15 Cr. L. J. 369 :

23 I. C. 737 : 7 S. L. R. 77 :
A. I. R. 1914 Sind 65.

—Ss. 4 (1) (h), 190 (1) (a), 192 (1)—*Report of offence by Trying Magistrate, whether complaint—District Magistrate, jurisdiction of—Transfer of case for trial to Subordinate Court.*

Where a Trying Magistrate after the conclusion of a trial submits a report to the District Magistrate detailing facts indicating that a certain person had, in relation to the proceedings in the Trial Court, committed an offence under S. 193, Penal Code and the District Magistrate thereupon orders the prosecution of that person and transfers the case to a Magistrate subordinate to him, his action is not *ultra vires*, inasmuch as the report to the District Magistrate amounts to a complaint within the meaning of S. 4 (h) and the District Magistrate can take cognizance of the offence under S. 190 (1) (a) and send it for trial to a Subordinate Magistrate under S. 192 (1). *Sarju Prasad v. Emperor*.

25 Cr. L. J. 947 :
81 I. C. 595 : 21 A. L. J. 825 :
9 O. & A. L. R. 1049 :
A. I. R. 1924 All. 190.

—Ss. 4 (1) (h), 190 (1) (a), 556—*Report of an Akunwun, stating there was prima facie case against applicant—A complaint—Magistrate issuing warrant without examining Akunwun on oath—Error in procedure—Magistrate also a Collector, if can try case.*

The Superintendent of Land Records made a report to the Deputy Commissioner stating that tax tickets had been tampered with, and that an enquiry was necessary. The Deputy Commissioner directed the *Akunwun* to make enquiry. The *Akunwun* submitted a report, stating that there was a *prima facie* case against the applicant, showing that he had collected revenue in excess of the authorised amount by means of falsified receipts made by him; and had committed offences under Ss. 417 and 477-A of the Penal Code. The Deputy Commissioner took up the report as a Magistrate, and, without examining the *Akunwun* on oath, issued a warrant against the applicant under S. 477-A of the Code: *Held*, that his procedure was not correct, as he should have examined the *Akunwun* on oath before issuing a warrant, but that the omission was an error in procedure and did not vitiate a concluded trial: *Held*, also, that the report of the *Akunwun* was a com-

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plaint, as defined in S. 4 (h) and that the action of the Magistrate was taken under cl. (a) and not under cl. (c) of S. 190 (1): *Held*, further, that the fact that the District Magistrate is also the Collector did not bar him from trying the case, as under S. 556 he is not deemed, to be a party to, or personally interested in a case by reason only that he is concerned therein in a public capacity. *Nga Ba v. Emperor*. 1 Cr. L. J. 671 :
2 L. B. R. 204.

—Ss. 4 (1) (h), 190 (1) (b)—“*Report of a Police Officer*” and “*Police Report*”, meaning of.

The expressions “report of a Police Officer” and “Police Report” mentioned, respectively, in S. 4 (1) (h), and S. 190 (1) (b), do not refer exclusively to reports under Ch. XIV of the Code. These expressions refer to and include any report by a Police Officer, whether in a cognizable or non-cognizable case, and it is not necessary for a Magistrate receiving such a report to treat the reporting officer as a complainant under S. 200 of the Code. *Emperor v. Ngo Po Thin*. 1 Cr. L. J. 193 :
10 Bur. L. R. 36 : 2 L. B. R. 146.

—Ss. 4 (1) (h), 190 (c), 200—*Complaint—Letter to Magistrate giving information with request to take action.*

A letter to a Magistrate, informing him that a certain person used insulting language to the writer and asking him to take action, is a complaint, and the Magistrate ought to examine the complainant on oath, under S. 200 before issuing a summons to the accused. *Kheller Mohan Miller v. Emperor*.

14 Cr. L. J. 76 :
18 I. C. 412 : 17 C. W. N. 448.

—Ss. 4 (1) (h), 190 (1) (c), 191—*Complaint and information, distinction between—Complaint when and by whom competent.*

The essential difference between a complaint and information is that a Magistrate acts on a complaint because the complainant has asked him to act, but a Magistrate acts on information on his own initiative. But there is nothing in the definition of complaint to show that a complaint can be made only in a non-cognisable case or only by the person aggrieved. *Shco Pratap Singh v. Emperor*.

32 Cr. L. J. 306 :
129 I. C. 436 : 1930 A. L. J. 1316 :
L. R. 12 All. 25 Cr. : I. R. 1931 All. 164 :
A. I. R. 1930 All. 820.

—Ss. 4 (1) (h), 190 (1) (c), 435—*Letter to District Magistrate conveying information of offence—District Magistrate, whether entitled to take action—Revision.*

A letter was written to a District Magistrate conveying information of an offence and asking for action to be taken. The District Magistrate thereupon took action under S. 190 (1) (c). The accused filed an application of revision: *Held*, that the Magistrate was entitled to treat the letter as an information

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and no irregularity had been committed by him in that respect. *Chhote Maharaj v. Emperor*.

25 Cr. L. J. 1147 :
81 I. C. 971 : 10 O. & A. L. R. 605 :
A. I. R. 1925 Oudh 144.

—Ss. 4 (1) (h), 193—*Penal Code, S. 211—Application to Deputy Commissioner for enquiry, whether complaint.*

M. addressed an application to a Deputy Commissioner, saying that his application to the Police was not enquired into and praying that the Deputy Commissioner should order an enquiry or start himself an enquiry. M. did not ask for the trial and punishment of the accused: *Held* that the application was not a "complaint" for the purposes of S. 211 of the Penal Code. *Mahadu v. Emperor*.

24 Cr. L. J. 959 :
75 I. C. 543.

—Ss. 4 (1) (h), 195—*Report submitted by Superintendent of Police with endorsement for necessary action, whether complaint.*

A report submitted by the Superintendent of Police to a Sub-Divisional Officer with the endorsement that it is submitted for favour of perusal and necessary action does not amount to a complaint within the meaning of S. 4 (h). *Baldeo Singh v. Emperor*.

27 Cr. L. J. 899 :
L. R. 7 A. 133 Cr. 96 I. C. 211 :
A. I. R. 1926 All. 566.

—Ss. 4 (1) (h), 195, 476—*Complaint—Sanction.*

Where the order of the Court was "I hereby complain against R.....that he on.....filed two false and forged bonds in suit No.....in the Court ofand thereby committed an offence under Ss. 471, 476 and 209, I. P. C. The papers will be sent to the District Magistrate with the request that they may be made over to a competent Court for disposal": *Held*, that this was a complaint as defined in S. 4 (h) and not a sanction under S. 195 or S. 476, *Raja Ram v. Emperor*.

15 Cr. L. J. 700 :
26 I. C. 148 : 12 A. L. J. 881 :

A. I. R. 1914 All. 367.

—Ss. 4, (1) (h), 195, 476—"Complaint," what is—*Sanction to prosecute—Perjury, trial for, without sanction or complaint, legality of.*

Accused, who held a decree against the complainant, recovered in execution of the decree a sum larger than was due thereunder. The complainant thereupon applied to the Court for sanction to prosecute the accused. No sanction was granted, nor was any action taken under S. 476 of the Cr. P. C. The presiding officer of the Court, however, addressed to the Magistrate of the district a letter in which he stated all the facts and concluded by soliciting orders in the case. The accused was tried and convicted under Ss. 193 and 210 of the Penal Code: *Held*, (1) that the letter addressed to the District Magistrate did not amount to a complaint within the meaning of S. 476; (2) that no sanction having been granted under S. 195, the trial and conviction were illegal. *Sheo Sampat Pande v. Emperor*.

19 Cr. L. J. 963 :
37 I. C. 815 : 16 A. L. J. 662 : 40 All. 641 :
A. I. R. 1919 All. 455 :

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—Ss. 4 (1) (h), 199—*Adultery—Complaint—Statements in husband's deposition in a trial on another charge—Practice—Penal Code, (Act XLV of 1860), Ss. 366, 379, 498.*

The accused was charged in the first instance under Ss. 366 and 379 of the Penal Code. When the complainant, the husband of the woman, was examined as a witness, there were certain statements made in his deposition amounting to an offence under S. 498. The Court acquitted the accused on charges under Ss. 366 and 379, but convicted him under S. 498: *Held*, that the conviction was bad and ought to be set aside. The Court could not take cognizance of the offence under S. 498, as there was no complaint by the husband; the statement in the husband's deposition as a witness could not be said to be a complaint. *Emperor v. Imankhan*.

13 Cr. L. J. 287.
14 Bom. L. R. 141 : 14 I. C. 671.

—Ss. 4 (1) (h), 199—*Complaint—Petition by husband simply for coercing wife, whether a complaint.*

Where the accused leaving her husband's house went with her jewels and some property, and the husband went to the house of the Deputy Magistrate at about 9 p. m., where was also the first accused, and presented a complaint not with the object of getting the Magistrate to take action but simply to coerce his wife to give back the jewels: *Held*, that there was no complaint under S. 199 such as could entitle the Magistrate to take cognizance of the case after the death of the husband. *In re : Rukmani Ammal*.

16 Cr. L. J. 466.
29 I. C. 98 : A. I. R. 1916 Mad. 1059.

—Ss. 4, (1) (h), 199 (1) (a), 552—*Application not suggesting Magistrate should take action—Prayer to take woman from husband's custody—Magistrate if bound to take deposition of applicant—Omission to do so—Whether vitiates subsequent order directing complaint under Penal Code, S. 182.*

An application to the Magistrate did not suggest that the Magistrate should take any action against any person for committing an offence; nor did the allegations in the application form the ingredients which constituted any offence under the Penal Code; nor was there any offence referred to in the application by the number of the section. It only said that R, the husband of K, came to the house of D and took her away from that house. The relief asked was that K should be set at liberty and taken from the custody of her husband because there was an apprehension that he might ill-treat her; *Held*, that the application was not a criminal complaint but an application under S. 552, that the Magistrate was not bound to take the deposition of the applicant on oath and his omission to do so did not vitiate an order subsequently made by him directing a complaint under S. 182, Penal Code, to be made against the applicant for prosecution under S. 199 (1) (a), *Dalpat Rai v. Emperor*.

37 Cr. L. J. 857 :
163 I. C. 609 : 1936 A. L. J. 592 :
9 R. A. 42 : 1936 A. W. R. 396 :
A. I. R. 1936 All. 469.

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—Ss. 4 (1) (h), 202—*Complaint—Complaint containing prayer that case be investigated by superior Police Officer, effect of.*

An application addressed and presented to a Magistrate containing an allegation that an offence has been committed, with a prayer that the culprits be suitably dealt with, is a "complaint". Merely because the application also contains a prayer that the case should be investigated by a superior Police Officer on the ground that the "local" Police is hostile to the applicant, and under the influence of the principal accused, does not make it an executive application. *Kantiya Ram v. Chanan Mal.*

41 Cr. L. J. 618 :
42 P. L. R. 134 : 188 I. C. 524 : 13 R. L. 33 :
A. I. R. 1940 Lah. 208.

—Ss. 4 (1) (h), 203—*Information reported by Police to be false—Complainant asking for judicial enquiry—Application, whether complaint—Procedure.*

Where an information is reported by the Police to be false and the complainant asks for a judicial enquiry into the charge made by him, his application amounts to a complaint within the meaning of S. 4 (h) and the proper mode of dealing with it is to examine the complainant on oath and to dispose of the application as a complaint under the procedure indicated in Chapter XVI of the Code. *Emperor v. Makund Patel.*

20 Cr. L. J. 389 :
50 I. C. 997 : A. I. R. 1919 Pat. 530.

—Ss. 4 (1) (h), 203—*Petition of objection, whether complaint.*

A charged B with house-breaking and B lodged an information against A for theft of his gun. The Police reported B's case to be false, and B filed a petition of objection asking the Magistrate to make an investigation and to summon the accused. B, in the meantime, was tried on the charge of house-breaking and acquitted, and the Magistrate passed an order on his petition of objection: that his case was false: *Held*, (1) that the petition of objection filed by B was a complaint within the meaning of S. 4 (h), (2) that the order of the Magistrate entering the theft case as false, was in substance an order under S. 203 dismissing the complaint. *Sadhu Charan Roy v. Balci Swain.*

19 Cr. L. J. 874 :
147 I. C. 70 : 3 P. L. J. 346 : A. I. R. 1918 Pat. 270.

—Ss. 4 (1) (h), 250—*Complaint—Information laid by Police Officer—Police Report—Compensation.*

Where a Police Officer lays an information against a person under S. 51 or S. 68 (c) of the Bombay District Police Act, such information is a complaint. Compensation can be awarded against the Police Officer, if the case is frivolous or vexatious. *Imperator v. Khushaldas.*

13 Cr. L. J. 752 :
17 I. C. 64 : 6 S. L. R. 82.

—Ss. 4(1)(h), 488—*Application for maintenance, whether complaint—Delegation of enquiry.*

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A petition for maintenance under S. 488 is not a complaint within the meaning of S. 4 (h). The Magistrate to whom it is made, cannot refer it to a Subordinate Magistrate for enquiry and dismiss it on his report. *Emperor v. Amir Khan.*
2 Cr. L. J. 367 :
6 P. L. R. 361.

—Ss. 4 (1) (h) 488—*Application for maintenance—Whether complaint—Enquiry by Subordinate Magistrate.*

An application for maintenance is not a complaint as defined in S. 4 (h). A Magistrate should inquire into it himself. He cannot refer it to a Subordinate Magistrate for inquiry and dismiss it on his report. *Sardaran v. Amir Khan.*
2 Cr. L. J. 421
29 P. R. Cr. 1905

—Ss. 4 (1) (h), 498—*Complaint—Police Officer's report.*

The report of a Police Officer is not a complaint within the terms of S. 199. *Bhana v. Emperor.*
12 Cr. L. J. 50 :
8 I. C. 1160 : 32 P. R. 1910 Cr.

—S. 4 (1) (i)—*"European British subject"—Evidence as to.*

Evidence to the effect that the applicant's grandfather was born in England is not sufficient to bring the applicant within the provisions of S. 4 (i). In order that the applicant should bring himself within the four corners of that definition, he will have to show that his grandfather was of European descent. *Cyril Bertram Plucknett v. Emperor.*

41 Cr. L. J. 72 :
184 I. C. 757 : 43 C. W. N. 120 :
I. L. R. 1939 Cal. 162 : 12 R. C. 295 :
A. I. R. 1939 Cal. 545.

—S. 4 (1) (i)—*European British subject—Son of Indian subject born at Constantinople.*

The mere fact that the accused, the son of an Indian subject of His Majesty, was born at Constantinople, does not make him an "European British subject," when it is not proved that the accused or his father or his grandfather was domiciled in the United Kingdom or in any of the European, American or Australian Colonies or Possessions of His Majesty. *Alexander Ruffe v. Emperor.*

13 Cr. L. J. 197 :
14 I. C. 197 : 24 P. W. R. 1912 Cr.

—S. 4 (1) (i)—*Investigation, meaning of.*

An investigation includes all the proceedings, under the Code for the collection of evidence, conducted *inter alia* by a Police Officer.

148 I. C. 178 : 6 R. S. 189 :
A. I. R. 1933 Sind 240.

—S. 4 (1) (j)—*"European British subject," meaning of.*

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The words 'European British subject' in S. 4 (j), mean an European British subject who had claimed to be dealt with as such. *In re : H. B. Babington.*

38 Cr. L. J. 336 :
167 I. C. 160 : 1936 M. W. N. 1091 :
44 L. W. 755 : 71 M. L. J. 827 :
9 R. M. 430 : I. L. R. 1937 Mad. 339 :
A. I. R. 1937 Mad. 14.

—S. 4 (1) (j)—*European British subject waiving his right to be tried as such—Judicial Commissioner's [Court is Court of revision or appeal.*

An appeal or revision is clearly a subsequent stage of a trial, and a European British subject who has waived his right to be tried as such before the Magistrate, is debarred from asserting it or claiming the special procedure provided for such trial before the appellate or revisional Court. The first part of the definition of a High Court given in S. 4 (j) does not apply in such a case and the Judicial Commissioner's Court is the Court of revision or appeal for a European British subject, who has waived his right to be tried as such or who has set it up and failed to establish it. *Emperor v. Private T. B. A. W. Johnson.*

141 I. C. 445 :
A. I. R. 1933 Pesh. 6.

—S. 4 (1) (j),—*Waiver of right of trial as European British subject—Right of Appeal or Revision as European, if sustainable.*

Where an accused waives his right to be tried as a European British subject, the special privilege given to him as such including the right of appeal or revision to the High Court by virtue of S. 4, cl. (j) is lost. *Jhermiah v. Johnson.*

25 Cr. L. J. 231 :
76 I. C. 695 : 45 M. L. J. 800 :
18 L. W. 895 : 33 M. L. J. 194 :
1924 M. W. N. 60 : A. I. R. 1924 Mad. 373.

—S. 4 (1) (k)—*Enquiry and trial, distinction.*

Possibility of proceedings ending in discharge—Proceedings are enquiry—From the point at which they must result in conviction or acquittal, they become trial. *Mohammad Hussain v. Fakhrullah Beg.*

34 Cr. L. J. 58 :
140 I. C. 689 : 9 O. W. N. 782 :
8 Luck. 135 : I. R. 1933 Oudh 10 :
A. I. R. 1932 Oudh 298.

—S. 4 (1) (k)—*Enquiry in connection with tender of pardon, necessity and nature of.*

Cr. P. C. does not make any provision for any inquiry by the District Magistrate or any other Magistrate in connection with a tender of pardon. It is entirely a matter of his choice. Any such inquiry, as he makes, would not be an inquiry conducted under the Code within the meaning of S. 4 (k). *Motilal Hirralal v. Emperor.*

22 Cr. L. J. 728 :
64 I. C. 40 : 43 Bom. L. R. 884 :

—S. 4 (1) (k)—*Enquiry, nature.*

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An enquiry under the Code is different from a 'trial'. *Ramchandra v. Satyabhama.*

29 Cr. L. J. 372 :
108 I. C. 328 : 9 P. L. T. 459 :
10 A. I. Cr. R. 25.

—S. 4 (1) (k)—*Inquiry and investigation, distinction between—Documents seized—Examination of, by Customs or Police Officers, whether investigation.*

A clear distinction is made by the Code between an inquiry and an investigation. An "inquiry" relates to a proceeding held by a Court or a Magistrate, while an investigation relates to the steps taken by a Police Officer or a person other than a Magistrate. A proceeding by a Police Officer for the collection of evidence would answer the definition of investigation only if it were a proceeding under the Code. An examination by the Customs or Police Officers, of the documents seized, is not a proceeding under the Code and hence not an investigation under the Cr. P. C. *K. Hoshide v. Emperor.*

41 Cr. L. J. 329 :
186 I. C. 486 : I. L. R. 1940 1 Cal. 231 :
44 C. W. N. 82 : 12 R. C. 510 :
A. I. R. 1940 Cal. 97.

—S. 4 (1) (k)—*Proceedings under S. 145, if enquiries.*

Proceedings, under S. 145, are enquiries within the meaning of S. 4 (k). An enquiry under the Code, does not merely mean an enquiry into an offence, but includes enquiries into matters which are not offences. *Ali Mohammad Khan v. Tarok Chandra Banerji.*

9 Cr. L. J. 278 :
1 I. C. 336 : 13 C. W. N. 420 :

—Ss. 4 (m), 100—*Enquiry before issue of search warrant—Magistrate's power to administer oath.*

Enquiry before issuing a search warrant in order to satisfy the Magistrate that there is ground for issuing search warrant being judicial proceeding, the Magistrate is empowered to examine persons on oath, and such persons are bound to take the oath under S. 5 of the Oaths Act, and under S. 14 of that Act, are bound to state the truth. *Abdul Aziz v. Emperor.*

17 Cr. L. J. 491 :
36 I. C. 171 : 31 P. R. 1916 Cr. :
A. I. R. 1916 Lah. 231.

—Ss. 4 (m), 476—*Jurisdiction—"Judicial Proceeding"—Inquiry into petition against subordinate official.*

An inquiry conducted by a Magistrate into the truth of allegations against a subordinate official contained in a petition presented to a Deputy Commissioner is a judicial proceeding. *Emperor v. Kuna Sah.*

2 Cr. L. J. 454 :
25 A. W. N. 195 : 2 A. L. J. 717 :
I. L. R. 1928 : All. 89.

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—S. 4 (1) (m)—‘Criminal proceeding,’ meaning, of.

‘Criminal proceeding’ includes investigation by a Police Officer of an alleged cognizable offence. *Emperor v. Johri*. 33 Cr. R. L. 256 : 136 I. C. 277 : 1931 A. L. J. 177 : I. R. 1932 All. 165 : A. I. R. 1931 All. 269.

—S. 4 (1) (m)—Inquiry under S. 176, whether judicial—Revision by High Court.

✓ Proceedings under S. 176 are judicial proceedings and are subject to the revisional powers of the High Court under Ss. 435 and 439 apart from its inherent powers recognised by S. 561-A of the Code. *In re : Laxmi Narayan Timmona Kashi*. 29 Cr. L. J. 1063 : 112 I. C. 567 : 30 Bom. L. R. 1050 : A. I. R. 1928 Bom. 390.

—Ss. 4 (1) (m)—Judicial proceeding whether includes execution proceeding.

The definition of a judicial proceeding in S. 4 (m) is wide enough to cover execution proceedings. *Brahmdco Singh v. Emperor*.

19 Cr. L. J. 153 : 43 I. C. 441 : A. I. R. 1917 Pat. 101.

—S. 4 (1) (m)—Mutation proceedings.

✓ Mutation proceedings are judicial proceedings within the meaning of the Cr. P. C. *Lachhman Prasad Joshi v. Emperor*. 31 Cr. L. J. 679 : 124 I. C. 364 : 6 O. W. N. 953 : 5 Luck. 435 : A. I. R. 1930 Oudh 78.

—Ss. 4 (1) (m), 476—Proceedings in execution, whether “judicial proceeding”—Sanction to prosecute—Guiding principle.

The proceedings in execution are judicial proceedings within the meaning of the Code till they are finally disposed of by the Court. No Court should direct or sanction prosecution unless there is a reasonable probability of conviction. The opinion of the Court should be judicial opinion based on evidence and formed after a thorough inquiry into the matter. *Shiashankarpuri v. Emperor*. 16 Cr. L. J. 161 : 27 I. C. 545 : 10 N. L. R. 177 : A. I. R. 1914 Nag. 40.

—S. 4 (1) (o).

See Cattle Trespass Act, S. 22.

—Ss. 4 (1) (o), 29—Offence under Mussalman Waqf Act—Jurisdiction of Magistrate—‘Offence,’ definition of.

An offence under S. 10 of the Mussalman Waqf Act is an ‘offence’ within the meaning of S. 1, sub-s. (o), Cr. P. C. and S. 3, cl. 37 of the General Clauses Act, and is, therefore, triable not by the District Judge, but by any Magistrate under the provisions of S. 29. *Ali Mahomed v. Emperor*. 28 Cr. L. J. 954. 105 I. C. 666 : 9 A. I. Cr. R. 142 : A. I. R. 1928 Sind 43.

—Ss. 4 (1) (o), 190—Cattle Trespass Act, S. 20—Powers of 2nd Class Magistrate to take cognizance of.

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A Magistrate of the Second Class, who is authorised under S. 190, Cr. P. C. to take cognizance of offences upon receiving complaints, has power to take cognizance of complaints under S. 20 of the Cattle Trespass Act. *Emperor v. Vishwanath Vishnu Joshi*.

21 Cr. L. J. 95 : 54 I. C. 495 : 21 Bom. L. R. 1084 : 44 Bom. 42 : A. I. R. 1920 Bom. 85.

—Ss. 4 (1) (o), 407—Cattle Trespass Act, Ss. 20, 22—Compensation awarded to complainant under S. 22 of the Cattle Trespass Act—Appeal.

By S. 4 (o) the word “offence” includes an act in respect of which a complaint may be made under S. 20 of the Cattle Trespass Act, and a person against whom an order under S. 22 of the Cattle Trespass Act is made, is a “person convicted on a trial” within the meaning of S. 407. *In re : Ponnusami*.

5 Cr. L. J. 86 : I. L. R. 29 Mad. 517.

—S. 4 (1) (p)—Officer-in-charge of Police Station—Constable.

Under the powers conferred by S. 6, the Local Government (Mad.) has directed that the senior constable present at any Police Station shall be deemed to be officer-in-charge of the Police Station for the time being during the absence of the officer-in-charge. *Public Prosecutor v. Kuppa Kavundan*. 12 Cr. L. J. 190 : 10 I. C. 667 : 1911 2 M. W. N. 231 : 9 M. L. T. 414.

—Ss. 4 (1), (p), 166—Police Officer present at station house, meaning of—Search by person in charge of station during permanent incumbent’s absence, legality of.

Under S. 4 (p) if a person is deputed to be in charge of a Police Station, the fact that he is doing duty elsewhere does not deprive him of his capacity of station house officer. The words present at the station house in S. 4 (p) do not have the effect of depriving an officer of his functions if he happens to go out of the station house. A search by a person, therefore, who is appointed to do the duties of a station officer but who happens to be out of the station at the time is not illegal. *Asan Alliar v. Masilamani Nadar*. 20 Cr. L. J. 422.

51 I. C. 198 : 36 M. L. J. 252 : 42 Mad. 446 : 1919 M. W. N. 452 : 25 M. L. T. 276 : A. I. R. 1919 Mad. 226.

—S. 4 (1) (r)—Advocates on Appellate side, if pleaders.

Advocates on the Appellate Side do not come within the definition of “Pleader” as defined in the Code for the purposes of the Sessions Court. Consequently, they have no authority to practise in the Sessions Side of the High Court. *In re : Philip v. Godinho (F. B.)*

148 I. C. 664 : 36 Bom. L. R. 1 : 58 Bom. 456 : 6 R. B. 312 : A. I. R. 1934 Bom. 70.

—S. 4 (1) (r)—Constituted attorney—appearance, right of.

Constituted attorney can appear for the

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accused. *Jaffar Cassum Moosa v. Emperor.*

35 Cr. L. J. 1035 :
149 I. C. 1132 : 36 Bom. L. R. 433 :
6 R. B. 414 : A. I. R. 1934 Bom. 212.

———S. 4 (1) (r)—*Mukhtar—Authority of Mukhtar to practise in Criminal Courts.*

A *Mukhtar* is not entitled to practise generally, and as of right, in Criminal Courts, but requires the permission of the Court to act in any particular proceeding. *In re : Anant Ram.*

7 Cr. L. J. 21 :
28 A. W. N. 11 : I. L. R. 30 All. 66 :
5 A. L. J. 40.

———S. 4 (1) (r)—*Mukhtar—Right to appear in Criminal Courts—General order prohibiting Mukhtars from practising, legality of.*

A District Magistrate has no power, in view of S. 4 (1) (r) to pass a general order prohibiting *Mukhtars* from practising in the Criminal Courts. There is no reason why a *Mukhtar*, though he has no general power to appear in any Court, should be debarred from appearing in any proceeding in a Criminal Court with the permission of the Court. *In re : Bajirao Abaji Kulkarni.* 29 Cr. L. J. 226 :
107 I. C. 56 : 29 Bom. L. R. 1587 :
9 A. I. Cr. R. 403 : A. I. R. 1928 Bom. 33.

———S. 4 (1) (r)—*Mukhtar—Right to appear in Criminal Court—Practice.*

A *Mukhtar* can only plead in a Criminal Court with the permission of the Presiding Officer of the Court. He has no right to plead without such permission. *Topanmal v. Emperor.*

12 Cr. L. J. 118 :
9 I. C. 711 : 4 S. L. R. 195.

———S. 4 (1) (r)—*Pleader accepting engagement in Court not authorized to practice—Duty.*

It is the duty of a Pleader who appears in a Criminal Court of a District, to which his *sanad* or certificate does not apply, to inform the Magistrate that he cannot appear as of right and to apply for permission under S. 4 (r). The better course is not to accept a fee or an engagement until that permission has been accorded, but if the Pleader accepts the engagement before attending the Magistrate's Court, he ought to explain to his client that his appearance will be contingent on the Magistrate's permission. *In re : Mr. C. H. Clements.*

15 Cr. L. J. 382 :
23 I. C. 750 : 7 S. L. R. 98 :
A. I. R. 1914 Sind 7.

———Ss. 4 (1) (r), 340—*Mukhtar—Right to appear on behalf of accused—Discretion of Court not to allow.*

It would rarely be a wise discretion on the part of a Sessions Judge or a Magistrate to refuse permission to a *Mukhtar* appearing for the defence. A *Mukhtar* should not be permitted to appear where his appearance is unnecessary or where there is no reason for his appearance. In deciding whether permission should or should not be given, the character of the person appointed to plead must be taken into consideration. *Ishan Chandra v. Emperor.*

12 Cr. L. J. 111 :
9 I. C. 664 : 15 C. W. N. 409 :
13 C. L. J. 635 : 38 Cal. 488.

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———Ss. 4 (1) (r), 340—*Prosecuting Inspector, whether can defend accused.*

A Prosecuting Inspector may, with the permission of the Court, defend an accused though he is not a member of the Bar, but it is desirable in such cases, that the Magistrate should record the statement of the accused that he has appointed him for his defence. *Emperor v. Chote Khan.*

31 Cr. L. J. 419 :
122 I. C. 442 : 26 N. L. R. 172 :
A. I. R. 1930 Nag. 150.

———Ss. 4 (1) (u), 8, 13, 349—*Nagpur City—City Magistrate, whether 'Sub-Divisional Magistrate'—Reference by Honorary Magistrate to City Magistrate, whether valid.*

Since Nagpur City has not been declared to be a sub-division of the Nagpur District, the City Magistrate of Nagpur cannot be described as a Sub-Divisional Magistrate for reference of cases to him under S. 319, Cr. P. C. by Second and Third Class Magistrates in the Nagpur City. *Rajaram v. Emperor.*

28 Cr. L. J. 489 :
101 I. C. 665 : 8 A. I. Cr. R. 167 :
A. I. R. 1927 Nag. 209.

———S. 4, cls. (v), (w)—*Summons case and warrant case—Distinction pointed out—Factor determining procedure.*

The procedure for the trial of a summons case is different from that for a warrant case, the main difference lying in the fact that in a warrant case it is necessary to frame the charge and secondly, that the accused has the right to reserve cross-examination of the prosecution witnesses till a late stage. In considering whether the trial should be in accordance with the procedure of a summons case or of a warrant case, it is not pertinent to consider the nature of the offence but only the measure of the punishment which may be inflicted. That constitutes the deciding factor. *Sufal Golia v. Emperor.*

39 Cr. L. J. 438 :
174 I. C. 454 : 42 C. W. N. 222 :
10 R. C. 674 : A. I. R. 1938 Cal. 205.

———S. 4, Ch. XVI—*Complaint, what is—Transfer of complaint to Sub-Deputy Magistrate for enquiry and report—Irrregularity.*

Petitioner made an application before a Sub-Divisional Officer impugning the correctness of a report of a Police Officer in a certain criminal matter and prayed that his case against the accused may be proceeded with. On a subsequent date the case was made over to a Sub-Deputy Magistrate to take evidence and to report for prosecution or otherwise : *Held*, that the application was a complaint within the meaning of S. 4 and that the procedure adopted by the Magistrate not being in accordance with the provisions of Chapter XVI of the Code, was irregular. *Lalji Singh v. Pardi Singh.*

18 Cr. L. J. 754 :
41 I. C. 130 : A. I. R. 1917 Pat. 362.

———Ss. 5, 29—*Jurisdiction of High Court—Offence due to contravention of S. 85, Companies Act—High Court when and how can take jurisdiction to try it.*

In the case of offences due to the contravention

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tion of the provisions of S. 85, Companies Act, the High Court has no jurisdiction to take cognizance and try such offence and impose fine. If the case were committed to the High Court under S. 194 (1), Cr. P. C. or proceedings were started on an application of the Advocate-General under S. 191 (2), or were transferred to it under S. 526, Cr. P. C. then the High Court would have jurisdiction to try the accused: but it would not have jurisdiction to try the accused merely on an application made under

S. 85, Companies Act. *Harish Chandra v. Kavindra Narain Sinha*. (F. B). 38 Cr. L. J. 111 : 166 I. C. 53 : 1936 A. L. J. 1105 : 9 R. A. 349 : I. L. R. 1937 All. 220 : 1936 A. W. R. 964 : A. I. R. 1936 All. 830.

———Ss. 5, 526—*Village Panchayat Case pending before—Transfer of case—High Court, power of.*

The High Court has jurisdiction under S. 526 read with S. 5 to transfer a case pending before a Village Panchayat. *Basdeo Misra v. Badal Misra*. 28 Cr. L. J. 94 :

99 I. C. 126 : L. R. 8 All. 33 Cr. : 49 All. 188 ; 7 A. I. Cr. R. 246 : 25 A. L. J. 157 : A. I. R. 1927 All. 199.

———S. 5 (2), Ch. XIV—*Madras Abkari Act, Ss. 40 to 47, 55—Offence under Abkari Act—Investigation—Procedure.*

S. 5 (2) governs and controls Chapter XIV of the Code. The Police have no right to file a charge-sheet or otherwise to proceed under Chapter XIV of the Cr. P. C. in respect of an offence under the Madras Abkari Act and proceedings so instituted by a charge-sheet by the Police, are without jurisdiction and liable to be set aside by the High Court in revision. *In re : Kuppuswamy Naidu*. 24 Cr. L. J. 335 : 72 I. C. 175 : 44 M. L. J. 231 : 17 L. W. 308 : A. I. R. 1923 Mad. 339.

———S. 6—*Municipal Magistrate, if Criminal Court.*

A Magistrate appointed for trial of offences against the Calcutta Municipal Act is a Criminal Court within the meaning of S. 6. *Ram Gopal Goenka v. Corporation of Calcutta*.

26 Cr. L. J. 1533 : 90 I. C. 317 : 29 C. W. N. 898 : 52 Cal. 962 : A. I. R. 1925 Cal. 1251.

———S. 6—*Order under S. 144, whether subject to revision.*

The order of a Magistrate acting under S. 144 is merely administrative in character and is not the order of a Court and is, therefore, not liable to be revised by the High Court under S. 435 of the Code. *Vedappan Serrai v. Perianan Serrai*.

30 Cr. L. J. 119 : 113 I. C. 279 : 28 L. W. 506 : 1928 M. W. N. 779 : 55 M. L. J. 621 : I. R. 1929 Mad. 94 : 52 Mad. 69 : A. I. R. 1928 Mad. 1108.

———Ss. 6, 32—*District Magistrate—Trial commenced but not concluded by First Class Magistrate as officiating District Magistrate, legality of.*

A trial commenced before an officiating Dis-

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trict Magistrate was concluded by that officer after he had ceased to act as Magistrate of the District. He continued to serve in the District as a First Class Magistrate. No objection to his jurisdiction was raised during the trial by the accused. On appeal the learned Sessions Judge set aside the conviction and ordered a re-trial on the ground that the Magistrate in question had no jurisdiction to continue the trial after ceasing to act as District Magistrate: *Held*, that the Magistrate had jurisdiction to continue the trial to its conclusion. *Emperor v. Syed Sajjad Hussain*. 4 Cr. L. J. 140 : 26 A. W. N. 201 : 3 A. L. J. 825.

———Ss. 6, 156 (3), 190, 193—*Sessions Judge—Power to direct enquiry by police.*

An order by the Sessions Judge directing the police to make enquiry under S. 156 (3), is *ultra vires*. S. 156 gives power to order an investigation only to a Magistrate empowered under S. 190. A Sessions Judge is not a Magistrate empowered under S. 190. *Emperor v. Ali*.

11 Cr. L. J. 330 : 5 I. C. 915 : 11 P. R. 1910 Cr. : 16 P. W. R. 1910 Cr.

———Ss. 6, 195—*Class of Magistrate—Sanction to prosecute—Jurisdiction.*

When a Revenue Officer who is only a 2nd Class Magistrate succeeds another who was a 1st Class Magistrate, he is not empowered to sanction a prosecution in respect of a criminal case tried by the latter. *Narsimhachar v. Srinivas Iyengar*.

9 Cr. L. J. 566 : 13 M. C. C. R. 140.

———Ss. 6, 403—*Burma Village Act, S. 9—Penal Code, S. 291, offence under—Trial before Village Headman, whether bars trial by Magistrate.*

Under the Burma Village Act, a Village Headman has power to try, as a Court, *inter alia*, an offence under S. 291 of the Penal Code, and a trial for an offence under that section by a Village Headman, therefore, bars a subsequent trial of the same accused for his same offence before a Magistrate. *R. Nga E. v. Emperor*.

25 Cr. L. J. 233 : 76 I. C. 697 : 2 Bur. L. J. 149 : A. I. R. 1924 Rang. 23.

———Ss. 6, 476-B—*District Magistrate, status of—Order by District Magistrate—Appeal, forum of.*

A District Magistrate, as such, is not a Court, and is only a First Class Magistrate who exercises special powers with which he is invested either by the Cr. P. C., or by the Local Government and appeals from appealable sentences of his Court lie to the Court of Session. An appeal, therefore, under S. 476-B will lie to the Court of Sessions from an order passed by the District Magistrate under S. 476-A. *Pilalal v. Emperor*. 30 Cr. L. J. 559 : 116 I. C. 77 : I. R. 1929 Nag. 195 : 25 N. L. R. 1 : A. I. R. 1929 Nag. 97.

———Ss. 6, 533 (h)—*Trial before Bench of Magistrates—Evidence recorded in absence of one member, effect of—Conviction, legality of.*

A conviction by a Bench of Honorary Magis-

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trates is illegal if the evidence is recorded and the judgment is delivered in the absence of one of the members of the Bench. *In re: Tanthavari Bapiraju*. 20 Cr. L. J. 823-B :

53 I. C. 823 : 10 L. W. 366 : 26 M. L. T. 362 : A. I. R. 1919 Mad. 274.

———S. 7—*District, what is.*

Per Full Bench (*Jackson, J.* dissenting).—The Notifications Nos. 175 and 177 of the Local Government, dated the 22nd of June, 1921, constituting a Sessions Division of West Tanjore and a Sessions Division of East Tanjore are *intra vires* of the Local Government. Per *Jackson, J.*—The word 'district' in S. 7, is used in its generally accepted sense of a revenue division in charge (in the Madras Presidency) of a Collector and the above said notifications are, therefore, *ultra vires*. *In re: Arumugha Solagan*. 32 Cr. L. J. 795 :

134 I. C. 51 : 34 L. W. 201 :

1931 Mad. W. N. 161 : 61 M. L. J. 265 :

54 Mad. 943 : I. R. 1031 Mad. 803 :

A. I. R. 1931 Mad. 697.

———S. 7 (2)—*Transfer of case—District Magistrate, power of, to transfer case outside district.*

There is no authority which enables one District Magistrate to transfer a case for trial to another District Magistrate. *Kayyamuiddin v. Dwarka*. 19 Cr. L. J. 671 :

45 I. C. 1007 : 5 O. L. J. 145 :

A. I. R. 1918 Oudh 158.

———S. 9—*Additional Sessions Judge, status of.*

Additional Sessions Judge functioning for particular case is different from Sessions Judge, and each is subordinate to High Court. *Emperor v. Lakshman Chanji Narangikar*. (F.B.) 32 Cr. L. J. 1147 :

134 I. C. 347 : 33 Bom. L. R. 675 :

55 Bom. 576 : I. R. 1931 Bom. 459 :

A. I. R. 1931 Bom. 313.

———S. 9—*Court of Sessions.*

There is only one Court of Sessions in each sessional division sitting at different places and manned by different Judges. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Ijtulla Paikar*. 32 Cr. L. J. 842 :

132 I. C. 160 : 53 C. L. J. 177 :

35 C. W. N. 400 : 58 Cal. 1117 :

I. R. 1931 Cal. 544 : A. I. R. 1931 Cal. 190.

———S. 9—*Courts of Sessions in Balochistan whether competent to exercise jurisdiction over European British subjects.*

Courts of Sessions in Balochistan have jurisdiction to try European British subjects committed to them by competent Courts. The fact that no Courts of Sessions have been appointed by the Local Government under S. 9, Cr. P. C., is not material, these Courts having been appointed by the authority superior to the Local Government, namely, the Governor-General-in-Council by the Regulation VIII of 1896. *Emperor v. Arthur Mercer*. 6 Cr. L. J. 108 :

5 P. R. Cr. 1907 : 8 P. L. R. 229 :

2 P. W. R. 82.

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———S. 9—*"Court of Sessions," meaning of—High Court exercising original jurisdiction, whether Court of Session:*

The expression, "Court of Session" wherever it is used in the Cr. P. C., means a Court established under S. 9 of the Code. The High Court exercising Original Criminal Jurisdiction is not a Court of Session within the meaning of the Cr. P. C.. *Emperor v. Harendra Chandra Chakravarty*. 26 Cr. L. J. 385 :

84 I. C. 929 : 51 Cal. 980 : 29 C. W. N. 385 :

A. I. R. 1925 Cal. 384.

———Ss. 9, 531—*Appeal made over to Additional Sessions Judge for hearing—Appeal ultimately heard by Sessions Judge himself—Jurisdiction.*

Where a Sessions Judge makes over a Criminal Appeal for decision to an Additional Sessions Judge, working in the same jurisdiction as himself and empowered to try cases or appeals, made to him by the Sessions Judge but subsequently, after notice to the parties, hears the appeal himself, he does not act outside his jurisdiction inasmuch as the making over of a case is not a "transfer" of the case. *Birjur Marwari v. Emperor*. 23 Cr. L. J. 107 :

65 I. C. 491 : 19 A. L. J. 952 :

44 All. 157 : A. I. R. 1922 All. 387.

———S. 9 (2)—*Government order appointing place for Sessions Court, legality of.*

Special Government order as to at what place Court of Sessions should hold its sitting, is not *ultra vires*. *Emperor v. Lakshman Chanji Narangikar*. (F.B.) 32 Cr. L. J. 1147 :

134 I. C. 347 : 33 Bom. L. R. 675 :

55 Bom. 575 : I. R. 1931 Bom. 459 :

A. I. R. 1931 Bom. 313.

———S. 9 (2)—*Trial of cases by Jury or Assessors—Authority competent to decide.*

Local Government only and not High Court can decide whether a Sessions Court shall try cases with Jury or Assessors. *Emperor v. Lakshman Chanji Narangikar*. 32 Cr. L. J. 1147 :

134 I. C. 347 : 33 Bom. L. R. 675 :

55 Bom. 576 : I. R. 1931 Bom. 459 :

A. I. R. 1931 Bom. 313.

———Ss. 9(3), 268—*Additional Sessions Judge appointed by Resident—Exercise of discretion under S. 268.*

Additional Sessions Judge appointed by the Resident under S. 9 (3), Cr. P. C., is entitled to exercise his discretion under S. 268, and try cases without jury or aid of assessors. *Fakira v. Emperor*. 38 Cr. L. J. 498 :

167 I. C. 790 : 1937 O. W. N. 412 :

39 P. L. R. 334 : 1937 O. L. R. 216 :

9 R. P. C. 231 : 3 B. R. 426 :

41 C. W. N. 741 : 1937 M. W. N. 546 :

46 L. W. 134 : 1937 2 M. L. J. 323 :

39 Bom. L. R. 966 : I. L. R. 1937 Bom. 711 :

1937 A. W. R. 1128 : 64 I. A. 148 :

1937 A. L. J. 1055 P. C. :

A. I. R. 1937 P. C. 119.

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S. 10—One District Magistrate for two Districts.

There is nothing wrong in having one District Magistrate for both the Districts, East Tanjore and West Tanjore. *In re: Arumugha Solagem.*

32 Cr. L. J. 1095 :
134 I. C. 51 : 34 L. W. 201 :
1931 M. W. N. 161 : 61 M. L. J. 265 :
54 Mad. 943 : I. R. 1931 Mad. 803 :
A. I. R. 1931 Mad. 697.

Ss. 10, 195, (1) (a)—District Magistrate acting under Police Act, whether Court—Jurisdiction of Sessions Judge to interfere—Revision.

Where a District Magistrate has authority to grant and does grant, contrary to the opinion of the Superintendent of Police, sanction to prosecute a person on the allegation that he had committed contempt of the lawful authority of an officer-in-charge of a Police station, he does so by virtue of the provisions of S. 4 of the Police Act. He is, however, not acting as the Presiding Officer of the Court of a District Magistrate, constituted under the Cr. P. C. and consequently a Sessions Judge has no jurisdiction to interfere with his order. His order, not being that of a Court of Justice, is not subject to the revisional jurisdiction of a High Court. *Chhotey Lal v. Chhedi Lal.*

24 Cr. L. J. 597 :
73 I. C. 341 : 45 All. 135 :
A. I. R. 1923 All. 149.

Ss. 10, 438—District Magistrate invested with powers under S. 10, other powers of.

From the mere fact that the District Magistrate has been invested with certain powers under S. 10, it does not follow that he has not other powers which are not contemplated by Cr. P. C. He is, in addition, the Collector of the district. He is also the District Officer, and in those capacities, he has to perform many functions which are not covered by the Cr. P. C. *Chaudhury Bejoy Krishna Deb v. Thakur Shyam Narain Singh.*

41 Cr. L. J. 442 :
187 I. C. 310 : I. L. R. 1939 2 Cal. 532 :
12 R. C. 575 : A. I. R. 1940 Cal. 30.

Ss. 10 (2), 12, 528—Magistrates, subordination of.—Transfer—Additional District Magistrate and District Magistrate—Omission to state grounds.

S. 12, Cr. P. C. does not make an Additional District Magistrate subordinate to the District Magistrate, and the latter cannot exercise the powers under S. 528 in respect of such Magistrates. It is incumbent on the Court making a transfer under S. 528 to record its reasons therefor but the omission to do so is not a ground for setting aside the order where it has not prejudiced the accused. *Prakas Chunder Dutt v. Emperor.*

6 Cr. L. J. 360 :
I. L. R. 34 Cal. 918.

Ss. 10 (2), 197—Additional District Magistrate, powers of.

Where, under S. 10 (2), Cr. P. C., the Local Government appoints an Additional District Magistrate and confers upon him "all the

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powers of a District Magistrate under the Code" such powers are not confined to those enumerated in Sch. III (v) of the Code, but include all powers with which a District Magistrate is invested under the Code, and where one of the powers exercised by a District Magistrate is the power to pass an order of sanction under S. 197, it is within the competence of an Additional District Magistrate, empowered under S. 10 (2), to exercise that power. *Kakala Chinna Chendrayya v. Maddukhuri Subharayudu.*

24 Cr. L. J. 116 :
71 I. C. 244 : 17 L. W. 226 :
1923 M. W. N. 77 : A. I. R. 1923 Mad. 338.

Ss. 10 (2), 435 (1)—Court of Additional District Magistrate—Whether inferior to District Magistrate's Court.

The Court of a Magistrate of the 1st Class, appointed under S. 10 (2), Cr. P. C., an Additional District Magistrate is inferior to the Court of the District Magistrate for the purposes of S. 435 (1) of the Code. *Emperor v. Abdul Karim.*

9 Cr. L. J. 104 :
25 P. R. Cr. 1908.

S. 11—District Magistrate, illness of—Officer-in-charge of current duties, whether "succeeds" to office of District Magistrate.

There is no vacancy in the office of the District Magistrate and no temporary succession to such office within the meaning of S. 11 where the District Magistrate has not left the District, but is only temporarily disabled from attending to his work. *Emperor v. Achhaibar Singh.*

22 Cr. L. J. 713 :
63 I. C. 873 : 24 O. C. 255 :
8 O. L. J. 612 : A. I. R. 1921 Oudh 162.

S. 12—Sub-Divisional Magistrate—Jurisdiction.

Although a Magistrate is placed in charge of one Sub-Division, his jurisdiction over the area outside his jurisdiction as a Magistrate of the First Class is retained unless specifically curtailed. *Rameshkar Pathak v. Baijnath Rai.*

37 Cr. L. J. 55 :
159 I. C. 12 : 16 P. L. T. 576 :
2 B. R. 61 : 8 R. P. 257 :
A. I. R. 1935 Pat. 436.

S. 12—Honorary Magistrate—Appointment for definite period—No order cancelling appointment—Jurisdiction after expiry of period.

When an Honorary Magistrate has been appointed for a particular term of year in the Central Provinces, his jurisdiction to try cases must be deemed to continue even after expiry of the period, in the absence of a specific order cancelling such appointment. *Tukaram v. Dagdu.*

31 Cr. L. J. 24 :
120 I. C. 223 : A. I. R. 1930 Nag. 96.

S. 12—Sub-Divisional Magistrate—Jurisdiction.

A Sub-Divisional Magistrate has no jurisdiction to take cognizance of matters outside the local area within which the District Magistrate

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has appointed him to act. *Chaubey Kunj Behari Lal v. Lauva.* 22 Cr. L. J. 122 (b) :

59 I. C. 554 : 19 A. L. J. 77 :
A. I. R. 1921 All. 123.

—S. 12—Magistrate, transfer of, within district—Powers of Magistrate.

A Magistrate, who is transferred from one local area to another in the same district, does not thereby cease to have jurisdiction in the matter of granting sanction to prosecute upon an application made to him before his transfer. *Choti v. Khecheru.* 21 Cr. L. J. 746 :

58 I. C. 250 : 18 A. L. J. 758 :
2 U. P. L. R. (A) 353 : 42 All. 649 :
A. I. R. 1920 All. 177.

—S. 12—Mahalkari appointed Second Class Magistrate—Suspension by Collector, effect of, on magisterial powers.

Where a person who is a Mahalkari has been appointed as a Second Class Magistrate by name, under S. 12, he can be suspended or removed from his position as a Second Class Magistrate only by the Local Government. Consequently, the mere suspension of such a person as a Mahalkari by the Collector would not put an end to his powers as a Second Class Magistrate. *In re : Laaminarayan Timmanna Karki.* 29 Cr. L. J. 1063 :

112 I. C. 567 : 30 Bom. L. R. 1050 :
A. I. R. 1928 Bom. 390.

—S. 12—Jurisdiction, definition of.

The mere definition of areas cannot be taken as a provision excluding jurisdiction in the rest of the district. *Gulabraw Laxmauraw Chandgude v. Emperor.* 37 Cr. L. J. 514 :

162 I. C. 207 :
37 Bom. L. R. 745 : 8 R. B. 404 :
A. I. R. 1935 Bom. 409.

—S. 12—Magistrate made Chairman of Municipal Board, whether Subordinate to District Magistrate.

A Magistrate, who is gazetted to the office of the Chairman of a Municipal Board and takes charge of that office, is divested of his territorial jurisdiction as Magistrate and is no longer subordinate to the District Magistrate. The latter, therefore, cannot transfer any criminal case to him for trial. *Nathi Mall v. Emperor.* 15 Cr. L. J. 693 :

26 I. C. 141 : 12 A. L. J. 890 :
36 All. 513 : A. I. R. 1914 All. 410.

—Ss. 12, 15—Bench of Magistrates composed of Magistrates of Third Class—Notification of Commissioner-in-Sind investing Bench with ordinary powers of Magistrate of Second Class under Part II, Sch. III—Jurisdiction of Bench to try offences triable by Magistrate of Second Class.

A Bench of Magistrates consisting of two Magistrates, who individually were Third Class Magistrates exercised the powers of a Magistrate of a Second Class, and tried and convicted the accused of an offence not triable by a Magistrate of Third Class, but by a Magistrate of Second Class, purporting to act under the Notification

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of Commissioner-in-Sind issued under S. 15 which, without expressly investing the Bench with jurisdiction to try offences cognizable by a Magistrate of the Second Class, invested the Bench with the ordinary powers of a Second Class Magistrate specified in Part II, Sch. III, and empowered the Bench to try cases summarily under S. 261 and authorized it to exercise powers under S. 562 : *Held, per curiam (Aston and DeSouza, A. J. Cs., dissenting).*—That there was an obvious omission in the Notification which could be supplied by the Court on its true construction and that the Bench had impliedly been vested with powers to try Second Class magisterial cases. *Emperor v. Noor Mahomed.* 28 Cr. L. J. 913 :
105 I. C. 433 : 9 A. I. Cr. R. 66 :
A. I. R. 1928 Sind 1.

—Ss. 12, 107—Sub-Divisional Magistrate, jurisdiction of.

The jurisdiction of a Sub-Divisional Magistrate is confined to his own Sub-Division and he cannot take proceedings under S. 107, against a person residing outside his sub-division. *Syed Ali v. Emperor.* 39 Cr. L. J. 810 :

176 I. C. 784 : 11 R. N. 79 :
A. I. R. 1938 Nag. 448.

—Ss. 12, 110—Sub-Divisional Magistrate—Jurisdiction beyond sub-division.

The mere fact that a Magistrate is placed in charge of a sub-division of a district is, in the absence of anything to the contrary, no ground for holding that his jurisdiction over the area of the district outside his local jurisdiction as a Magistrate of the First Class is curtailed, and it is not illegal for such a Magistrate to take proceedings under S. 110 upon a Police Report in respect of persons residing outside his local jurisdiction. *Rameshwar Dusadh v. Emperor.* 21 Cr. L. J. 321 :

55 I. C. 593 : 1 P. L. T. 632 :
A. I. R. 1920 Pat. 25.

—Ss. 12, 529 (e)—Jurisdiction—Offence committed beyond local jurisdiction—Trial, legality of.

The trial of offence by a Magistrate who is otherwise competent to try the same is not invalid merely because the offence was not committed within the circle of the jurisdiction of the Magistrate. Such an irregularity is excused by the provisions of S. 529 (e). *Khub Chand v. Emperor.* 29 Cr. L. J. 124 :

106 I. C. 716 : L. R. 8 A. 144 Cr. :
8 A. I. Cr. R. 402 : A. I. R. 1927 All. 791.

—Ss. 12, 531—Proceedings in wrong sub-division—Effect.

No order of a Criminal Court should be set aside merely on the ground that the proceeding in which it was passed took place in the wrong sub-division, unless such error has occasioned a failure of justice. *Mithani v. Emperor.* 13 Cr. L. J. 203 :

9 A. L. J. 448 : 14 I. C. 203.

—Ss. 12, 531—Transfer of Magistrate from one sub-division to another—Transfer of cases on his file, rule as to.

Cases on the file of a Magistrate in a District

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do not automatically pass to his successor in the local area merely because the former has been transferred to another local area in the same District. *Mithani v. Emperor*.

13 Cr. L. J. 203.
9 A. L. J. 448 : 14 I. C. 203.

—S. 12 (1)—Jurisdiction, not defined—Effect.

Where the local area of the jurisdiction of a Magistrate of the First Class has not been defined under S. 12 (1), his jurisdiction extends under S. 12 (2) to the whole of his district. *Golam Rahman Khan v. Kalipada*.

33 Cr. L. J. 858 :
139 I. C. 850 : 36 C. W. N. 796 : 59 Cal. 1484 :
I. R. 1932 Cal. 663 : A. I. R. 1932 Cal. 864.

—S. 12 (2) Jurisdiction of Magistrate not defined—Jurisdiction, extent of.

If the jurisdiction of a Magistrate is not defined in the manner laid down in S. 12 (2), his jurisdiction and powers extend throughout the district. But he cannot take cognizance of a case pending in another Court, unless there is a valid order transferring the case from the file of that Court to his file. *Emperor v. Achhaibar Singh*.

22 Cr. L. J. 162 :
63 I. C. 873 : 24 O. C. 255 : 8 O. L. J. 612 :
A. I. R. 1921 Oudh 162.

—Ss. 13 (3), 529 (f), 192—District Magistrate—Appointing Sub-Divisional Magistrate for particular period—Authority to be in charge of S. D. O's file during his tour, if amounts to appointment—Such Magistrate, not empowered under S. 192, transferring case in good faith to his own file—Transfer, validity of.

A District Magistrate who has been delegated powers under S. 13 (3), is competent to appoint a Sub-Divisional Magistrate on a particular date or dates or for a particular period. This he might do without relieving the permanent incumbent. The mere authority from the District Magistrate to be in charge of the S. D. O's file at headquarters so long as he is on tour is an appointment within the meaning of S. 13 though the appointment is limited only to a particular kind of work and a particular occasion. Where such a Magistrate transfers erroneously but in good faith a case of which he has not taken cognizance to his own file as second officer, the order of transfer is valid by virtue of S. 529 (f). The fact that he is not empowered to do so under S. 192, is immaterial. *Ram Krishna Sinha v. Emperor*.

39 Cr. L. J. 417 :
174 I. C. 513 : 42 C. W. N. 246 : 10 R. C. 693 :
A. I. R. 1938 Cal. 195.

—S. 14—"Any local Area," meaning of—Special Magistrate, powers of—Punjab Government Notification No. 99, dated 23rd February 1883.

The words 'any local area' in S. 14 can be extended to cover, if necessary, all the territories administered by the Local Government issuing the Notification, and are not restricted in their meaning to a local area within a specified District or Sessions Division. The Punjab Government Notifi-

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cation No. 99, dated 23rd February 1883, applies equally to a Special Magistrate of the First Class appointed under S. 14. *Hira Lal v. Emperor*.

19 Cr. L. J. 310 :
44 I. C. 326 : 4 P. W. R. 1918 Cr. :
48 P. L. R. 1918 :
A. I. R. 1918 Lah. 196.

—S. 14—Appointment of Magistrate to try a case—'Case' whether includes all charges.

A 'case' is not necessarily a single charge but comprises all charges or classes of charges. A Magistrate upon whom authority is conferred under S. 14 to try the case relating to the prosecution of a particular person, is empowered to try all the charges that may be laid against that person in that prosecution. *Jehangir Ardesheer Cama v. Emperor*.

28 Cr. L. J. 1012 :
106 I. C. 109 : 29 Bom. L. R. 996 :
8 A. I. Cr. R. 324 :
A. I. R. 1927 Bom. 501.

—S. 14—Case, meaning of.

In S. 14, the word "case" includes all the offences which come to light during the investigation. *Bhat v. Emperor*.

33 Cr. L. J. 68 :
134 I. C. 1230 : 33 Bom. L. R. 1192 :
I. R. 1932 Bom. 14 :
A. I. R. 1931 Bom. 517.

—S. 15—Bench of Magistrates—Trial by two out of three, legality of.

A case was opened before a Bench of three duly appointed Honorary Magistrates, but one of them left at an early stage of the proceedings and took no further part in the proceedings. The other two Magistrates heard the whole of the case and one of them wrote the judgment but did not sign it, although he initialled certain corrections in the text. The third signed it: *Held*, (1) that in the absence of a special order in the case, requiring, as a matter of law, three persons to hear and decide it, the hearing and decision by two Magistrates was in accordance with law. *Khuda Baksh v. Emperor*.

18 Cr. L. J. 749 :
40 I. C. 749 : 15 A. L. J. 463 :
A. I. R. 1917 All. 379.

—S. 15—Bench of Magistrates, trial by—Absence of one member during trial, effect of.

The trial of an accused person by a Bench of Magistrates, one of whom did not hear the entire evidence, is bad in law, and a conviction by such Bench cannot be sustained. *Abdul Ghani v. Emperor*.

22 Cr. L. J. 511 (a) :
62 I. C. 335 : A. I. R. 1922 Lah. 137.

—S. 15.

The words "sit together" in S. 15, must be construed as equivalent to "constitute." *Emperor v. Bhimabai Sitaram Manr*.

36 Cr. L. J. 592 :
154 I. C. 827 : 36 Bom. L. R. 314 :
7 R. B. 373 : A. I. R. 1934 Bom. 176.

—S. 15.

Trial by Bench of Magistrates—Only one Magistrate hearing case on many occasions—

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Proceedings are irregular. *Rameshwar Datt Singh v. Sharath Singh*.

35 Cr. L. J. 417 (2) :
147 I. C. 516 : 11 O. W. N. 75 : 6 R. O. 273 :
A. I. R. 1934 Oudh 85.

—Ss. 15, 16—Bench of Magistrates—Absence of some Magistrates from later stages of a trial, effect of.

The absence of some of the Bench Magistrates, who were present at the earlier stages of a trial, from the further stages of the trial and at the time of judgment, does not vitiate the trial. *Venkataram Iyer v. Swaminatha Iyer*.

15 Cr. L. J. 549 :
24 I. C. 957 : 1914 M. W. N. 867 :
A. I. R. 1914 Mad. 139.

—Ss. 15, 16—Rules framed by U. P. Government under S. 16, validity of—Trial before Bench of Magistrates—Judgment by Bench other than Bench which heard evidence, legality of.

The rules framed by the United Provinces Government under S. 16 are *intra vires* the Government. The effect of the rules is that any trial commenced before any two members of a Bench can lawfully be continued before any other two members, provided that if exception is taken by the accused to the proceeding before a differently constituted Bench, the trial must either be re-commenced *de novo*, or adjourned to a subsequent date on which the same Magistrates who commenced the trial might find it convenient to sit together. Where one of the Magistrates who delivers the judgment was absent on the date of the second hearing, it cannot be said that the accused are not prejudiced, and the proceedings at the last hearing, when judgment is pronounced, are illegal and must be set aside. *Mathura v. Emperor*.

19 Cr. L. J. 1004 :
48 I. C. 344 : 16 A. L. J. 884 : 41 All. 116 :
A. I. R. 1918 All. 56.

—Ss. 15, 268, 537—Sessions trial—Assessors, number of, less than that required by law, effect of.

Where a Sessions Judge tries a case with the aid of assessors, it is the Judge plus the assessors who constitute the Court, not the Judge alone ; and where, therefore, a Sessions Judge tries a case with the aid of number of assessors less than that fixed by law, there is no trial at all, and the defect cannot be cured by S. 537. *Jairam Kunbi v. Emperor*.

25 Cr. L. J. 459 :
77 I. C. 811 : 20 N. L. R. 129 :
A. I. R. 1924 Nag. 287.

—Ss. 15, 350 (a)—Bench of Magistrates—Some Magistrates not sitting throughout trial—Validity.

A Bench of Magistrates consisted of A, B and C. A and B began the trial and recorded a portion of the evidence. B and C sat at the next two hearings and all the three sat at the subsequent hearings and signed the judgment : *Held*, that the trial was bad as it contravened the provisions of S. 350 (a) even though the quorum required was only two. *Suraj Bali v. Emperor*.

29 Cr. L. J. 310 :
107 I. C. 875 : 4 O. W. N. 1240 :
9 A. I. Cr. R. 414 : A. I. R. 1928 Oudh 212.

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—Ss. 15, 529 (f), 530 (p)—Rules of Benches of Honorary Magistrates, r. 4—Transfer of case to Bench not triable summarily by Bench—Trial in regular way—Acquittal—District Magistrate ordering re-trial—Jurisdiction.

A District Magistrate transferred to a Bench of 2nd Class Honorary Magistrates a case under S. 456, Penal Code. The Bench [tried the case not summarily but in the regular way and acquitted the accused. On revision, the District Magistrate held that the Honorary Magistrates' proceedings were void under S. 530 (p), Cr. P. C. and ordered, without giving the accused an opportunity of being heard, that the case be re-tried : *Held*, that the order of the District Magistrate was without jurisdiction and ought to be set aside. The proceedings of the Honorary Magistrates were not void. *Nga San Hmi v. Emperor*.

12 Cr. L. J. 383 :
11 I. C. 247 : 1 U. B. R. 1910 70.

—S. 16—Bench of Honorary Magistrates—Each Magistrate not present at every hearing when evidence recorded, effect of—Local Government, rules made by—Substantial justice.

It is not necessary that each of the Magistrates of a Bench of Honorary Magistrates deciding the case must invariably be present at every hearing when evidence is heard and recorded. S. 16 does not exclude the authority of the Local Government or the District Magistrate to lay down rules for the guidance of the conduct of business by Benches of Honorary Magistrates. The criterion of the validity of a judgment of a Bench of Honorary Magistrates is simply whether substantial justice has or has not been done. *Inar Dat v. Emperor*.

15 Cr. L. J. 516 :
24 I. C. 604 : 17 O. C. 142 :
A. I. R. 1914 Oudh 345.

—S. 16—Bench of Magistrates—President voting against finding of guilt—His right to vote on question of sentence.

The fact that the President of a Bench of Magistrates was among those who thought the accused were not guilty, does not render him incompetent to vote on the question of sentence, on the accused being found guilty by a majority of the Bench. *In re : Mennakanti Rosayya*.

28 Cr. L. J. 310 :
100 I. C. 534 : A. I. R. 1927 Mad. 500.

—S. 16—Bench of Magistrates—Quorum of two Magistrates—Evidence recorded by one, admissibility of.

Where the rules relating to a Bench of Magistrates provides that two Magistrates shall constitute the quorum, evidence recorded by a Magistrate sitting singly is not evidence recorded in a Court, and the mere reading over to the Bench, when properly constituted of the statements so recorded, would not render them admissible as evidence and cannot be acted upon. *Emperor v. Gulu*.

27 Cr. L. J. 542 :
93 I. C. 1038 : 20 S. L. R. 134 :
A. I. R. 1926 Sind 192.

—S. 16—Honorary Magistrate, jurisdiction of—Administrative distribution of work—Magistrate enquiring into case arising outside area assigned, legality of.

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There is nothing in the Code which prescribes that any particular class of cases should be tried by Honorary Magistrates. If for the convenience of administration a Magistrate is directed to take up cases arising in a particular area, he is not, without jurisdiction, if he enquires into a case arising outside that area, provided that his powers extend over the area in which the case arises. *Yaqub v. Appaseami*.

25 Cr. L. J. 556 :
81 I. C. 44 : A. I. R. 1925 Nag. 40.

—S. 16—*One Bench Magistrate competent to try—Absence of others during trial, if vitiates trial.*

Where transfer of accused was made under S. 192 to the Bench Magistrates, one of whom alone being invested with powers of a Magistrate of Third Class, was empowered to hear and try the case under orders issued by the District Magistrate consonant to the provisions of S. 16 and where he had jurisdiction to try the case sitting alone and he heard all the evidence and he was the Magistrate who pronounced judgment: *Held*, there was no irregularity vitiating the trial. *Debi Prasad v. Emperor*.

L. R. 5 All. 93 Cr. :
A. I. R. 1924 All. 674.

—S. 16—*Rules regulating constitution of Bench—Trial in contravention—Legality.*

A trial held by a Bench of Magistrates in contravention of the rules regulating the constitution of such Bench is void. *Mohidin Karim v. Emperor*.

21 Cr. L. J. 369 :
55 I. C. 849 : 22 Bom. L. R. 154 :
44 Bom. 400 : A. I. R. 1920 Bom. 300.

—S. 16—*Rules under, by U. P. Govt. are intra vires.*

The rules framed by the United Provinces Government under S. 16 are *intra vires* the Government. *Mathura v. Emperor*.

19 Cr. L. J. 1004 :
48 I. C. 344 : 16 A. L. J. 384 : 41 All. 116 :
A. I. R. 1918 All. 56.

—S. 16—*Rule requiring Bench to consist of 5 with quorum, validity of.*

The rules made by Bombay Government providing that a Bench should consist, generally speaking, of five members with a quorum of three, are valid. *Emperor v. Bhimabai Sitaram Mane*.

36 Cr. L. J. 592 :
154 I. C. 827 : 36 Bom. L. R. 314 :
7 R. B. 373 : A. I. R. 1934 Bom. 176.

—S. 16—*Trial by Bench of Honorary Magistrates—Difference of opinion—Benefit of doubt—Reference to District Magistrate, whether legal.*

Where there is an irreconcilable difference of opinion between the members of a Bench of two Honorary Magistrates as to the guilt of an accused, they should follow the principle laid down by the Local Government for their guidance, though not formally issued by the District Magistrate of their district under S. 16 and, giving the benefit of the doubt, should acquit the accused. A reference on a

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difference of opinion between them to a District Magistrate is irregular and not justified by any provisions of the Code. *Kashinath v. Shanker Ram*.

16 Cr. L. J. 113 :
27 I. C. 177 : A. I. R. 1915 All. 96.

—Ss. 16, 350—*Judicial Officer deciding case, if must hear whole evidence.*

In the face of S. 350, it cannot be assumed as an inherent principle of Criminal Procedure that the Judicial Officer who decides the case must have heard the whole of the evidence. *Inar Dat v. Emperor*.

15 Cr. L. J. 516 :
24 I. C. 604 : 17 O. C. 142 :
A. I. R. 1914 Oudh 345.

—Ss. 16, 350, 356—*Bench of Magistrates, trial by—Different Magistrates at different hearings—Illegality—Procedure—Re-trial.*

The constitution of a Bench cannot be changed during the progress of a trial except in the circumstances referred to in S. 350 of the Code, and at least so many of the Magistrates as constitute a quorum, who commenced the hearing of a case must continue it till its conclusion. Where the minimum number of Magistrates required to constitute a quorum are not the same throughout the trial, the trial is vitiated. Where a trial is vitiated owing to the non-observance of the rule, that the same Magistrates must be present at every hearing, the proper course for an Appellate Court is not to direct the acquittal of the accused but to direct a re-trial, especially if the interests of the complainant so require. *Brij Bhushan v. Ram Kirat*.

25 Cr. L. J. 198 :
76 I. C. 566 : 10 O. L. J. 614 :
A. I. R. 1923 Oudh 163.

—Ss. 16, 367—*Bench of Magistrates—Chairman differing from majority—Judgment of Court—Procedure.*

Where the Chairman of a Bench of Magistrates is opposed to the majority of the Bench and is not prepared to write a judgment for the majority, one of the majority ought to write the judgment and that should form part of the record, so that, the High Court in revision may know the reasons for the opinion of the majority. *In re : Dyta Seetharamayya*.

27 Cr. L. J. 90 :
91 I. C. 394 : 23 L. W. 537 :
A. I. R. 1926 Mad. 354.

—S. 16 (d)—*Bench of Honorary Magistrates—Difference—Chairman's casting vote—Rules framed by Government—Rule No. 6, if ultra vires.*

Per curiam (Ghose and Pratt, JJ., contra) :—Rule 6 of the rules framed by the Local Government under S. 16, providing that when the members of a Bench of Magistrates are even, the view of the Chairman shall prevail, is not inconsistent with the Code. *Per Ghose and Pratt, JJ.*—The rule is *ultra vires*. *Kailash Chandra Indu v. Kali Prasunno Roy*.

3 Cr. L. J. 409 :
10 C. W. N. 642 : 3 C. L. J. 492.

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———S. 17—*Power of District Magistrate to distribute work, delegation of.*

S. 17 does not empower a District Magistrate to pass on his powers of calling up cases from subordinate Courts and re-distributing them. The distribution of business is confined to the District Magistrate and cannot be exercised by a Magistrate in charge of a Sub-Division or by a senior Honorary Magistrate. *Bal Kishore v. Sipahi Lal.* 15 Cr. L. J. 584 :

25 I. C. 336 : 12 A. L. J. 803 :
36 All. 468 : A. I. R. 1914 All. 202.

———Ss. 17, 195—*Sanction by Magistrate for prosecution—Application for withdrawal—Proper forum.*

For the purposes of the Code, the District Magistrate and not the Sessions Judge is the authority to whom the Sub-Divisional Magistrate is subordinate. An application for withdrawal of a complaint under S. 195 (a) made by a Sub-Divisional Magistrate should therefore be made to the District Magistrate and not to the Sessions Judge. Where a Magistrate acts under cl. (a) of S. 195 (1), he acts not as a Court but as a public servant, and sub-s. (3) of S. 195 does not, consequently, apply to such a case. *Maini Misir v. Emperor.*

28 Cr. L. J. 353 :
100 I. C. 961 : 6 Pat. 39 :
7 A. I. Cr. R. 466 : 8 P. L. T. 488 :
A. I. R. 1927 Pat. 111.

———Ss. 17, 439—*Criminal Rules of Practice, r. 122—Criminal trial, stay of—District Magistrate, powers of—Mischief and rioting, complaint of—Stay of trial during pendency of civil suit for title—Revision.*

Under S. 17 and r. 122 of the Criminal Rules of Practice, a District Magistrate has wide powers of superintendence over his subordinate Magistrates which might be considered to justify special directions being issued by him to stop or go on with particular proceedings pending before them. But it is inexpedient that the trial of a criminal case on a complaint of rioting and mischief should be stayed pending the disposal of a civil suit on the question of title and an order staying such a trial made by a District Magistrate is liable to be set aside by the High Court. *Nambia Pillai v. Sudalai-muthu Nandan.* 25 Cr. L. J. 280 :

76 I. C. 872 : 1923 M. W. N. 276 :
17 L. W. 570 : 32 M. L. T. 191 :
44 M. L. J. 642 : A. I. R. 1923 Mad. 337.

———Ss. 17, 497—*Bail—Additional Sessions Judge—Power to grant or cancel bail.*

The power to grant or cancel bail can be conferred on the Additional Sessions Judge, under S. 17 of the Code but where no such powers have been conferred, his order granting or cancelling bail must be considered to be *ultra vires*. *Maung Ba Maung v. Emperor.*

32 Cr. L. J. 148 :
128 I. C. 577 : I. R. 1931 Rang. 33 :
A. I. R. 1930 Rang. 335.

———S. 17 (4).

An additional Sessions Judge cannot issue an order to another Judge of equal jurisdiction

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to transfer an appeal to his own file. *Daulat Ram v. Emperor.* 33 Cr. L. J. 158 :

135 I. C. 252 : 1931 A. L. J. 591 :
L. R. 12 All. 113 Cr. : I. R. 1932 All. 76 :
A. I. R. 1931 All. 435.

———S. 17 (4)—*Application, what is.*

An application within the meaning of S. 17 (4) must be an application which is recognized by law, that is, a document properly stamped. *Daulat Ram v. Emperor.* 33 Cr. L. J. 158 :

135 I. C. 252 : 1931 A. L. J. 591 :
L. R. 12 All. 113 Cr. : I. R. 1932 All. 76 :
A. I. R. 1931 All. 435.

———Ss. 18, 21—*Honorary Presidency Magistrate—Powers of.*

S. 18 confers full powers of a Presidency Magistrate on a Bench of Honorary Presidency Magistrates under the Code; and the Bench can, therefore, take action under S. 106. *Hassan v. Yas Kubar.* 2 Cr. L. J. 770 :

7 Bom. L. R. 833.

———S. 18 (4).

Additional Chief Presidency Magistrate is vested with all the powers of Chief Presidency Magistrate.

35 Cr. L. J. 729 :
148 I. C. 691 : 59 C. L. J. 204 :
38 C. W. N. 560 : 61 Cal. 467 :
6 R. C. 477 : A. I. R. 1934 Cal. 405 (2).

———Ss. 20, 21—*Chief Presidency Magistrate, jurisdiction of—Rule under S. 21, r. 3, scope of.*

A Chief Presidency Magistrate has jurisdiction to try an offence committed in any place within the Presidency Town. He has further power under r. 3 of the Rules framed under S. 21 to direct that any particular class of cases may be brought before him for trial to prevent pressure of work in the other Courts. *Khodabux v. Emperor.* 27 Cr. L. J. 1213 :

97 I. C. 973 : 28 Bom. L. R. 1066 :
A. I. R. 1926 Bom. 564.

———Ss. 20, 29—*Calcutta Port Act (III of 1890), Ss. 84, 138, 139—Presidency Magistrate, jurisdiction, extent of—Offence committed outside Calcutta but within limits of port, cognizance of.*

The Presidency Magistrate of Calcutta is an officer authorised to exercise the powers of a Magistrate within the limits of the port of Calcutta and is competent, under S. 20 to entertain a complaint of an offence under S. 84 of the Calcutta Port Act, in respect of an offence committed outside the limits of Calcutta but within the limits of the port of Calcutta. *Gunpat v. Good.* 20 Cr. L. J. 782 :

53 I. C. 622 : 30 C. L. J. 252 : 24 C. W. N. 79 :
47 Cal. 147 : A. I. R. 1919 Cal. 1.

———S. 21—*Subordination of Magistrates.*

All stipendiary as well as non-stipendiary Magistrates are Subordinate to the Chief Presidency Magistrate, Calcutta.

35 Cr. L. J. 729 :
148 I. C. 691 : 59 C. L. J. 204 : 38 C. W. N. 560 :
61 Cal. 467 : 6 R. C. 477 :
A. I. R. 1934 Cal. 405 (2).

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—S. 21—*Bombay Government Rules, rr. 9, 10—Bench of Honorary Magistrates—Difference of opinion—Dissenting judgment should form part of record.*

Although under rr. 9 and 10 of the rules framed by the Bombay Government under S. 21 where there is a difference between two Honorary Magistrates composing a Bench, the opinion of the Chairman prevails, the dissenting Magistrate has a right to have his judgment and finding recorded, and his dissenting judgment should, therefore, form part of the record in the case. *Emperor v. Fardunji C. Gora.*

28 Cr. L. J. 1025 :
106 I. C. 209 : 29 Bom. L. R. 1470 :
A. I. R. 1927 Bom. 630.

—S. 21—*Rules under, r. 8, that opinion of the Chairman shall prevail in case of difference between two Magistrates—Rule is ultra vires.*

Rule 8 framed by the Chief Presidency Magistrate under S. 21 that the opinion of the Chairman shall prevail in case of a difference of opinion between two Magistrates constituting a Bench, is inconsistent with the Code. Such a rule is, moreover, arbitrary and not consonant with natural justice. *Henry Wakefield v. Harn Sardar.*

1 Cr. L. J. 842 :
8 C. W. N. 862.

—S. 28—*Interpretation of.*

The schedule to the Code and S. 28 must be read together, and S. 28 is subject to the other provisions of the Code, that is, it is subject to S. 30. *Emperor v. Prithvinath.*

39 Cr. L. J. 660 :
175 I. C. 935 : 20 N. L. J. 151 :
I. L. R. 1938 Nag. 248 : 11 R. N. 18 :
A. I. R. 1938 Nag. 56.

—S. 29-A—*Accused European British subject—Duty of Magistrate.*

Per Cuming, J.—A Magistrate is not bound to ask an accused who is apparently a European British subject whether he claims to be tried as such, so far as cases coming within Chap. XLIV-A are concerned. *Carmen v. O'Brien.*

29 Cr. L. J. 245 :
107 I. C. 353 : 54 Cal. 1041 :
9 A. I. Cr. R. 471 : A. I. R. 1928 Cal. 97.

—Ss. 29-A, 528-A, 529-B—*European British subject—Claim to be tried as such, when to be made.*

A claim to be dealt with as a European British subject under Ss. 29-A, 528-A and 529-B must be made before the trial or enquiry has actually commenced, and if it is not then made, it cannot be made at any subsequent stage. *Carmen v. O'Brien.*

29 Cr. L. J. 245 :
107 I. C. 353 : 54 Cal. 1041 : 9 A. I. Cr. R. 471 :
A. I. R. 1928 Cal. 97.

—S. 29-B.

Magistrate other than one of those mentioned in the section can try an offender under 15 years himself or may send him to be tried by Magistrate empowered under the section. *Natural Nagindas v. Emperor.*

32 Cr. L. J. 722 :
131 I. C. 476 : 33 Bom. L. R. 312 :
I. R. 1931 Bom. 303 : A. I. R. 1931 Bom. 198.

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—S. 29-B.

Offence under S. 304, I. P. C. is not triable by Magistrate of Central Children Court. *Lakhi Salm v. Emperor.*

33 Cr. L. J. 645 :
138 I. C. 626 : 59 Cal. 856 : 36 C. W. N. 164 :
I. R. 1832 Cal. 479 : A. I. R. 1932 Cal. 487.

—S. 29-B.

Section is permissive. Trial of juvenile by ordinary Magistrate is not illegal. Section only enables special Magistrates to try cases otherwise triable by Sessions Judges alone. It does not invalidate a trial which will be invalid apart from the section. *Emperor v. Jalal Dhondibhai.*

35 Cr. L. J. 1033 :
149 I. C. 1135 : 36 Bom. L. R. 435 :
6 R. B. 413 : A. I. R. 1934 Bom. 211.

—S. 30—*Exercise of powers, condition for.*

A Magistrate empowered by the Local Government under S. 30, need not mention the existence of his special powers in order to exercise them, or in order to pass any sentence covered by S. 34. *Nadar Alam Khan v. Emperor.*

36 Cr. L. J. 1143 :
157 I. C. 211 : 8 R. Pesh. 12 :
A. I. R. 1935 Pesh. 108.

—S. 30—*Magistrate described in heading of judgment as invested with S. 30 powers, but not purporting to act as such.*

A First Class Magistrate simply described in the heading of his judgment as invested with S. 30 powers, but not purporting to act under it, cannot exercise those powers in passing the sentence. *Mahi v. Emperor.*

7 Cr. L. J. 461 :
3 P. W. R. Cr. 36.

—S. 30.

Magistrate exercising powers under S. 30, but not signing as such Magistrate, cannot pass sentence in excess of powers of First Class Magistrate. *Emperor v. Sukhdoo Raj.*

35 Cr. L. J. 1288 (1) :
151 I. C. 265 :
7 R. L. 116 (1) : A. I. R. 1934 Lah. 361 (1).

—S. 30—*Object of.*

The object of conferring special powers on District Magistrates is to accelerate proceedings at the trial by avoiding the delay consequent on commitment to the Sessions Court which sits only at considerable intervals. It is also intended to afford relief to those who have to attend as witnesses in the Court. *Emperor v. Prithvinath.*

39 Cr. L. J. 660 :
175 I. C. 935 : 20 N. L. J. 151 :
I. L. R. 1938 Nag. 248 : 11 R. N. 18 :
A. I. R. 1938 Nag. 56.

—S. 30—*Exercise of powers.*

Once a Magistrate has been specially empowered under S. 30 by the Local Government, he can necessarily, when acting as a Magistrate, exercise the powers mentioned in S. 34. *Nadar Alam Khan v. Emperor.*

36 Cr. L. J. 1143 :
157 I. C. 211 : 8 R. Pesh. 12 :
A. I. R. 1935 Pesh. 108.

—S. 30—*Penal Code, S. 304—Culpable homicide—S. 30 Magistrate, power of, to try.*

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A Magistrate empowered under S. 30, is not legally competent to try either the offence of murder or the offence of culpable homicide not amounting to murder punishable under the first part of S. 304, Penal Code. *Emperor v. Shamira*. 27 Cr. L. J. 846 : 95 I. C. 266 : A. I. R. 1926 Lah. 576.

———S. 30.—Scope of.

Section 30 governs S. 23 of the Code : *Emperor v. Prithvinath*. 39 Cr. L. J. 660 : 175 I. C. 935 : 20 N. L. J. 151 : 11 R. N. 18 : I. L. R. 1938 Nag. 248 : A. I. R. 1938 Nag. 56.

———S. 30.—Habitual offender — Forum — Sentence.

A person accused of theft of a pair of shoes was convicted by a Magistrate of the First Class and sentenced to one year's rigorous imprisonment, including two months' solitary confinement and thirty stripes. The accused had six previous convictions for offences against property, and in two cases, the sentences were each for a period of three years' imprisonment: *Held*, that the accused should have been committed to the Court of Sessions, as the case was one in which the advisability of transporting him for life should have been carefully considered, but since the accused had been whipped, he could not be sentenced to more than five years' rigorous imprisonment. The Chief Court set aside the order of conviction, and directed the accused to be re-tried by a Magistrate with powers under S. 30. *Emperor v. Nur Din*. 1 Cr. L. J. 111. 5 P. L. R. 89 : 28 P. R. Cr. of 1903.

———Ss. 30, 28.—Interpretation.

S. 30 cannot be regarded in any other light than the provision of the Code with which under certain circumstances and in certain parts of India, S. 28 of the Code is to be read. *Ma Sin v. Maung Maung Lay*. 37 Cr. L. J. 773 : 163 I. C. 163 : 8 R. Rang. 613 : 14 Rang. 378 : A. I. R. 1936 Rang. 230.

———Ss. 30, 207, 254, 347.—Offence exclusively triable by Sessions Court, committal for, by S. 30 Magistrate.

The committal of a case triable exclusively by the Court of Session is not illegal merely because the Committing Magistrate is himself empowered under S. 30 to try the case. *Emperor v. Hanuman*. 20 Cr. L. J. 97 : 48 I. C. 977 : A. I. R. 1918 Nag. 141.

———Ss. 30, 250.—Special Power Magistrate trying complaint under S. 376, Penal Code—Complaint found false—Accused discharged—Whether can pass order directing payment of compensation under S. 250.

The principle deducible from S. 250, is that the Magistrate can only pass an order awarding compensation if he is able to dispose of the case himself personally. Consequently, a Special Power Magistrate, trying a complaint under S. 376, Penal Code, can pass an order under S. 250, notwithstanding the fact the offence is exclusively triable by a Court of

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Sessions. *Ma Sin v. Maung Maung Lay*. 37 Cr. L. J. 773 : 163 I. C. 163 : 8 R. Rang. 613 : 14 Rang. 378 : A. I. R. 1936 Rang. 230.

———Ss. 30, 337 (2-a)—Pardon to approver by S. 30 Magistrate—Trial of case.

A Magistrate with powers under S. 30 who has tendered a pardon to an approver cannot try the case in which the approver, is to be examined as a witness, but must commit the accused to Sessions Court or High Court if he is satisfied that there are reasonable grounds for believing that the accused is guilty of the offence. *Kishore v. Emperor*. 25 Cr. L. J. 1341 : 82 I. C. 573 : A. I. R. 1925 Nag. 119.

———S. 30 (1)—Scope of.

A judgment must be delivered by the Judge who has heard the evidence, and an accused person has a right not to be convicted by a Magistrate who has not heard the evidence, subject to the exception given in S. 30, cl. 1. *Labh Singh v. Emperor*. 35 Cr. L. J. 1261 : 151 I. C. 213 : 28 S. L. R. 239 : 7 R. S. 46 : A. I. R. 1934 Sind 106.

———S. 32.

See also Emergency Powers Ordinance, 1932.

———S. 32.—Reference in judgment to S. 75, Indian Penal Code—Extension of Magistrate's powers under S. 32—Previous conviction—Enhanced sentence.

Taking into consideration a similar previous conviction of the accused and referring to S. 75, Penal Code, a Magistrate of the First Class convicted and sentenced the accused for an offence under S. 447 of that Code, to one month's rigorous imprisonment: *Held*, that no Magistrate acting under the magisterial powers, conferred by S. 32, could pass a sentence enhanced under S. 75. *Emperor v. David Narsu*. 1 Cr. L. J. 607 : 6 Bom. L. R. 548.

———Ss. 32, 423.—Appellate Court—Enhancement of sentence.

An accused was tried and convicted by a Second Class Magistrate on a charge under S. 406, Penal Code, and sentenced to three months' simple imprisonment. On appeal, the Appellate Court affirmed the conviction but varied the sentence passed to a fine of Rs. 400 with an alternative sentence of rigorous imprisonment: *Held*, that the sentence passed by the Appellate Court was *ultra vires* : and therefore, illegal. *Mohammad Yakub Ali v. Emperor*. 25 Cr. L. J. 312 : 76 I. C. 1032 : 45 All. 594 : A. I. R. 1924 All. 130.

———Ss. 32, 439.—Revision on question of sentence.

The law vests a discretion in the trying Magistrate to pass adequate sentence in each case, and it is for him to decide after taking into consideration all the pertinent circumstances of the case, what should be the adequate sentence. No rule of thumb can be laid down by a higher Tribunal as a guide for

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the trying Magistrate in awarding an adequate sentence. Before the High Court would interfere in revision on the question of sentence, it should be satisfied that the sentence was so unreasonable and so excessive as to require a reduction. *Murido v. Emperor*.

31 Cr. L. J. 763 :
125 I. C. 46 : A. I. R. 1930 Sind 58.

—S. 32 (2)—Magistrate specially empowered under S. 30—Sentence of imprisonment in addition to whipping.

A person who commits an offence under S. 326, Penal Code, may be punished with whipping in addition to any other punishment. He may, therefore, be sentenced to a term of imprisonment not exceeding seven years, and in addition to a sentence of whipping in view of S. 32 (2), and S. 3 of Burma Act, VIII of 1927. *Nga Kyan v. Emperor*.

38 Cr. L. J. 670 :
168 I. C. 975 : 14 Rang. 662 : 9 R. Rang. 380 :
A. I. R. 1937 Rang. 183.

—S. 32 (2)—Whipping—Rule that a certain number of lashes is equivalent to imprisonment—Whether applies when sentences of different kinds are combined.

The guide that a certain number of lashes might be taken as the equivalent of a certain number of months' imprisonment, which is of importance when questions of commutation of sentences have to be considered, is of no application in a case where a Magistrate is lawfully combining two different kinds of sentences in accordance with the powers under S. 32 (2). *Nga Kyan v. Emperor*.

38 Cr. L. J. 670 :
168 I. C. 975 : 14 Rang. 662 : 9 R. Rang. 380.
A. I. R. 1937 Rang. 183.

—S. 33—Extension of period of imprisonment awarded under S. 65, Penal Code.

The provisos to S. 33 do not extend the period of imprisonment which may be awarded under the provisions of S. 65 of the I. P. C. *Gokul Chandra Nandi v. Sribodh Chandra Banerji*.

41 Cr. L. J. 957 :
190 I. C. 598 : 21 P. L. J. 795 : 7 R. N. 58 :
13 R. P. 264.

—Ss. 34, 439—Sentence passed by Magistrate under S. 31—Enhancement, limit of—Procedure.

S. 439 (3) limits the power of enhancement of sentence. This limitation does not apply to a sentence which has been passed by a Magistrate acting under S. 34 of the Code. Except in very exceptional cases; a sentence by the High Court under its powers of enhancement should not, where the sentence has been imposed by a Magistrate, exceed one of seven years' rigorous imprisonment. The usual course when a Court thinks that a sentence of seven years' rigorous imprisonment would not meet the ends of justice, is to set aside the trial and order the case to be committed to the Court of Session. *Sera Singh v. Ranjha*.

24 Cr. L. J. 932 :
75 I. C. 353 : A. I. R. 1923 Lah. 600.

—S. 34-A—Foreigner, privileges of.

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A foreigner, who is not a European British subject, is not entitled to any privileges in the matter of trial or of sentence. *Mr. M. F. Rego v. Emperor*.

34 Cr. L. J. 505 :
143 I. C. 17 : 29 S. L. R. 251 :
I. R. 1933 Nag. 153 : A. I. R. 1933 Nag. 136.

—S. 34-A—European British subject—Privileges, nature of.

Although there is still some privilege as regards the courts by which a European British subject can be tried, there is practically no privilege with regard to sentence, and under S. 34-A, as amended, a Court of Session can pass a sentence of death, penal servitude or imprisonment with or without fine, or of fine upon a European British subject. *Mrs. M. F. Rego v. Emperor*.

34 Cr. L. J. 505 :
143 I. C. 17 : 29 S. L. R. 251 :
I. R. 1933 Nag. 153 : A. I. R. 1933 Nag. 136.

—S. 35.

See also (i) Punishment.
(ii) Whipping Act.

—S. 35—Two sentences at one trial—Consecutive sentences of 6 years—Forum of appeal.

An order of an Assistant Sessions Judge convicting the accused at one trial for two offences and sentencing him to three years for each of the offences, the sentences to run consecutively, is appealable to the High Court and not to the Sessions Judge. *Hamid v. Emperor*.

32 Cr. L. J. 469 :
129 I. C. 731 : 1930 A. L. J. 1206 :
L. R. 11 A. 172 Cr. : I. R. 1931 All. 219.

—S. 35—Applicability to sentences in default of payment of fine.

S. 35 does not refer to sentences of imprisonment in default of payment of fine but refers only to substantive sentences, the former cannot be concurrent. *Emperor v. Ghulam Ahmed*.

30 Cr. L. J. 907 :
117 I. C. 224 : I. R. 1929 Sind 192 :
A. I. R. 1929 Sind 179.

—S. 35—Charge for unlawful assembly with intent to commit assault—Separate sentences for rioting, hurt and grievous hurt, legality of—Amendment to S. 35, effect of.

In view of the amendment to S. 35 by which the word 'distinct' before the word 'offences' has been deleted, separate sentences for offences under Ss. 323, 324 and 325, Penal Code, are not bad in law even though the acts in respect of which such charges were made were included within a charge under S. 147. *Fatiah Bap v. Emperor*.

28 Cr. L. J. 751 :
103 I. C. 799 : 31 C. W. N. 691 :
A. I. R. 1927 Cal. 575 : 8 A. I. Cr. R. 380.

—S. 35—Concurrent sentences—Conviction at two separate trials by different Courts.

A Sessions Judge has no power to order a sentence passed by him to run concurrently with the sentence passed by another Court in another trial. *Makbul Hussain v. Emperor*.

14 Cr. L. J. 240 :
19 I. C. 336 : 11 A. L. J. 263.

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—S. 35—Concurrent sentences.

The accused was tried at four separate trials upon four distinct charges and sentenced to various terms of imprisonment ranging from six months to six years, and it was ordered that all the sentences should be served concurrently: *Held*, that such an order was illegal. *Nga Pya v. Emperor*.

24 Cr. L. J. 388 :
20 I. C. 212 : 6 Bur. L. T. 67.

—S. 35—Concurrent sentences in separate trials.

A Magistrate has no power to make an order that the sentences of imprisonment passed by him on an accused in two separate trials, should run concurrently. *Joyenamlah Bepari v. Emperor*.

19 Cr. L. J. 702 (b) :
46 I. C. 158 : 22 C. W. N. 597 :
A. I. R. 1918 Cal. 243.

—S. 35—Concurrent sentences, when competent.

The power of passing concurrent sentences is confined to cases where a person is convicted at one trial of two or more distinct offences. *Debi Dayal v. Emperor*.

15 Cr. L. J. 300 :
23 I. C. 508 : 16 Cal. 370 : A. I. R. Oudh 193.

—S. 35—Conviction for several offences at one trial—Separate sentences.

Where a person commits house trespass and attempts to murder an occupant of the house, he may be convicted of both these offences, but a separate sentence for each offence is not justified. *Barkat v. Emperor*.

22 Cr. L. J. 198 :
60 I. C. 54.

—S. 35—Conviction for two offences setting aside one conviction but maintaining sentence.

The accused was charged with two offences under Ss. 326 and 148, Penal Code. The Magistrate convicted him on both charges and sentenced him to 18 months' imprisonment "under S. 326/148". On appeal, the Sessions Judge acquitted the accused of the offence under S. 148 but maintained his conviction under S. 326. He also upheld the sentence as he thought that it was not excessive for the offence under S. 326: *Held*, that the judgment of the Magistrate must be interpreted as meaning that the Magistrate passed concurrent sentences under each section. *Sohan Ahir v. Emperor*.

25 Cr. L. J. 992 :
81 I. C. 640 : 22 A. L. J. 263 :
L. R. 5-A. 88 Cr. : A. I. R. 1924 All. 492.

—S. 35—Conviction of same person for forgery and using forged document as genuine—Separate sentences.

The offence of using forged document as genuine and the offence of forgery are separate offences, and under S. 35, separate sentences can be passed on the accused convicted by both at the same trial. *In re : Sriramalu Naidu*.

30 Cr. L. J. 983.
119 I. C. 763 : 1929 M. W. N. 279 :
29 L. W. 559 : 52 Mad. 532 :
56 M. L. J. 554 : I. R. 1929 Mad. 895 :
A. I. R. 1929 Mad. 450.

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—S. 35—Distinct offences—Concurrent sentences—Competency of.

A direction that punishments inflicted in respect of distinct offences shall run concurrently can be made only when the accused is convicted at one trial of two or more distinct offences. *Girdhari Lal v. Emperor*.

12 Cr. L. J. 217.
10 I. C. 156 : 11 P. R. 1911 Cr. :
32 P. W. R. 1911 Cr. : 146 P. L. R. 1911 :

—S. 35, 110, 117 (4)—General repute, evidence of.

Evidence as to the general repute of the accused, as being a habitual offender, where clearly deposed in proceeding under S. 110, is admissible under the provisions of S. 117, sub-s. (4), and is sufficient ground for requiring the accused to give security. *Emperor v. Gajadhar*.

34 Cr. L. J. 160 :
141 I. C. 251 : 9 O. W. N. 1012 :
I. R. L. 1933 Oudh 48 :
A. I. R. 1933 Oudh 58.

—S. 35—Illustration—Penal Code Ss. 366, 376—Abduction with intent to commit rape—absence of rape—Sentence.

If a person abducts a woman with intent to rape her but does not rape her, he cannot be awarded separate sentences under S. 366 and 376, Penal Code. *Imam Ali v. Emperor*.

27 Cr. L. J. 338 :
92 I. C. 850 : A. I. R. 1926 Lah. 212.

—S. 35—Imprisonment in default of fine—Concurrent sentences.

Sentences of imprisonment in default of Fines imposed for two or more offences cannot be directed to run concurrently as not being justified by S. 35. *Emperor v. Akidullah*.

13 Cr. L. J. 536 :
15 I. C. 808 : 5 S. L. R. 263.

—S. 35—Accused guilty of several offences—One sentence, legality of.

In a case where the provisions of S. 71 of the Penal Code, do not come into play, the Court has no discretion whatever to pass only one sentence for one offence and decline to pass sentences for the other offences of which it may find the accused guilty. Separate sentences must be passed for the several offences of which the Court finds the accused guilty. *Emperor v. Mi Meaw*.

36 Cr. L. J. 460 :
154 I. C. 75 : 12 Rang. 419 :
7 R. Rang. 255 : A. I. R. 1934 Rang. 338.

—S. 35.

Joint trial of offences under S. 29, Frontier Crimes Regulation and S. 19, Arms Act—Trial is governed by Cr. P. C. and appeal lies from conviction. *Akbar v. Emperor*.

35 Cr. L. J. 399 :
147 I. C. 180 : 6 R. Pesh. 26 :
A. I. R. 1933 Pesh. 90.

—S. 35—Distinct offences—Manufacture of mahua spirit and possession of material.

The offence of manufacture of mahua spirit necessarily includes that of possession of materials for the manufacture of the same

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and the two offences of manufacture and possession cannot be called 'distinct' for the purpose of S. 35. *Sheikh Munir v. Emperor*. 25 Cr. L. J. 83 :

76 I. C. 19 : A. I. R. 1924 Nag. 32.

—S. 35—*Offences of house-breaking with intent to commit theft and commission of theft—Separate and consecutive sentences.*

S. 71, Penal Code, and S. 35, Cr. P. C., as amended, do not restrict the passing of separate sentences for house-breaking with intent to commit theft and theft which follows it. These two separate offences though they form part of one transaction, can be punished with separate and consecutive sentences. *Baijnathsing Attarsing v. Emperor*.

40 Cr. L. J. 466 :

181 I. C. 45 : 11 R. S. 202 : 1929 Kar. 378 :

A. I. R. 1939 Sind 76.

—S. 35—*Penal Code, Ss. 64, 69—Conviction for separate offences—Imprisonment in default of payment of fine—Sentences, if can run concurrently.*

Where accused is convicted of separate offences and is sentenced to pay a fine, or, in default, to suffer imprisonment for a certain period for each of the offences of which he has been convicted, the sentences in default of payment of fine cannot be directed to run concurrently. It is not incumbent upon a Magistrate to impose a term of imprisonment in default of payment of fine. S. 64 of the Penal Code merely says that it is competent to the Court to pass such a direction, and if the Magistrate wants to avoid giving a second term of imprisonment in default of payment of fine, he can refrain from making a direction under that section. *Emperor v. Subrao Sesharao*.

27 Cr. L. J. 111 :

91 I. C. 543 : 27 Bom. L. R. 1351 :

A. I. R. 1926 Bom. 62.

—S. 35—*Penal Code, Ss. 71, 148, 326—Roiting, armed with deadly weapons—Grievous hurt—Separate sentences, legality of.*

S. 35 empowers a Magistrate to pass separate sentences in respect of convictions under Ss. 148 and 326, Penal Code, subject to the provisions of S. 171 of the latter Code. *Piru Rama Havaldar v. Emperor*. 27 Cr. L. J. 113 :

91 I. C. 689 : 27 Bom. L. R. 1371 :

49 Bom. 916 : A. I. R. 1926 Bom. 64.

—S. 35—*Penal Code, Ss. 71, 411, 414—Convictions for receiving stolen property and concealing stolen property—Consecutive sentences, legality of—'Distinct offences.'*

Under S. 35 as amended in 1923, it is not necessary that the offences should be distinct in order to enable a Magistrate to pass consecutive sentences. Consecutive sentences can be imposed where a person is convicted of receiving stolen property under S. 411 and of concealing other stolen property under S. 414. *I. P. C. Emperor v. Hanma Timma Blandipaddar*. 29 Cr. L. J. 544 :

109 I. C. 368 : 30 Bom. L. R. 383 :

10 A. I. Cr. R. 159 : A. I. R. 1928 Bom. 145.

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—S. 35—*Penal Code, Ss. 117, 353—Unlawful assembly and hurt—Separate sentences.*

Separate sentences under Ss. 147 and 353 are not permissible where the act which converts the accused into an unlawful assembly is the same as renders them liable to punishment under S. 353, Penal Code. *Manak Chand v. Emperor*. 27 Cr. L. J. 834 :

95 I. C. 754 : A. I. R. 1926 Lah. 581.

—S. 35—*Penal Code, Ss. 457, 380—Distinct offences—Conviction—Sentence.*

The offences under Ss. 457 and 380, I. P. C. not being distinct offences, the Magistrate's ordinary jurisdiction is not enhanced by the provisions of para. 2 and proviso (b) of S. 35. *Emperor v. Dhondi Bapu Bhapkar*.

4 Cr. L. J. 445 :

8 Bom. L. R. 850.

—S. 35—*Possession of illicit liquor and of apparatus for manufacturing liquor—Separate sentences, legality.*

The offence of possessing illicit liquor and the offence of possessing apparatus for manufacturing such liquor are quite distinct offences for which separate sentences can be passed. *Emperor v. Pandu Avachi Bhil*.

29 Cr. L. J. 412 :

108 I. C. 512 : 30 Bom. L. R. 328 :

52 Bom. 277 : 10 A. I. Cr. R. 114 :

A. I. R. 1928 Bom. 141.

—S. 35—*Scope of—Concurrent sentences.*

Ordinarily sentences can only be ordered to run concurrently when they are passed at a single trial under the conditions laid down in S. 35, not in the case when the offences charged are not of the same kind within the meaning of S. 231, being punishable with different kinds of punishment. *Mahadeo v. Emperor*. 27 Cr. L. J. 807 :

95 I. C. 471 : A. I. R. 1926 Nag. 426.

—S. 35—*Sentence for offence, directed to take effect after expiry of sentence for default to find security for good behaviour, legality of.*

A Magistrate acts illegally if he directs that a sentence of imprisonment for an offence should take effect after the expiry of the sentence which the accused may be undergoing for default to find security for good behaviour. *In re : Pichari Anthu*.

16 Cr. L. J. 622 :

30 I. C. 446 : A. I. R. 1916 Mad. 1114.

—S. 35—*Sentences of imprisonment in default of fines—Direction that sentences should run concurrently—Legality.*

A Criminal Court is not competent to direct that sentences of imprisonment imposed for default in payment of fines should run concurrently. Under S. 35 such a direction can be given only in respect of sentences of imprisonment or transportation. *In re : Kanda Mooppan*. 38 Cr. L. J. 796 (B) :

169 I. C. 607 : 45 L. W. 87 :

1937 M. W. N. 52 : 1937 I. M. L. J. 74 :

I. L. R. 1937 Mad. 362 : 10 R. M. 77 (1) :

A. I. R. 1937 Mad. 406.

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—S. 35—*Separate convictions for two or more offences—Separate sentences.*

Whether a Court must inflict a separate sentence for each of the offences of which a person has been convicted at one trial, must depend upon the particular circumstances of each case. Where, there are two or more separate convictions for two or more distinct offences in the same case, S. 35 contemplates a separate sentence for each offence.

Emperor v. Wadhawa. 19 Cr. L. J. 223 : 43 I. C. 799 : 46 P. R. 1917 Cr. : A. I. R. 1918 Lah. 297.

—S. 35—*Separate sentences for hurt and rioting, legality of—Practice.*

Under S. 35, as amended in 1923, separate sentences for rioting and hurt are legal although in practice it is undoubtedly better to give a single sentence for all the offences or to order the sentences to run concurrently.

Ali Akbar v. Emperor. 30 Cr. L. J. 575 : 116 I. C. 216 : I. R. 1929 Lah. 472 : A. I. R. 1929 Lah. 670.

—S. 35—*Separate sentences for offences under Ss. 457 and 380, Penal Code.*

Under S. 35, as amended, the Court can pass separate sentences for offences under Ss. 457 and 380, Penal Code. But the punishment provided for any one of these two offences will be sufficient, and if the Court of Appeal finds that the trial Court has wrongly passed two separate sentences but the sentences taken together are not excessives they can be consolidated.

Idris v. Emperor. 40 Cr. L. J. 751 : 183 I. C. 217 : 12 R. P. 121 : 5 B. R. 907 : 20 P. L. T. 736 : A. I. R. 1939 Pat. 349.

—S. 35—*Separate trials—Concurrent sentences.*

Sentences passed in separate trials cannot be directed to run concurrently.

Batan Singh v. Emperor. 26 Cr. L. J. 731 : 86 I. C. 219 : 7 L. L. J. 39 : A. I. R. 1925 Lah. 334.

—S. 35—*Term of imprisonment, can run concurrently with term of transportation.*

A term of imprisonment may be legally ordered to run concurrently with a term of transportation.

Bogi v. Emperor. 15 Cr. L. J. 68 : 22 I. C. 420 : 21 P. L. 1913 Cr. : 50 P. L. R. 1914 : A. I. R. 1914 Lah. 75.

—S. 35—*'May' significance of.*

The word 'may' in S. 35 not only confers a power but also imposes the duty of putting it in use.

Emperor v. Dharamdas. 34 Cr. L. J. 143 : 141 I. C. 280 : 26 S. L. R. 416 : I. R. 1933 Sind 46 : A. I. R. 1933 Sind 9.

—S. 35—*Theft of calf and killing it—Distinct offences.*

Theft of calf and subsequent killing of it constitute two offences of theft and mischief

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—Separate convictions and sentences are legal. *Emperor v. Bhawan Surji.*

37 Cr. L. J. 553 : 162 I. C. 283 : 38 Bom. L. R. 164 : 60 Bom. 627 : 8 R. B. 405 : A. I. R. 1936 Bom. 172.

—S. 35—*Trial includes conviction—Separable offences not distinct offences—Penal Code, S. 71—Assessment of punishment.*

There is nothing improper in the accused being charged with and tried at one trial for the two offences under Ss. 147 and 332/149, and the illustrations to S. 235, show that trial includes conviction. Separable offences, which come within the provisions of S. 71, I. P. C., cannot be treated as distinct offences within the meaning of S. 35, Cr. P. C. There is, therefore, no authority for awarding separate sentences. A Court in awarding punishment under S. 71, I. P. C., should pass one sentence for either of the offences in question and not a separate one for each offence. Where the lower Court has concluded separate sentences for each offence, but the aggregate punishment awarded does not exceed the punishment provided by law for the major offence, it is merely an irregularity and does not call for interference by the High Court when no failure of justice has been occasioned.

Imperator v. Baradi. 11 Cr. L. J. 415 : 6 I. C. 880 : 3 S. L. R. 221.

—Ss. 35, 235 (1)—*Penal Code, S. 71—Excise Act (XII of 1896), Ss. 45, 51—Distilling and possessing spirits not distinct offences—Separate convictions for distilling and possessing spirits.*

Distilling spirit and possessing the spirit obtained by such distillation are not distinct offences within the meaning of S. 35, and a double sentence is prohibited by S. 71, Penal Code. Although under S. 235 (1), Cr. P. C., separate convictions for the two offences are legal, yet it is neither necessary nor desirable to convict for possessing spirit when the manufacture is proved.

Emperor v. Nga San Dun. 1 Cr. L. J. 552 : U. B. R. 1904 : 1st Qr., P. C. 1.

—Ss. 35, 364—*Working at two places without license—Distinct offences.*

Where accused was working as a goldsmith without a license in mining area but worked in two places for want of sufficient space in one, the whole forms one offence and cannot be split up into two for the sake of punishment.

Chennappa v. Government of Mysore. 9 Cr. L. J. 326 : 12 M. C. C. R. 78.

—Ss. 35, 397—*Accused convicted in two separate cases—Second sentence order, to run from date of order—Direction illegal—Concurrent sentence, when can be passed.*

The question whether sentences should be concurrent or consecutive, arises only in cases of separate convictions at one trial. In all other cases, S. 397 is imperative and should not be disregarded. On 30th March, A was sentenced to four years' rigorous imprison-

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ment. On 19th April he was convicted in a separate case by the same Magistrate and sentenced to three years' imprisonment which the Magistrate ordered should run from the date of his order. The first sentence was reduced on appeal to two years : *Held*, that the direction was illegal. *Emperor v. Ganda Singh*.

13 Cr. L. J. 3 :
13 I. C. 109 : 20 P. L. R. 1912 :
13 P. W. R. 1912 Cr.

—Ss. 35, 397—Concurrent sentence, when ordered.

A sentence of imprisonment cannot be ordered to run concurrently with another sentence not passed at the same trial. *Emperor v. San E.*

7 Cr. L. J. 445 :
4 L. B. R. 147.

—Ss. 35, 397 — Concurrent sentence—Separate trials.

The only case in which a Court may pass concurrent sentence for two offences is, where the accused is convicted at the same trial for both the offences, as provided for in S. 35. If the trials are separate, S. 397 applies, and the sentences must take effect consecutively. In the latter case if the second sentence is one of transportation, the Court has the discretion to reverse the order, and direct that the sentence of transportation should take effect first, but the Court cannot make them concurrent. *Imperator v. Khudabux*.

10 Cr. L. J. 236 :
2 S. L. R. 23.

—Ss. 35, 397—Sentence in respect of one offence—Conviction for similar offence in another trial—Concurrent sentence—Procedure.

Where a person is convicted of an offence and is sentenced to undergo a term of imprisonment and is found guilty by another Judge of a precisely similar offence in another case, it is illegal to pass a sentence upon him to run concurrently with the previous sentence. In such a case, if the Judge is of opinion that the previous sentence is adequate, he should pass a nominal sentence on the accused. *Emperor v. Bhikki*

21 Cr. L. J. 398 :
55 I. C. 1006 : 2 U. P. L. R. (A) 96 :
A. I. R. 1920 All. 211.

—Ss. 35, 397—Separate trials—Separate sentences—If can be concurrent.

Where separate trials are held and separate sentences passed upon the accused at each trial, the sentences under S. 397 must be served consecutively. The Court has no power in such a case to direct under S. 35 that the sentences should run concurrently. *Harak Narain v. Emperor*.

22 Cr. L. J. 520 :
62 I. C. 408 : 19 A. L. J. 310 :
A. I. R. 1921 All. 126.

—Ss. 35, 397—Separate trials on one and the same day—Concurrent sentences.

The accused was tried and convicted separately for two offences of cheating. The trials took place on one and the same day and one after the other : *Held*, that for all practical purposes, the trial was one, and under S. 35, the sentences could have been legally ordered to

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run concurrently. *Emperor v. Mahomed Isaf Habib*.

12 Cr. L. J. 241 :
10 I. C. 769 : 13 Bom. L. R. 200.

—Ss. 35, 403 (b)—Concurrent sentences, whether aggregate sentences—Appeal, forum of.

Concurrent sentences do not come within the expression aggregate sentences for the purpose of S. 35 or for the purpose of raising the status of the forum of appeal. *Gurushay Ram v. Emperor*.

19 Cr. L. J. 90 :
43 I. C. 250 : 3 P. L. W. 249 :
3 P. L. J. 138 : A. I. R. 1917 Pat. 33.

—Ss. 35, 411—Concurrent Sentences—whether single sentence—Right of appeal.

Two sentences, each of six months' imprisonment passed simultaneously under S. 35 and directed to run concurrently, cannot be held to be a single sentence of one year's imprisonment but would be considered as a single sentence of six months' imprisonment. *Sukkandan Singh v. Emperor*.

13 Cr. L. J. 787 :
17 I. C. 531 : 17 C. L. J. 392.

—S. 35 (1)—Concurrent sentences, when can be passed.

Under S. 35 (1) a Criminal Court has power to direct sentences to run concurrently only when the accused is convicted at one trial of two or more distinct offences. The Court has no power to order sentences to run concurrently with sentences passed in other trials. *Dulli v. Emperor*.

26 Cr. L. J. 570 :
85 I. C. 714 : L. R. 6 All. 10 Cr.
47 All. 59 : A. I. R. 1925 All. 305.

—S. 35 (1)—“Or”—Court's duty to determine whether sentences to run consecutively or concurrently.

Notwithstanding the use of the word “or” between the terms “imprisonment” and “transportation” in S. 35 (1) the section is intended to cover cases in which one of the punishments inflicted is imprisonment whilst the other is transportation. A Court when sentencing an accused at one trial to imprisonment as well as to transportation, ought to determine whether the sentence will run consecutively or concurrently, otherwise the sentence is defective in form. *Khokha Mohan v. Emperor*.

17 Cr. L. J. 238 :
34 I. C. 654 : 23 C. L. J. 596 :
A. I. R. 1917 Cal. 377.

—S. 35 (1)—Sentences in different trials, concurrent running of.

A Court is not competent to direct that sentences passed in different trials on an accused person for two or more offences should run concurrently; such direction can only be given under S. 35 (1) when such sentences have been passed at one trial. *Kamal Mandal v. Emperor*.

18 Cr. L. J. 410 :
38 I. C. 970 : 24 C. L. J. 54 :
20 C. W. N. 1300 : A. I. R. 1917 Cal. 416.

—S. 35 (2)—Concurrent terms of imprisonment not individually appealable—Appeal, if lies.

An accused who has been sentenced to con-

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current terms of imprisonment not one of which is individually appealable has, no right of appeal against them collectively. *Aziz Sheikh v. Emperor.*

14 Cr. L. J. 254 :
19 I. C. 510 : 17 C. W. N. 825 :
40 Cal. 631.

———S. 35 (3)—*Appeal—Sentence of one month's imprisonment under more sections than one—Sentences concurrent—Appeal, forum of.*

Concurrent sentences for the purpose of appeal must be taken in the aggregate. Where a Deputy Magistrate convicted the accused under Ss. 143 and 361-114 and sentenced them to one, month's rigorous imprisonment under each section, the sentences to run concurrently: *Held*, that an appeal lay to the Sessions Court. *Abdul Khalik v. Emperor.* 13 Cr. L. J. 877 :
17 I. C. 813 : 17 C. W. N. 72.

———S. 35 (3)—*Conviction by First Class Magistrate of several offences—Concurrent non-appealable sentence for each offence—Appeal to Sessions Judge.*

An appeal does not lie to the Sessions Judge when a Magistrate of the First Class convicted an accused person of more offences than one and has sentenced him for each offence, to a term of imprisonment which by itself is not appealable but the sentences are directed to run concurrently. *Abdul Jabbar v. Emperor.*

23 Cr. L. J. 225 :
66 I. C. 65 : 25 C. W. N. 613.

———S. 35 (3)—*Consecutive sentences—Single sentence.*

Under S. 35 (3), Cr. P. C. the aggregate of consecutive sentences passed for several offences at one trial is to be deemed a single sentence. *Hamid v. Emperor.*

32 Cr. L. J. 469 :
129 I. C. 731 : 1930 A. L. J. 1206 :
L. R. 11 All. 172 Cr : I. R. 1931 All. 219.

———Ss. 35 (3), 408—*Aggregation of sentences of fine—Aggregate fine exceeding Rs. 50—Appeal.*

Section 35 (3), refers only to sentences of imprisonment. In case a Magistrate of the First Class passes two sentences of fine amounting in the aggregate to more than Rs. 50, an appeal is competent to the Court of Sessions under S. 408. *Shidlingappa Gurulingappa v. Emperor.*

27 Cr. L. J. 926 :
96 I. C. 270 : 28 Bom. L. R. 668 :
A. I. R. 1926 Bom. 416.

———S. 35—III. Penal Code, Ss. 144, 447—*Legality of separate sentences—Common object in rioting—Intention in Criminal trespass.*

Where the accused, who had entered upon the land of the complainant with the common object of cutting crops standing on it, were convicted and sentenced both for rioting under S. 147 and criminal trespass under S. 447 of the Penal Code : *Held*, that the common object for rioting and the intention for criminal trespass being substantially the same, separate convictions under both sections were illegal. *Bhup Singh v. Emperor.*

1 Cr. L. J. 139 :
8 C. W. N. 305.

———S. 35, Proviso (a)—*Consecutive sen-*

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tences beyond period of fourteen years, whether prohibited—Concurrent sentences not exceeding fourteen years, whether can be passed.

Proviso (a) to S. 35 aims at the prohibition of the giving of consecutive sentences in one trial beyond the period of fourteen years. If the sentences given in respect of two or more convictions in one trial are directed to run concurrently instead of consecutively, and the period of such concurrent sentences does not exceed fourteen years, the proviso is not in any way infringed. *Nga Mya Gai (a) Maung v. Emperor.*

39 Cr. L. J. 28 (a) :
171 I. C. 912 : 10 R. Rang. 201 :
A. I. R. 1937 Rang. 391.

———Ss. 35, Proviso (a), 397—*Punishment—Accused convicted of several offences—Aggregate imprisonment.*

An aggregate sentence of 20 years' rigorous imprisonment is contrary to the provisions of proviso (a) to S. 35. The section has no application whatever when a person is convicted on two or more separate trials, even though in all of them, the complainant is the same and the offences are similar and they are concluded on the same date. In the case of separate trials, S. 397 applies. *Sheo Narain v. Emperor.*

11 Cr. L. J. 679 :
8 I. C. 550 : 105 P. R. L. 1910.

———Ss. 36, 37—*Justice of the Peace, powers of.*

The powers conferred on Justices of the Peace, by virtue of Notification No. 2770 F. B. of 14th July 1904, are the ordinary powers conferred on First Class Magistrate under S. 36 and do not include powers with which a Magistrate of the First Class may be invested under S. 37. The power to entertain complaints is not one of the ordinary power of a First Class Magistrate. *Loghan v. S. W. Romer.* 12 Cr. L. J. 535 :
12 I. C. 303 : 1911 2 M. W. N. 196.

———S. 39—*Opium Act, S. 3—"Special empowering," what amounts to.*

A Notification of the Local Government empowering Second Class Magistrates of certain places in the Presidency mentioned in a list appended to the Notification, by virtue of their office to try cases under the Opium Act, amounts to a "special empowering" within the meaning of S. 3 of the Opium Act. *Alaga Pillai v. Emperor.*

24 Cr. L. J. 846 :
74 I. C. 958.

———S. 39 (2).

Criminal powers cannot be granted retrospectively. *Gul Muhammad v. Emperor.*

35 Cr. L. J. 462 :
147 I. C. 757 : 35 P. L. R. 310 : 6 R. Pesh. 38 :
A. I. R. 1933 Pesh. 97 (1).

———S. 40—*Magistrate with First Class powers—Grant of leave, whether extinguishes powers.*

The grant of leave to a Magistrate who belongs to the Provincial Civil Service of the Punjab as an Extra Assistant Commissioner does not cause the cessation of his criminal powers so as to take his case out of the cate-

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gory of the cases contemplated by S. 40. *Prilam Singh v. Emperor*. 37 Cr. L. J. 1051 : 126 I. C. 521 : A. I. R. 1930 Lah. 833.

—S. 40—Sub-Judge invested with criminal power—Transfer—Effect.

Where a Sub-Judge with magisterial powers is transferred from one place to another, he is not transferred *qua* Magistrate but *qua* Subordinate Judge. When he is required to perform additional duties of a Magistrate in the place to which he is transferred, a fresh Notification is to be issued in that behalf. *Emperor v. Karimbuz*. 35 Cr. L. J. 187 :

146 I. C. 893 : 27 S. L. R. 427 : 6 R. S. 92 : A. I. R. 1933 Sind 398.

—S. 42.

See Penal Code, S. 187.

—S. 44—Omission to give information of commission of offence—Effect.

Under S. 44, it is the duty of a person who witnesses the commission of an offence to give information thereof to the nearest Magistrate or Police Officer, and, if he fails to do so, he renders himself liable to prosecution under S. 202 of the Penal Code. *Ajodhi v. Emperor*.

21 Cr. L. J. 486 : 56 I. C. 582 : 16 N. L. R. 30 : A. I. R. 1920 Nag. 170.

—S. 44—Person aware of intention to commit crime failing to give information.

A person who is aware of the intention of certain people to commit a murder, and does not disclose it to anybody, is a consenting party to the crime and an accomplice and his evidence cannot be accepted without corroboration. *Shabram v. Emperor*.

20 Cr. L. J. 191 : 49 I. C. 607 : 20 P. R. 1919 Cr. : 14 P. W. R. 1919 Cr. : A. I. R. 1919 Lah. 168.

—S. 45—Chaukidar, whether bound to report rumours.

Section 45 makes it incumbent upon a *Chaukidar* to communicate to an officer in charge of a Police Station only such information as he possesses to his own knowledge relating to matters mentioned in the section. It does not require him to communicate every rumour prevalent in the village. *Lachmi Singh v. Emperor*.

25 Cr. L. J. 972 : 81 I. C. 620 : 1924 Pat. 181 : 5 P. L. T. 505 : A. I. R. 1924 Pat. 691.

—S. 45—Death resulting not fairly soon after cause, whether reportable.

However, unnatural, in the ordinary sense of the word, the cause of a death might be, it must be 'unnatural' as used in S. 45 in order to require to be reported immediately unless it occurred fairly soon after the cause. *Domar Singh v. Emperor*.

23 Cr. L. J. 345 : 66 I. C. 1001 : A. I. R. 1922 Nag. 87.

—S. 45—Persons duty bound to give information.

The duty imposed by S. 45 of giving information of occurrence of sudden unnatural deaths is cast only on owners or occupiers of land and

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should not be extended to owners or occupiers of houses. *Hiru Satua Desla v. Emperor*.

30 Cr. L. J. 172 : 113 I. C. 510 : 30 Bom. L. R. 1570 : 53 Bom. 184 : I. R. 1929 Bom. 142 : A. I. R. 1929 Bom. 12.

—S. 45—False defence, whether indication of guilt.

The guilt of an accused should not be inferred from the omission by the accused of an available true and complete defence and substitution for it of unsustainable falsehoods. It is the duty of a Magistrate to find out whether an accused person is guilty or innocent, not merely to decide whether the pleas he chooses to put forward are sound or not. *Domar Singh v. Emperor*.

23 Cr. L. J. 345 : 66 I. C. 1001 : A. I. R. 1922 Nag. 87.

—S. 45—Mens rea, if ingredient of offence.

Intention necessarily implies a *mens rea*, a consciousness of doing wrong. A *Mukaddam* or *Kotwar* cannot be convicted under S. 45 for an omission to make a report of a sudden accident or suspicious death if he honestly believes that there was no necessity for him to make the report, and the view held by him, is a reasonable view. *Domar Singh v. Emperor*.

23 Cr. L. J. 345 : 66 I. C. 1001 : A. I. R. 1922 Nag. 87.

—S. 45—Police already informed of commission of offence—Duty to furnish information—Effect on.

Section 45 is not intended to be punitive, but is intended to facilitate information as to the commission of an offence and thereby to facilitate steps being taken in the investigation of the same. Therefore where the Police has somehow been informed of the commission of an offence, no further duty or obligation lies upon the persons named in the section to furnish fresh information on the same lines. *Rampal v. Emperor*.

23 Cr. L. J. 162 : 65 I. C. 626 : 8 O. L. J. 590 : 4 U. P. L. R. Oudh 17.

—S. 45—Sudden and suspicious death—Duty of *Mukaddam* and *Kotwar* to report death.

Under S. 45, every *Mukaddam* and *Kotwar* is bound to communicate forthwith to the nearest Station House Officer or Magistrate the occurrence in and near the village of any sudden or unnatural death or any death under any suspicious circumstances. *Domar Singh v. Emperor*.

23 Cr. L. J. 345 : 66 I. C. 1001 : A. I. R. 1922 Nag. 87.

—S. 45—Technical offence—Duty of Magistrate—Measure of punishment.

A nominal penalty of a pie only need be imposed if the accused is guilty of nothing more than a slight error of judgment which had no harmful consequences whatsoever, if in such a case, the responsible authorities choose to prosecute and the Magistrate is bound to convict when the offence is proved. *Domar Singh v. Emperor*.

23 Cr. L. J. 345 : 66 I. C. 1001 : A. I. R. 1922 Nag. 87.

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———Ss. 45, 87—"Proclaimed offender" what is.

The term "proclaimed offender" as used in S. 45 must be taken not in any technical sense but in its obvious general meaning. If a proclamation has been made in respect of person under S. 87 of the Code, it is sufficient to constitute him a proclaimed offender under S. 45. *Emperor v. Ram Sarup*.

39 Cr. L. J. 154 :
172 I. C. 530 : 1938 O. W. N. 7 :
1938 O. L. R. 8 : 10 R. O. 182 :
A. I. R. 1938 Oudh 80.

———Ss. 45 (c), 250, 435, 439—Compensation for false and vexatious complaint—"Information given to Police Officer," meaning of—Report sent to Station House Officer by village headman.

The words "information given to a Police Officer" in S. 250 include also a report which a village headman is bound to send, under S. 45 (c) on a complaint made to him of the commission of a non-bailable offence. *Nochimuthu Chetty v. Mulhusami Chetty*.

15 Cr. L. J. 431 :
24 I. C. 167 : 27 M. L. J. 37 :
1914 M. W. N. 804 :
A. I. R. 1914 Mad. 694.

———S. 46—Scope.

Where a person goes to a house with the intention of carrying out his amours with a married woman, the owner of the house has every right to arrest him. If such person is armed with a dagger and evades arrest, the owner under S. 46, read with S. 38, Frontier Crimes Regulation, can use all means necessary for securing him. *Said Mahmud v. Emperor*.

36 Cr. L. J. 1135 :
156 I. C. 704 : 8 R. Pesh. 5 :
A. I. R. 1935 Pesh. 83.

———Ss. 46, 80—Penal Code, 225-B—Arrest—Forcible resistance or evasion—Arrest without showing warrant—Illegal obstruction—Offence.

Where a person forcibly resists the endeavour to arrest him or attempts to evade arrest, a Police Officer would be entitled to act under S. 46 and the apprehension of such person without showing him the warrant of arrest as required by S. 80, would not be invalid or unlawful. Intentional resistance or illegal obstruction to arrest in such a case would be punishable under S. 225-B, Penal Code, even if S. 80, Cr. P. C. has not been complied with. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Darbesh Ali*.

30 Cr. L. J. 703 :
116 I. C. 723 : 33 C. W. N. 284 :
40 C. L. J. 264 : I. R. 1929 Cal. 499 :
56 Cal. 831 : A. I. R. 1929 Cal. 174.

———S. 46 (1)—Submitting to custody of police, what is.

When a person states that he has done certain acts which amount to an offence to a Police Officer, as such, he submits to the custody of the officer within the meaning of S. 43 (1), and is then in the custody of a Police Officer within

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the meaning of S. 27 of the Evidence Act. *Santokhi Beldar v. Emperor*.

34 Cr. L. J. 349 :
142 I. C. 474 : 14 P. L. T. 82 :
12 Pat. 241 : I. R. 1933 Pat. 139 :
A. I. R. 1933 Pat. 149.

———Ss. 46 (1), 80—Warrant of arrest—Disturbance by person to be arrested put down and warrant shown and arrest effected—Irregularity—Right of private defence.

Where a Police party came to arrest a woman with a bailable warrant, she with her companions offered resistance and created such disturbance that the substance of the warrant could not be notified. The head constable and others overcame the assault and then showed the warrant and effected the arrest: *Held*, that there was no irregularity in the procedure in effecting the arrest. The irregularity, if any, was not such as to bring the case outside the scope of S. 99, Penal Code, and give the accused a right of private defence. *Ramjit v. Emperor*.

39 Cr. L. J. 360 :
173 I. C. 734 : 1937 A. L. J. 1334 :
1938 A. W. R. 17 : 10 R. A. 501 :
A. I. R. 1938 All. 120.

———S. 47—Parties absent—Acquittal of accused.

The accused can be acquitted under S. 247, if the complainant is absent, even though the accused is also absent and the case is a summons case. *Surman Sriramulu v. Thotapalli Virargadu*.

33 Cr. L. J. 579 :
138 I. C. 788 : 36 L. W. 379 :
1932 M. W. N. 647 : I. R. 1932 Mad. 546 :
A. I. R. 1932 Mad. 563.

———S. 51—Medical examination—Consent.

Medical examination of an arrested person may not be held without his consent. *Bhondur v. Emperor*.

33 Cr. L. J. 11 :
134 I. C. 1053 : 35 C. W. N. 1212 :
54 C. L. J. 499 : I. R. 1932 Cal. 13 :
A. I. R. 1931 Cal. 601.

———S. 84.

See also Penal Code, 1860, S. 255-B.

———S. 54—Arrest—Without justification.

The detention or arrest of members of the public are not matters of caprice but are governed by and must be conducted upon certain rules and principles which the law clearly lays down. To arrest persons without any justification is one of the most serious encroachments upon the liberty of the subject which can well be contemplated. *Ramprit Ahir v. Emperor*.

26 Cr. L. J. 1608 :
90 I. C. 712 : 7 P. L. T. 218.

———S. 54—Circumstances justifying arrest—"Credible information" and "reasonable suspicion," meaning of—Discretion, delegation of.

S. 54 gives wide powers to a Police Officer to make an arrest without an order from a Magistrate and without a warrant, and it is necessary in exercising such large powers to be

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cautious and circumspect. The section gives a Police Officer personal authority and involves personal responsibility, and the "reasonable suspicion" and "credible information" must be based upon definite facts which the Police Officer must consider for himself before he acts under the section. He cannot delegate his discretion or take shelter under the belief or judgment of another Police Officer. *In the matter of: Charu Chandra Majumdar.*

18 Cr. L. J. 73 :
37 I. C. 57 : 20 C. W. N. 1233 :
44 Cal. 76 : A. I. R. 1917 Cal. 253.

—S. 54—Cognizable offence—Constables's powers of arrest.

A constable has authority under S. 54 to arrest a person on suspicion of his having committed a cognizable offence without a warrant even when he is not in uniform. *Mahadeo Rai v. Emperor.*

25 Cr. L. J. 652 :
81 I. C. 140 : 21 A. L. J. 791 :
9 O. & A. L. R. 900 : A. I. R. 1924 All. 201.

—S. 54—Object of Cognizable case—Police, power of, to arrest when warrant already issued by Magistrate.

S. 54 does not prevent any Police Officer from arresting a person where a warrant for his arrest has already been issued by a Magistrate, and the exercise of the power is not restricted only to the officer to whom the warrant is directed. The object of the Code is to give the widest powers to the Police in cognizable cases, and the only limitation is the necessary requirement of reasonability and credibility of the information to prevent the misuse of the powers. *In re: Ratna Mudali.*

18 Cr. L. J. 709 :
40 I. C. 709 : 40 Mad. 1028 :
A. I. R. 1918 Mad. 514.

—S. 54—Observation of formalities under S. 56, necessity of.

Where a Subordinate Police Officer is not acting independently, but is merely deputed by a superior officer to arrest some one concerned in a cognizable offence, he cannot do so without observing the formalities mentioned in S. 56. *Mohamed Ismail v. Emperor* 37 Cr. L. J. 462 :
161 I. C. 459 : 13 Rang. 754 : 8 R. Rang. 480 :
A. I. R. 1936 Rang. 179.

—S. 54—Power under—Limited by order under S. 56.

Power conferred by S. 54, Cr. P. C. is not limited by issue of a written order under S. 56. *Jioo Mian v. Emperor.* 39 Cr. L. J. 563 :
175 I. C. 335 : 19 P. L. T. 247 :
16 Pat. 763 : 10 R. P. 623 : 4 B. R. 584 :
A. I. R. 1938 Pat. 229.

—S. 54.

"Reasonable suspicion" and "credible information" must relate to definite averments which must be considered before taking action. Authority conferred is personal. *Saindino Jakhra v. Emperor.* 36 Cr. L. J. 332 :
153 I. C. 361 : 28 S. L. R. 205 :
7 R. S. 132 : A. I. R. 1934 Sind 197.

—Ss. 54, 56—Cognizable offence—Com-

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mand Certificate given to constable—Failure to notify substance of certificate—Arrest, illegality.

The provisions of S. 56 do not deprive a constable of his statutory power under S. 54 to arrest without an order from a Magistrate and without a warrant, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned. The mere fact that in such a case a Command Certificate has been given to the constable under S. 56 of the Code is immaterial as the constable independent of any such Command Certificate is entitled to make the arrest. The failure of the constable in such a case to comply with the provisions of S. 56, does not take away from him the protection which attaches to him while acting in the discharge of his duty in a manner authorised by law. *Kishun Mandar v. Emperor.* 27 Cr. L. J. 1310 :
98 I. C. 254 : 5 Pat. 533 : 8 P. L. T. 237 :
A. I. R. 1926 Pat. 424.

—Ss. 54, 56—Evidence regarding reason for arrest not allowed at appellate stage.

Evidence on the question whether the substance of the *hukumnama* was read over to the accused or whether the Police Officer did have credible information to the effect that the accused was concerned in a cognizable offence, cannot be introduced at the appellate stage as the temptation to fill in blanks would be extremely strong. 41 Cr. L. J. 744 :
189 I. C. 480 : 44 C. W. N. 502 :
13 R. C. 106 : A. I. R. 1940 Cal. 321.

—Ss. 54, 56—Police constable, arrest by, under S. 56—No order in writing—S. 51 satisfied—Arrest, legality of.

Where facts exist which do attract the application of S. 4 itself, a Police Officer can act under that section even if the formalities required by S. 56 are not complied with. Where the Police constables knew of their own knowledge and upon the information supplied by the Head Constable and the complainant that a complaint had been made by the complainant, of house-breaking against the accused: *Held*, that they could have acted under S. 54 as well as under S. 56 if they had order in writing under S. 56, but the absence of writing could not prevent them from acting under S. 54. *Achar Bilawal v. Emperor.* 39 Cr. L. J. 107 :
172 I. C. 149 : 10 R. S. 137 : 32 S. L. R. 63 :
A. I. R. 1937 Sind 308.

—Ss. 54, 56—Scope—If controlled by S. 56—Arrest without warrant in cognizable case—Sub-Inspector directing constable to bring offender before him—Arrest of offender without written order—Legality—Resistance to arrest—Offence under S. 353, Penal Code.

Section 54 is very wide and not controlled by S. 56. A police constable is entitled to arrest under S. 54 independently of S. 56, the person required without a warrant in a cognizable case. The word "complaint" in the first clause of S. 54 does not admit of a restricted meaning that the complaint should be made to the arresting

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constables for action. Where, therefore, the constables are directed by the Sub-Inspector to bring the offender before him, on a complaint being made to him, the constables shall be acting within their powers under S. 54 (1). The offender who refuses to submit and those who prevent the constables from carrying out the arrest are guilty under S. 353, Penal Code. *Keshavlal Havilal v. Emperor*. 38 Cr. L. J. 267 : 165 I. C. 632 : 38 Bom. L. R. 971 : 9 R. B. 249 : I. L. R. 1937 Bom. 127 : A. I. R. 1937 Bom. 56.

—Ss. 54, 58, 60—Offence committed in Martial Law area—Arrest of offender outside area, legality of—Summary Magistrate, remand by, legality.

It is not illegal for a summary Magistrate appointed under Martial Law Ordinance (II of 1921) to remand a person arrested by the Police outside the Martial Law area but charged with the commission of cognizable offences within the said area. Nor is the arrest by the Police outside the area illegal. The provisions of the Cr. P. C. are not abrogated or suspended by the introduction of Martial Law. The Courts constituted under the Ordinance will follow, as far as possible, the procedure laid down in the Code. *In re : Kochunni Elayar Nair*. 23 Cr. L. J. 490 :

68 I. C. 26 : 41 M. L. J. 441 : 14 L. W. 465 : 1921 M. W. N. 708 : 45 Mad. 14 : A. I. R. 1922 Mad. 215.

—Ss. 54, 60, 61—Scope of.

The precautions laid down in Ss. 54, 60 and 61 are designed to secure that within not more than 24 hours of the arrest of an accused person, some Magistrate shall have seisin of what is going on and some knowledge of the nature of the charges against the accused, however incomplete the information may be. *Dwarkanadas Haridas v. Ambalal Ganpatram*.

25 Cr. L. J. 1203 : 82 I. C. 131 : 28 C. W. N. 850 : A. I. R. 1924 Cal. 893.

—Ss. 54, 76,—Goondas Act (Bengal), S. 4—Warrant—Bail—Surety, if must have control over arrested person—Secretary to Government, position of.

It would be an illegal abuse of power under the Goondas Act if a surety produced by a person, against whom a warrant is issued, is refused on the ground that he cannot exercise control over the person arrested. The Secretary to the Government, in such cases, is not in the position of a Court subordinate or inferior to the High Court. *Besseswar Raj Gorla v. Emperor*.

28 Cr. L. J. 10 : 99 I. C. 42 : 30 C. W. N. 791 : 53 Cal. 962 : A. I. R. 1926 Cal. 961.

—Ss. 54, 202—Complaint filed before Magistrate—Police, power of, to investigate.

In practice, the Police will not ordinarily take independent action in respect of a complaint which has already been distrusted by a Magistrate, but it is neither correct nor expedient to lay down the general proposition that an order made by a Magistrate under S. 202, debars the

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Police from exercising their power of arrest and investigation. *Emperor v. Bhola Bhagal*.

24 Cr. L. J. 375 : 72 I. C. 375 : 2 Pat. 379 : 4 P. L. T. 521 : 1 P. L. R. 248 Cr. : A. I. R. 1923 Pat. 547.

—S. 54 (1), para. 7—'Reasonable complaint', what amounts to—Essentials to justify arrest.

A reasonable complaint or suspicion must be founded on some definite fact or some tangible proof which is sufficient to establish in the mind of reasonable Police Officer, the reasonableness or credibility of the charge, information or suspicion. Further, to justify an arrest under S. 54 (1), Para. 7, there must be in existence as a fact as opposed to any belief which may be entertained by any person, a warrant which has been issued under the Extradition Act. *Hara Mohan Patnaik v. Emperor*. 40 Cr. L. J. 500 : 180 I. C. 787 : 19 P. L. T. 509 : 18 Pat. 121 : 5 B. R. 491 : 11 R. P. 533 : A. I. R. 1939 Pat. 129.

—Ss. 54 (1), 537—Arrest without notifying substance of warrant—Omission, effect of.

The writing out of a warrant or an order for arrest when the person to be arrested comes within the first clause of S. 54 is a superfluous act but cannot be considered illegal. The omission to notify the person arrested of the order for his arrest is an irregularity covered by S. 537. *Rangpal v. Emperor*.

18 Cr. L. J. 666 : 43 I. C. 314 : A. I. R. 1917 All. 85.

—S. 54 (1)—Arrest by constable without warrant—Cognizable offence—Reasonable complaint.

When a Magistrate, after recording the statement of the complainant in a complaint of a cognizable offence, issues a warrant for the arrest of the accused, there is a "reasonable complaint of the accused being concerned in a cognisable offence" and the arrest by a constable without warrant of such an accused is justified under S. 54 (1), Cl. (1). It is not necessary that the complaint referred to in the section should have been made to the constable himself. It is sufficient that there was a reasonable complaint made to a person entitled to entertain it. *Alay Mohammad v. Emperor*. 22 Cr. L. J. 758 : 64 I. C. 278 : 3 U. P. L. (A.) 198.

—S. 54 (7)—Police Officer, duty of—Person liable to be extradited, when can be arrested—Procedure after arrest.

Per Mukerji, J.—S. 54 seventhly gives a Police Officer personal authority and involves a personal responsibility and reasonable suspicion and credible information must be based upon definite facts which the Police Officer must consider himself before he acts under the section and he cannot delegate his discretion or take shelter under the plea or judgment of another officer or authority. The arresting Police Officer has to exercise his own judgment, and form his own opinion as to whether he should or should not act. The last portion of clause seventhly of S. 54 contemplates cases in which there is a present liability and not cases in which there

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may be liability in future for apprehension or detention. The issue of some sort of process for extradition under the law would create such a liability although the process may not have arrived and is not available for execution. Even where all the conditions necessary to satisfy the requirements of clause *scritthly* of S. 54 are made out and the arrest is validly or lawfully made, the person arrested must forthwith be produced before a Magistrate in order that the detention may conform to the provisions of S. 23 of the Extradition Act. *Subodh Chandra Roy v. Emperor*.

26 Cr. L. J. 625 :
85 I. C. 913 : 29 C. W. N. 98 :
40 C. L. J. 489 : 52 Cal. 319 :
A. I. R. 1925 Cal. 278.

S. 54 (7)—Scope of.

S. 54 (7) means that at the time the Police take action, there must be in existence as a fact, a warrant issued under the Extradition Act. *Emperor v. Kahu*.

34 Cr. L. J. 679 (2) :
144 I. C. 67 : I. R. 1933 Lah. 402 :
A. I. R. 1933 Lah. 159.

S. 55—Accused, discharge of, from custody—Magistrate, jurisdiction of, to order further detention.

Where, by the order of a Magistrate, a person is discharged from custody on the ground of insufficient evidence to connect him with the offence in connection with which he was detained, the Magistrate has no authority to direct his further detention in connection with a different matter, unless and until he has been re-arrested by the Police under S. 55. *Rahu v. Emperor*.

22 Cr. L. J. 115 :
59 I. C. 547 : 18 A. L. J. 1114 :
43 All. 186 : A. I. R. 1921 All. 278.

S. 55—Arrest by an Inspector of Police in Calcutta, legality of.

Cr. P. C. does not apply to the Police of Calcutta unless expressly made applicable to them. S. 55 is expressly applicable though not paragraph (p) and (s) of S. 4. Therefore arrest by an Inspector of Police in Calcutta of a person, who has no ostensible means of subsistence or is unable to give a satisfactory account of himself, is quite legal. *Emperor v. Madho Dhobi*.

1 Cr. L. J. 535 :
I. L. R. 31 Cal. 557.

S. 55—Arrest under—Police, if bound to release on bail.

When the Police make an arrest under S. 55, they are not bound to release the persons arrested on bail immediately after the arrest. Nor can it be said that their custody is illegal merely because they were not informed that they are entitled to be released on bail. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Jair Ali*.

37 Cr. L. J. 1076 :
164 I. C. 1007 : 63 Cal. 189 : 9 R. C. 331.

S. 55.

As no particular form is prescribed under S. 56, it is enough for the Police Officer in his requisition to specify S. 55, and by so doing, he con-

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veys sufficient information to the person to be arrested. *Rameshwar v. Emperor*.

35 Cr. L. J. 1452 :
151 I. C. 834 : 1934 A. L. J. 997 :
4 A. W. R. 107 : 7 R. A. 230 :
A. I. R. 1934 All. 879.

S. 55—Evidence—Arrest—Procedure.

S. 55 does not empower the Police to arrest persons who are suspected of earning their livelihood by unlawful gaming. *Emperor v. Kyaw Dun*.

3 Cr. L. J. 20 :
3 L. B. R. 94.

Ss. 55, 57—Person acquitted on charge of dacoity and directed to be released—Re-arrest by Police under S. 55, legality of—Procedure—Jurisdiction.

For a Police Officer or Magistrate, to detain a person after orders have been passed for his immediate release, is a most grave irregularity and might expose the Magistrate or Police Officer to serious results. On the acquittal of a person on a charge of dacoity, he was immediately re-arrested by the Police under S. 55 and kept in custody for twelve days. *Held*, that the procedure adopted by the Police was altogether illegal and entirely without jurisdiction. *Maiku v. Emperor*.

20 Cr. L. J. 381 :
50 I. C. 98 : 17 A. L. J. 458 :
1 U. P. L. R. All. 19 : 41 All. 433 :
A. I. R. 1919 All. 160.

Ss. 55, 91—Security bond for appearance in Court—Liability of surety.

Two men arrested under S. 55 were released on bail, the petitioner giving bonds whereby he undertook that the person concerned would appear in Court when required to answer the charge specified, failing which, he would forfeit the sum. Three months afterwards both men were suspected of complicity in certain offences and the petitioner was required to produce them. He failed to do so, and an order of forfeiture of security was made against him. *Held*, (1) that the undertaking of the petitioner could be regarded only as one to produce the persons concerned when their presence was required in connection with proceedings then pending against them, and not for their attendance to answer charges in respect of offences that might be committed at some future time. *Mana v. Emperor*.

25 Cr. L. J. 131 :
76 I. C. 227 : A. I. R. 1924 Lah. 622.

Ss. 55, 110—Arrest of suspected criminal—Powers of Police Officer.

A Police Officer may first arrest any person as is mentioned in S. 55 and then make up his mind whether to proceed against him for some substantive offence or to put him before a Magistrate in order that proceedings under Ch. VIII may be taken against him. *Hardoyal Singh v. Emperor*.

27 Cr. L. J. 628 :
94 I. C. 404 : 20 S. L. R. 85 :
A. I. R. 1926 Sind 190.

Ss. 55, 110—Police Officer, power of—Arrest without warrant.

Section 55 is independent of Chapter VIII of

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of the Code, although proceedings under the Chapter may follow after the arrest contemplated in S. 55 as a natural sequence. A Police Officer may arrest a person, against whom proceedings under S. 110 are contemplated, without a warrant or an order from Magistrate. *Nepal v. Emperor*. 14 Cr. L. J. 618 : 21 I. C. 666 : 11 A. L. J. 596 : 35 All. 407.

—Ss. 55, 110—*Warrant, nature of, when action contemplated under S. 110.*

If it is intended that a Police Officer should arrest a man with a view of taking proceedings under S. 110, it is strictly and specifically necessary that he should specify one of the clauses given in S. 55, although it may be for the cause so stated that he intends to proceed under S. 110. *Hardayal Singh v. Emperor*. 27 Cr. L. J. 628 : 94 I. C. 404 : 20 S. L. R. 85 : A. I. R. 1926 Sind 190.

—S. 55 (1) (c).

See Penal Code, 1860, S. 225-A.

—Ss. 55 (1) (c), 110, 123—*“Residing,” meaning of—Jurisdiction.*

A person residing with his wife within the jurisdiction of a Magistrate can be tried by him under S. 110, though he happens to be outside the jurisdiction when arrested under S. 55 (1) (c). *Emperor v. Nga Po Aung*. 17 Cr. L. J. 319 : 35 I. C. 495 : 8 L. B. R. 378 : A. I. R. 1917 L. Bur. 140.

—S. 56.

See also Cr. P. C., S. 54.

—S. 56—*Applicability of.*

Per *Broomfield, J.*—S. 56 is not superfluous. It applies to subordinates other than Police Officers, for instance, *chaukidars*, and, moreover, there may be cases where it is necessary to give orders to Police Officers who could not act under S. 54, not having the requisite knowledge as to the existence of credible information or reasonable suspicion. *Keshavlal Harilal v. Emperor*. 38 Cr. L. J. 267 : 166 I. C. 632 : 38 Bom. L. R. 971 : 9 R. B. 249 : I. L. R. 1937 Bom. 127 : A. I. R. 1937 Bom. 56.

—S. 56—*Endorsement of names of constable.*

There is no provision in S. 56 requiring an endorsement of the names of the constables who actually go to make the arrest. *Rameshwar v. Emperor*. 35 Cr. L. J. 1452 : 151 I. C. 834 : 1934 A. L. J. 997 : 4 A. W. R. 107 : 7 R. A. 230 : A. I. R. 1934 All. 879.

—S. 56—*Station Officer directing constable to arrest without warrant—Authority in writing.*

Where a Police constable was in no way acting independently, but was acting on definite instructions from his Station-house Officer and was required by that officer to arrest without a warrant: *Held*, that the Police constable could not effect the arrest unless he had, in his

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possession, an authority in writing as required by S. 56. *Maroti Bansi Teli v. Emperor*. 40 Cr. L. J. 905 : 184 I. C. 231 : 1939 N. L. J. 101 : I. L. R. 1939 Nag. 488 : 12 R. N. 101 : A. I. R. 1939 Nag. 95.

—S. 56—*Sub-Inspector asking constable to arrest person—Whether direction under S. 56.*

Where a Police Sub-Inspector who is not present on the scene, asks the constables to bring certain persons to Police Station, his order does not amount to a direction to arrest as contemplated by S. 56 unless the order is given in writing. *Gulabi Mahto v. Emperor*. 41 Cr. L. J. 742 : 189 I. C. 539 : 21 P. L. T. 144 : 6 B. R. 835 : 13 R. D. 125 : A. I. R. 1940 Pat. 361.

—Ss. 56, 61—*“Officer subordinate,” meaning of—Chowkidar.*

In view of S. 39 of the Village Chowkidari Act, a *chowkidar* is subordinate to an officer in charge of a police-station. An “officer subordinate,” as mentioned in S. 56, Cr. P. C., is not limited to a police officer as in Ss. 54 and 57 to 61 of the Code. *Bahubal Sircar v. Emperor*. 3 Cr. L. J. 201 : 10 C. W. N. 287.

—S. 56 (1)—*Chaukidar’s duty to show order to accused.*

S. 56 (1) does not require a *chaukidar*, on his own initiative, to show to the accused an order given to him by the officer in charge of the police station. *Umrao v. Emperor*. 26 Cr. L. J. 795 : 36 I. C. 427 : A. I. R. 1925 Oudh 544.

—S. 59—*Chaukidar, powers of.*

Under S. 59, as amended in 1923, a *chaukidar*, has power to receive the custody of a person arrested under S. 59 by a private individual and to take such person to the Police Station. *Chotu Hajam v. Emperor*. 33 Cr. L. J. 572 : 138 I. C. 95 : 13 P. L. T. 321 : 1 R. 1932 Pat. 171 (1) : A. I. R. 1932 Pat. 214.

—S. 59—*“In his view,” meaning of—Penal Code, S. 225—Arrest by private person of person hiding himself in another’s house—Rescue—Offence.*

The words “in his view” in S. 59, mean “in presence of”, or “within sight of” and not “in his opinion.” Therefore, if a person is arrested by a private person not while committing theft but only when hiding himself in a house, his arrest is not lawful and consequently his rescue from the custody of the person arresting him does not constitute an offence under S. 225, Penal Code. *Gokul Tatwa v. Emperor*. 26 Cr. L. J. 1462 : 89 I. C. 1030 : 7 P. L. T. 65 : A. I. R. 1926 Pat. 53.

—S. 59—*“In his view,” meaning of.*

The words “in his view” mean “in his presence” or “within sight of him” and not “in his opinion.” *Abdul Aziz v. Emperor*. 35 Cr. L. J. 725 : 148 I. C. 574 : 14 P. L. T. 464 : 6 R. P. 490 : A. I. R. 1933 Pat. 508.

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—S. 59—"In view of," meaning of—Accused standing with pot of toddy in cocoanut tree—Arrest by private person, legality.

Where a complainant saw one accused person standing on the ground by a cocoanut tree with a pot of toddy in his hands and two of his friends climbing the trees for the purpose of bringing the toddy down : Held, the offence of theft of toddy was committed "in the view of" the complainant within the meaning of S. 59. *In re : Arumuga Goundan*. 25 Cr. L. J. 792 : 81 I. C. 312 : 18 L. W. 818 : A. I. R. 1924 Mad. 384.

—S. 59—Penal Code, Ss. 224, 225—Escape from lawful custody—Arrest by private persons—Duty of private persons.

S. 59 does not require a private person making an arrest to take himself the person arrested to the Police Station. The directions are sufficiently complied with when the person arresting forwards the person arrested in charge of a servant or village servant, where the person in charge of the person so arrested was prevented from taking him to the Police Station and the person arrested was rescued from his custody by the accused: Held, that the accused were guilty of an offence under S. 225, Penal Code. *Parridhan v. Emperor*. 6 Cr. L. J. 10. 4 A. L. J. 483 : 27 A. W. N. 179 : I. L. R. 29 All. 575.

—S. 61—Calcutta Police.

S. 61 does not apply to the Calcutta Police. *Srilal Agarwalla v. Emperor*. 27 Cr. L. J. 1185 : 97 I. C. 945 : 44 C. L. J. 134.

—S. 61—Offender to be produced before Magistrate forthwith.

It is proper that where an officer does not see his way to release an arrested person on bail, he should produce him before a Magistrate with as little delay as possible so that the Magistrate may determine, whether in the circumstances of the case, the person is entitled to be enlarged on bail. *Srilal Agarwalla v. Emperor*. 27 Cr. L. J. 1185 : 97 I. C. 945 : 44 C. L. J. 134.

—Ss. 61, 167, 344—Remand when to be granted—Under-trial prisoners.

The power of remand under S. 167 is given to detain prisoners in custody while the Police make the investigation, and in a proper case, to commence the inquiry, but the period of detention is limited to fifteen days in all. But the custody mentioned in S. 344 of the Code is quite different and is intended for under-trial prisoners. *Nagendra Nath Chakrabarty v. Emperor*. 25 Cr. L. J. 732 : 81 I. C. 220 : 38 C. L. J. 388 : 51 Cal. 402.

—Ss. 61, 167, 169—Detention of accused—Procedure—Cognizance of case on Police report.

At the expiration of the maximum period of 15 days' detention of an accused person and the additional time necessary to bring him

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before a Magistrate allowed under Ss. 61 and 167, an accused person must either be released by the Police under S. 169, security for his appearance if and when required being taken, or the Magistrate, empowered in that behalf, must either take cognizance if he has before him a Police report (which ordinarily would be a report in the form laid down in S. 173) which he thinks makes out a *prima facie* case or he must release him. *Bholanath Das v. Emperor*. 26 Cr. L. J. 68 : 83 I. C. 628 : 28 C. W. N. 490 : A. I. R. 1924 Cal. 614.

—Ss. 62, 190—Police report, meaning of.

Under S. 190 (b) the term Police Report does not necessarily mean only a *chalan*, but includes also a Report by the Police under S. 62. Cl. (c) of the former section cannot possibly cover a case of information derived from the Police and does not oblige a Magistrate to proceed under S. 191 and ask the accused whether he consents to be tried by him. *Abdullah v. Emperor*. 11 Cr. L. J. 150 : 4 I. C. 1025 : 35 P. W. R. 1909 Cr. : 3 P. R. 1910 Cr.

—Ss. 64, 196—Scope of—Person committing offence under S. 171-D, Penal Code, in presence of Magistrate—If can be arrested under S. 61—Previous sanction of Local Government, necessity of.

S. 196 does not control the powers of a Magistrate under the Code, but only prevents a Court from taking cognizance of certain offences without there being a complaint made by order of, or under authority from, the Governor-General-in-Council, the Local Government or some officer empowered by the Governor-General-in-Council in this behalf. Therefore, a Magistrate not functioning as a Court but only as a Magistrate acting under S. 64 is fully authorised to arrest and to release on bail a person who has committed an offence in his presence under S. 171-D, Penal Code, and no previous sanction of the Local Government is necessary for the Magistrate to take cognizance of such an offence. The word "offence" used in S. 64, is obviously wide enough to include an offence under S. 171-D, Penal Code. *Brahma Nand Misra v. Emperor*. 41 Cr. L. J. 85 : 184 I. C. 662 : 1939 A. L. J. 779 : I. L. R. 1939 All. 924 : 1939 A. W. R. 696 : 12 R. A. 273 : A. I. R. 1939 All. 682.

—S. 68.

See Motor Vehicles Act, 1914, S. 16.

—S. 68—Summons not sealed, whether legal.

A summons not sealed as required by S. 68 of the Cr. P. C. is illegal. *In re : Abdul Rahim Beg*. 21 Cr. L. J. 800 : 58 I. C. 528 : 37 M. L. J. 588 : 10 L. W. 554 : A. I. R. 1920 Mad. 352.

—S. 68—Verbal prayer for issue of summons.

Under the law, a verbal prayer for the issue

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of summons to the accused is sufficient. *Muhammad Gul v. Haji Fazley Karim.*

31 Cr. L. J. 369 :
122 I. C. 205 : 38 C. W. N. 446 : 56 Cal. 1013 :
A. I. R. 1929 Cal. 346.

—Ss. 69, 70, 71—Notice to accused—Substituted service, when to be ordered.

Substituted service of a summons should be ordered only after proper steps to serve the accused personally have proved ineffective. *Jadho v. Manik Lala.*

23 Cr. L. J. 739 :
69 I. C. 627.

—Ss. 69, 70, 71, 133, 134 (1)—Nuisance—Conditional order—Service of notice—Procedure.

The procedure for service of summons which is provided by S. 71 cannot be made use of unless service in the manner mentioned in S. 69 as well as S. 70 cannot be effected by the exercise of due diligence. A return of service of a notice of a conditional order made under S. 133 of the Cr. P. C. showed that the person to be served was not found in his house and that two copies of the notice were affixed to the door of the house: *Held*, that there being nothing to show that service could not be effected in the manner provided by S. 70, the service effected in the manner provided by S. 71 was not sufficient. *Beni Madhab Sapui v. Jadu Nath Sapui.*

27 Cr. L. J. 715 :
94 I. C. 907 : 43 C. L. J. 113 :
31 C. W. N. 148 : A. I. R. 1926 Cal. 1208.

—S. 69 (1).

See Penal Code, 1860, S. 173.

—S. 70—Proper service.

A summons is not properly served where it is left with the *darwan* without any attempt being made to find out the accused. *Man Mohan Pande v. Corporation of Calcutta.*

33 Cr. L. J. 264 :
136 I. C. 135 : 35 C. W. N. 868 :
I. R. 1932 Cal. 183 : A. I. R. 1932 Cal. 62.

—S. 71—Offence falling under two sections—Procedure.

Where one act constitutes offences under two different sections of the Penal Code, the proper procedure is to frame charges under both sections in one and the same trial and to award a sentence under either of the sections. *Raj Bahadur v. Emperor.*

19 Cr. L. J. 931 :
47 I. C. 447 : 28 P. W. R. 1918 Cr. :
23 P. R. 1918 Cr.
A. I. R. 1918 Lah. 49.

—S. 72—Scope of—Summons to give evidence at Police investigation, mode of service.

S. 72 requiring service of summonses to Government and railway servants to be effected through the heads of their departments applies only to summonses issued by a Court of Justice and not to orders of Police Officers investigating a crime under Chapter XIV of the Code. *In re : Gumparthi Venkataramiah.*

18 Cr. L. J. 733 :
40 I. C. 733 : A. I. R. 1918 Mad. 815.

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—S. 75—Interpretation.

Ss. 75 and 76 must be read together. S. 76 (1) is permissive. *Ranshan Singh v. Emperor.*

10 Cr. L. J. 479 :
4 I. C. 31 : 13 C. W. N. 1091.

—S. 75—Presiding Officer, what is.

Presiding Officer is not necessarily one who took cognizance of offence but one who presides in that Court at the time of signing warrant. *Kartik Chandra Maity v. Emperor.*

33 Cr. L. J. 706 :
138 I. C. 844 : 73 P. L. T. 135 :
I. R. 192 Pat. 1930 : A. I. R. 1932 Pat. 171.

—S. 75—Warrant—Seal of Court.

Under S. 75 the seal of the Court is essential to the validity of a warrant. *Mahajan Sheikh v. Emperor.*

16 Cr. L. J. 336 :
28 I. C. 672 : 19 C. W. N. 224 :
42 Cal. 708 : A. I. R. 1915 Cal. 737.

—S. 75—Warrant of arrest—Endorsement for bail—Date fixed for appearance of accused—Lapse of bail.

A warrant was issued with a provision endorsed for bail to be taken for the appearance of the accused on 1st October 1926. He was arrested on the same warrant on the 29th: *Held*, that the date fixed for the appearance of the accused having passed the direction to take bail lapsed, but the warrant itself did not lapse, and the arrest was legal. *Ransham Singh v. Emperor.*

10 Cr. L. J. 479 :
4 I. C. 31 : 13 C. W. N. 1091.

—Ss. 75, 204—Cancellation of warrant—Discretion.

Where a Magistrate has issued a warrant against the accused in the first instance, he can, in exercise of his discretion, vested in him by S. 204, cancel the same and issue summons instead, if sufficient reasons are shown to him. *Imperator v. Musammat Janpat.*

8 Cr. L. J. 187 :
1 S. L. R. 69.

—Ss. 75, 537—Warrant initialled but not signed, legality.

A Magistrate is guilty of gross carelessness in not signing his name in full on a warrant but that in itself is not an illegality which would vitiate the arrest. It is a mere irregularity covered by S. 537. *Bankay Behari Singh v. Emperor.*

19 Cr. L. J. 747 :
46 I. C. 523 : 3 A. L. J. 493 :
5 P. L. W. 117 : 1918 Pat. 269 :
A. I. R. 1918 Pat. 613.

—S. 75 (2)—Execution of warrant after date fixed for return—Legality of arrest.

A warrant for the arrest of a person does not become invalid on the expiry of the date fixed for return of the warrant but remains in force until it is cancelled by the Court or is executed. *Emperor v. Binda Ahir.*

29 Cr. L. J. 1007 :
112 I. C. 223 : 7 Pat. 478 :
A. I. R. 1928 Pat. 466.

—S. 75 (2)—Warrant, what is—Magistrate writing to another Magistrate to return warrant unexecuted—Cancellation of warrant.

A warrant is an order addressed to a certain

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person directing him to arrest the accused and to produce the accused before the Court. The warrant may have a further provision for admitting the accused to bail. But in each case, the warrant is an order directed to some one to arrest a certain accused and bring him before the Court, and the person to whom it is addressed, may, if he is a Magistrate or Police Officer endorse the warrant to some one serving under him. When the Magistrate writes to the District Magistrate in another Province asking him to return the warrants unexecuted then, it is clear that the warrants are cancelled. S. 75 (2) does not require that there should be any formal order on the record of cancellation. *Jagdish Narain Bajpai v. Emperor*.

41 Cr. L. J. 500 :
187 I. C. 682 : 1940 A. L. J. 104 :
12 R. A. 575 : 1940 A. W. R. 79 :
A. I. R. 1940 All. 178.

—Ss. 75 (2), 205 and 353—*Pardah woman—Personal appearance—Issue of summons in warrant case—Magistrate's power to cancel warrant and substitute summons—Personal appearance, when enforced.*

Unless and until a Magistrate has good reason to believe that there is a strong likelihood of the charge being proved, an accused if she be really a *pardah* woman of good position should not ordinarily be compelled to appear in person in the first instance. Although a case may be one in which a warrant may be issued in the first instance, it is not necessary for the Magistrate to do so, and that under S. 75 (2) he is at full liberty to cancel at any time a warrant and substitute a summons. If a Magistrate sees fit to issue a summons he can act under S. 205 and dispense with the personal appearance of the accused until, he considers that the case has reached a stage at which the presence of the accused is necessary when he can compel it by proper process. *Musammatt Prem Kuar v. Mai Sham Nath*.

8 Cr. L. J. 454.
3 P. W. R. 51 Cr.

—S. 76—*Construction.*

Ss. 75 and 76 must be read together. S. 76 (1) is imperative. *Roshan Singh v. Emperor*.

10 Cr. L. J. 479 :
4 I. C. 31 : 13 C. W. N. 1091.

—Ss. 77, 75—*Police officer, if must be described by name.*

S. 77 does not require that the name of the Police officer to whom a warrant is, in the first instance, directed should be inserted in the warrant as well as his designation. *Bankay Behary Singh v. Emperor*.

19 Cr. L. J. 747 :
46 I. C. 523 : 3 P. L. J. 493 :
5 P. L. W. 117 : 1918 Pat. 269 :
A. I. R. 1918 Pat. 613.

—S. 79.

See Madras Forest Act, 1882, S. 51.

—S. 79—*Endorsement, mode of.*

Per Milne and Havelirala, A. J. Cs. *Rupchand, A. J. C.*, *contra*.—It is immaterial whether endorsement is on warrant or

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separate piece of paper. *Mangharam Jaramdas v. Emperor*.

32 Cr. L. J. 916 :
132 I. C. 465 : 25 S. L. R. 117 :
I. R. 1931 Sind 81 : A. I. R. 1931 Sind 89.

—S. 80—*Compliance with—Presumption.*

There is a presumption that all official acts are properly performed and, therefore, it is not necessary for the prosecution to prove under S. 80, that the Police Officer notified the substance of the warrant to the accused or showed him the warrant. *Zarkhan Nurkhan v. Emperor*.

41 Cr. L. J. 543 :
188 I. C. 78 : 12 R. Pesh. 37 :
A. I. R. 1940 Pesh. 10.

—Ss. 80, 75—*Omission to explain contents of warrant to accused, effect of.*

The omission on the part of the constable to explain to the accused the particulars of the warrant after showing him the warrant, would not invalidate the arrest. *Bankay Behari Singh v. Emperor*.

19 Cr. L. J. 747 :
46 I. C. 523 : 3 P. L. J. 493 : 5 P. L. W. 117 :
1918 Pat. 269 : A. I. R. 1918 Pat. 613.

—S. 83.

District Magistrate of Dhenkanal State cannot issue warrant under S. 83 to Railway Police in charge of railway lands in that State to arrest person alleged to have committed offence in that State—Such arrest is, however, justified by virtue of Notification No. 31 I. B. of January 11, 1937, issued by Governor-General-in-Council. *Patnaik v. Emperor*.

40 Cr. L. J. 500 :
180 I. C. 787 : 19 P. L. T. 909 :
18 Pat. 121 : 5 B. R. 491 : 11 R. P. 533 :
A. I. R. 1939 Pat. 129.

—S. 83—*Warrant by Court in Quetta, if executable in British India.*

A warrant issued by a Court in Quetta cannot be executed in British India, as Quetta does not form part of British India. *Deeki Nandan Nathuram v. Emperor*.

41 Cr. L. J. 857 :
190 I. C. 203 : 13 R. Pesh. 24 :
A. I. R. 1940 Pesh. 30.

—S. 85.

See Cr. P. C., 1898, S. 511.

—S. 87—*Applicability—"Absconder," who is.*

Action under S. 87 can be taken only when a Court has reason to believe that any person against whom a warrant has been issued has absconded or is concealing himself so that such warrant cannot be executed. A person, however, who files a petition against the order issuing the warrant and takes steps to procure an order of a superior Court that he should be allowed to remain on bail after such warrant has been issued, can neither be said to be absconding nor concealing himself. *Qamar Din v. Emperor*.

23 Cr. L. J. 454 :
67 I. C. 726 : 66 P. L. R. 1922 Cr. :
A. I. R. 1922 Lah. 475.

—S. 87—*Application of.*

The provision of S. 87, cl. (3), is only applic-

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able when a statement in writing by the Court specifies the date on which the proclamation was published. *Raghuni Prasad Mahta v. Emperor*. 37 Cr. L. J. 318 :

160 I. C. 604 : 2 B. R. 227 : 17 P. L. T. 81 :
8 R. P. 370 : A. I. R. 1936 Pat. 249.

———S. 87—Notice, absence of—Effect.

In proceedings under Ss. 87, 88, the failure to give the necessary notice does not amount to more than an irregularity which can be cured by S. 537. *Hansraj v. Emperor*.

36 Cr. L. J. 457 :
153 I. C. 954 : 36 O. L. R. 262 : 16 Lah. 466 :
7 R. L. 482 : A. I. R. 1934 Lah. 987.

———Ss. 87, 45—Proclamation under S. 87 issued—Failure of headman of village to report to Police, the visits of such person to his village—Offence.

Where it has been proved by the evidence on the record that a proclamation under S. 87 was made in respect of a person in order to find whether the accused (village headman) is guilty under S. 176, Penal Code, read with S. 45 (1) (b) of the Cr. P. C., it is necessary to see whether he possessed any information respecting the proclaimed person's passage through or visit to his village. Where it appears that he became aware of such person's visit to the village, but failed to give the required information to the Police, he is liable under S. 176, Penal Code. The fact that the proclamation was not made strictly in accordance with the terms of S. 87, Cr. P. C., does not render such person, a proclaimed offender any the less. *Emperor v. Ram Sarup*.

39 Cr. L. J. 154 :
172 I. C. 530 : 1938 O. W. N. 7 :
1938 O. L. R. 8 : 10 R. O. 182 :
A. I. R. 1938 Oudh 80.

———Ss. 87, 88—Absconder—Attachment of ancestral property—Effect of.

In the case of ancestral lands in the Punjab, all that can be attached in proceedings under Ss. 87 and 88 is the interest of the absconder, and on his death, the lands must be released in favour of his heirs. Where waste land is granted to a person who subsequently acquires proprietary rights therein, the land becomes ancestral in the hands of his sons. *Shah Muhammad v. Emperor*. 26 Cr. L. J. 1148 :

88 I. C. 460 : 2 L. C. 8 : 7 L. L. J. 540 :
A. I. R. 1925 Lah. 629.

———Ss. 87, 88—Absconding accused—Proclamation and attachment.

When a Magistrate is asked to proclaim an accused person, he should first of all take evidence that the accused has absconded. When the absconding is proved, he should record evidence of the offence under S. 512. Then if he considers that there is sufficient *prima facie* proof of the offence, he can proceed under Ss. 87 and 88. But Magistrates should use their discretion under these sections and should not ordinarily proclaim an accused when the offence is a petty one. *Emperor v. Po Ni*.

3 Cr. L. J. 353 :
3 L. B. R. 116.

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———Ss. 87, 88—Attachment and sale of property of absconder—Proclamation, publication of.

The most important part of the publication of a Proclamation under S. 87, is the publishing of it in the accused's place of residence and the thirty days allowed by the section should be reckoned from the date of such publication. Magistrates, when acting under S. 87, should always make an endorsement or statement in writing validating the proclamation, as contemplated by clause (3) of the section. *Mala Singh v. Emperor*.

17 Cr. L. J. 414 :
36 I. C. 974 : 40 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 49.

———Ss. 87, 88—Attachment of property—Proclamation or copy not preserved—Legal formalities not observed—Confiscation, if justifiable.

In proceedings under Ss. 87 and 88, the Magistrate ought to take particular care to preserve proclamation and the record must be so clear as to satisfy the Court that the legal formalities were duly observed. Where neither the proclamation nor any copy is forthcoming and the only evidence consists of a statement of one of the accused persons that a proclamation of some undescribed sort was at some unspecified time issued, the evidence is insufficient to show that the legal formalities were observed by the Court. Before an order confiscating private property is made by a Criminal Court, the materials on the record must show with *certainty* that a proclamation was properly issued. *Muthusawmy Naidu v. Emperor*. 13 Cr. L. J. 293 :

14 I. C. 757 : 11 M. L. T. 431.

———Ss. 87, 88, 89—Attachment of property without warrant, illegality of—Inherent power of Court to release.

It is only when an applicant shows both that he had not absconded and that he had not proper notice, that property can be restored under S. 89. Further, under the section, it is not only necessary to make an application but also to prove the necessary facts within two years. Where land is attached, regarding which no warrant has been issued, the High Court may in view of the provisions of Ss. 530 (a) and 439, release the property from attachment in exercise of its inherent powers, where, it cannot do so under the strict provisions of S. 89. *Buta Singh v. Emperor*.

27 Cr. L. J. 1025 :
96 I. C. 977 : 8 Lah. L. J. 608 :
27 P. L. R. 825 :
A. I. R. 1926 Lah. 662.

———Ss. 87, 88, 91—Summons issued against accused—Subsequent order for issue of warrant without proof of service of summons, legality of—Proclamation—Attachment of accused's property.

Where the case is one in which according to the fourth schedule of the Code, the Magistrate shall ordinarily issue a summon and such a process was, as a matter of fact, issued by him, the Magistrate cannot subsequently order the issue of a warrant under S. 90 (b), unless he first pla-

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ces on record, his reasons for considering that the accused had been duly served and that in spite of such service, he had failed to appear without reasonable excuse. Before issuing a warrant for the arrest of the accused, the Magistrate must, by an exercise of judicial discretion applied to the considerations of the materials before him, come to the conclusion that the accused, after being duly served, had deliberately disobeyed the summons, or that he was keeping out of the way to evade its service. A proclamation and an order of attachment of accused's property issued on the non-execution of such a warrant are illegal and must be set aside. *Yasinkhan v. Emperor*.

10 Cr. L. J. 306 :
3 I. C. 575 : 5 N. L. R. 125.

—Ss. 87, 88, 114—*Warrant for arrest of person who had left Court's jurisdiction—Proclamation—Attachment of property.*

A Magistrate cannot legally issue a warrant under S. 114, for the arrest of a person who has already left the local limits of the Magistrate's jurisdiction. Where a warrant under S. 114 was issued for the arrest of a person who had left the district, and subsequently a proclamation against the person was issued and proceedings taken under Ss. 87, 88 : *Held*, that the warrant, proclamation and attachment were all illegal. *In re : Ramjibhai*.

13 Cr. L. J. 796 :
14 Bom. L. R. 889 : 17 I. C. 540.

—Ss. 87, 89—*Proclamation allowing less than thirty days for appearance, validity of.*

Where a proclamation under S. 87 does not give thirty days for the appearance of the accused, the proclamation is invalid and the subsequent proceedings following upon it are liable to be set aside. *Emperor v. Mullan Singh*.

21 Cr. L. J. 210 :
54 I. C. 994 : 32 P. R. 1919 Cr. :
128 P. L. R. 1920 : A. I. R. 1920 Lah. 330.

—Ss. 87, 89, 439—*Absconder—Forfeiture of property—Application to set aside forfeiture—Proclamation, validity of—Whether can be questioned.*

A person applying under S. 89, Cr. P. C. to set aside an order of forfeiture of his property, cannot contest the legality of the proclamation under that section, but there is nothing to prevent the High Court from considering it in the exercise of its revisional jurisdiction. *Emperor v. Mullan Singh*.

21 Cr. L. J. 210 :
54 I. C. 994 : 32 P. R. 1919 Cr. :
128 P. L. R. 1920 : A. I. R. 1920 Lah. 330.

—Ss. 87, 537—*Omission to affix copy of proclamation to Court house—Effect.*

Where a proclamation under S. 87 is made and is read and published in the places where the absconders are most likely to hear of it, the mere omission to affix a copy of it to the Court-house unless it prejudices the absconders, is an irregularity curable by S. 537 of the Code. *Malli v. Emperor*.

18 Cr. L. J. 979 :
41 I. C. 595 : 39 P. R. 1917 Cr. :
48 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 438.

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—S. 88—*Attachment in District other than that of issuing Magistrate without endorsement of District Magistrate of that District.*

An attachment of property is not authorised in a District other than that of the issuing Magistrate except when the order of attachment has been endorsed by the District Magistrate within whose District the property to be attached is situated. Such an attachment is illegal. *Ganu Shukul v. Emperor*.

31 Cr. L. J. 494 :
123 I. C. 397 : 11 P. L. T. 402 :
A. I. R. 1930 Pat. 347.

—S. 88—*Claim by third person to attached property—Procedure—Rejection of claim—Remedy.*

Where property is attached as the property of an absconder and another person claims the property as his own, it is proper to give to the claimant an opportunity of establishing his right. If a claim is put forward which the Magistrate has not inquired into or has rejected, the claimant's remedy is by Civil suit against the Secretary of State and the person at whose instance the attachment was effected. *Nga Po Aung v. Emperor*.

12 Cr. L. J. 392 :
11 I. C. 256 : U. B. R. 1911 (1) 66.

—S. 88—*Claim of third person to attached property—Procedure—Civil suit.*

There is no law requiring a Magistrate who has attached property to investigate the claims of third persons to the ownership of such property. If a Magistrate passes an erroneous order in respect of such property, the only remedy is by way of Civil suit. *Su We v. Emperor*.

7 Cr. L. J. 81 :
4 L. B. R. 109.

—Ss. 88, 87, 89—*Illegal sale of property of absconder—Suit to recover property—Jurisdiction.*

Where the property of an absconding offender was attached and sold by a Court purporting to act under S. 88, and it turned out that the procedure culminating in the sale was irregular and illegal, it was held that the Civil Courts had jurisdiction to entertain a suit by the owner of property so sold to recover the same in the hands of a purchaser. *Mian Jan v. Abdul*.

2 Cr. L. J. 241 :
25 A. W. N. 102 : 27 A. S. 72 :
2 A. L. J. 348.

—Ss. 88, 89—*Absconding accused, personal application by, if necessary.*

Semble. It is not necessary that the absconding accused should himself personally apply for the restoration of his property. The application can be made by any one on his behalf if it satisfies the other requirements of S. 89. *In re : Nilkanth Ramchandra Kulkarni*.

14 Cr. L. J. 237 :
19 I. C. 333 : 15 Bom. L. R. 175.

—Ss. 88, 89—*Accused, application of for removal of attachment—Proof—Limitation.*

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Under S. 89 it is necessary that the proof that the accused person had not absconded should be offered or given within two years from the date of attachment. It is not enough to show that the accused appeared voluntarily or was apprehended or brought before the Court within that period. *In re: Nilkanth Ramchandra Kulkarni*. 14 Cr. L. J. 237 : 19 I. C. 333 : 15 Bom. L. R. 175.

—Ss. 88, 89—*Application by legal representatives to set aside attachment.*

Where property has been attached under S. 88, it is only the person whose property has been attached, that can apply for its restoration. The legal representatives of a person whose property has been so attached have no *locus standi* and cannot, therefore, apply to set aside the attachment. *Ramiah v. Government of Mysore*. 10 Cr. L. J. 260 : 12 M. C. C. R. 173.

—Ss. 88, 89—*Joint Hindu family—Absconding accused, attachment of interest of, Receiver, appointment of—Rights of other co-parceners.*

By the Full Bench.—The undivided interest of an absconding member of a joint Hindu family in the family property is liable to attachment under S. 88. What has to be attached under the section is the share of the defaulting member of the family, which is subject to the rights of the other members of the family and may be realised by a Receiver in a suit for partition or otherwise. *Secretary of State v. Rangasamy Ayyangar*. 17 Cr. L. J. 296 : 35 I. C. 168 : 31 M. L. J. 84 & 120 : 20 M. L. T. 58 & 60 : 4 L. W. 21 & 24 : 1916 2 M. W. N. 88 & 90 : A. I. R. 1917 Mad. 366.

—Ss. 88, 89—*Joint Hindu family—Attachment of father's property—Severance, if effected.*

The language of Ss. 87 to 89 does not warrant the construction that the attachment effects a severance of a joint family or precludes the after-born sons of the absconder from claiming their shares in the property on partition. *Secretary of State v. Rangasamy Aiyangar*. 17 Cr. L. J. 296 : 35 I. C. 168 : 31 M. L. J. 84 & 120 : 20 M. L. T. 58 & 60 : 4 L. W. 21 & 24 : 1916 2 M. W. N. 88 & 90 : A. I. R. 1917 Mad. 366.

—Ss. 88, 89—*Joint Hindu family—Attachment of father's share—Rights of after-born sons.*

By the Division Bench.—The effect of an attachment under S. 88, clauses (3) and (4), read with cl. (7), is only to secure to the Government the enjoyment of the income during the continuance of the attachment, and not to vest the property or the share of the absconder in the Government as confiscated. *Quod* the property attached the rights of the Government are governed by the ordinary

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Hindu Law. *Secretary of State v. Rangasamy Ayyangar*. 17 Cr. L. J. 296 : 35 I. C. 168 : 31 M. L. J. 84 & 120 : 20 M. L. T. 58 & 60 : 4 L. W. 21 & 24 : 1916 2 M. W. N. 88 & 90 : A. I. R. 1917 Mad. 366.

—Ss. 88, 89—*Property of absconding offender attached and sold under illegal warrant—Suit for recovery of such property.*

Where the property of an alleged absconding offender is attached and sold by a Court and it turns out that the proclamation of sale is irregular and illegal, there is nothing to bar a suit by the owner of the property so sold to recover such property in the hands of a purchaser. *Abdul v. Kazim Begam*. 1 Cr. L. J. 616 : 24 A. W. N. 159.

—Ss. 88, 89, 439—*Absconder's property attached and sold—Sale, finality of—Locus standi of third party.*

S. 89 provides for applications by the absconding offender only for restoration of the property attached, and no provision is made for claims by third parties to such property. Once the sale of the property has been duly effected, it cannot be set aside even at the instance of the absconder. *Emperor v. Gaman*. 12 Cr. L. J. 142 : 9 I. C. 826 : 104 P. L. R. 1911 : 13 P. W. R. 1911 Cr. : 8 P. R. 1911 Cr.

—Ss. 88, 386—*Claim, determination of—Criminal Courts, jurisdiction of.*

The Code does not contain any provision for the trial of claims which may be preferred to property distrained under S. 386, and when the Magistrate has acted under it, no further proceedings in the Criminal Courts are admissible. *Hira Lal v. Emperor*. 16 Cr. L. J. 166 : 27 I. C. 550 : 28 P. L. R. 1915 : A. I. R. 1915 Lah. 227.

—Ss. 88, 435, 439—*Attachment of property—Order refusing to release property—Revision.*

An order under S. 88 refusing to release certain property from attachment is a proceeding within the meaning of S. 435 of the Code, and is subject to the revisional jurisdiction of the High Court. *Sant Singh v. Emperor*. 25 Cr. L. J. 82 : 76 I. C. 18 : A. I. R. 1924 Lah. 617.

—S. 88 (6-d)—*Suit to establish title to attached property—Claim under Sub-s. 6 (a), if should first be filed.*

Sub-s. 6 (d) of S. 88 does not prevent a person from filing a suit to establish his title to attached property without first filing a claim or objection under Sub-s. 6 (a). *Ezekiel v. The Province of Bengal*. 41 Cr. L. J. 134 : 185 I. C. 214 : I. L. R. 1939 2 Cal. 52 : 12 R. C. 350 : A. I. R. 1939 Cal. 746.

—S. 89.

See Cr. P. C., S. 88.

—S. 89—*Application of—Absconder—*

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Application for restoration of property—Proclamation, defective.

S. 89 applies to a case where the validity of attachment proceedings is challenged and it is open to a person to prove that he was not absconding, that there was no publication at all of the proclamation or that the proclamation was defective, e. g., that it specified no date for his appearance. *Mali v. Emperor*.

18 Cr. L. J. 979 :
41 I. C. 595 : 39 P. R. 1917 Cr. :
48 P. W. R. 1917 Cr. : A. I. R. 1917 Lah. 438.

—S. 89.

Accused not proving that he had not absconded or concealed himself to avoid execution of warrant cannot have attachment set aside. Court has no inherent jurisdiction to set aside. *Hans Raj v. Emperor*.

36 Cr. L. J. 457 :
153 I. C. 954 : 36 P. L. R. 262 :
16 Lah. 466 : 7 R. L. 482 :
A. I. R. 1934 Lah. 987.

—S. 89—*Applicability—Attachment invalid.*

S. 89 does not apply to a case where the attachment is irregular and invalid. *Mala Singh v. Emperor*.

17 Cr. L. J. 414 :
36 I. C. 974 : 40 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 49.

—S. 89—*Application for return of property made more than two years after attachment, whether barred.*

An application under S. 89 for return of the property attached, made more than two years after the attachment, is barred. *Mala Singh v. Emperor*.

17 Cr. L. J. 414 :
36 I. C. 974 : 40 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 49.

—S. 89—*Attachment, illegal—Remedy—Revision.*

It cannot be said that a person aggrieved by an illegal attachment has no remedy except by a Civil suit. The Chief Court has revisional powers of the widest scope which it would employ to annul such an attachment. *Mali v. Emperor*.

18 Cr. L. J. 979 :
41 I. C. 595 : 39 P. R. 1917 Cr. :
48 P. W. R. 1917 Cr. : A. I. R. 1917 Lah. 438.

—S. 89—*Attachment of property—Absconder acquitted—Property, release of.*

S. 89 lays down that before release, the person suspected of absconding must prove that he did not abscond and that he did not have notice of proclamation. Before becoming entitled to the release of attached property, he should prove these two facts. Where these conditions are not satisfied, the land concerned will remain the property of the Government. *Emperor v. Arab Gul*.

38 Cr. L. J. 99 :
165 I. C. 602 : 9 R. Pesh. 51.

—S. 89—*Proceedings against absconder—Sale—Application for restoration allowed, effect of—Property, whether can be restored.*

Where an application under S. 89 is allowed

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after the property has been sold, the successful applicant is not entitled to restoration of the property but only to the net proceeds of the sale of the property. *Emperor v. Fazal Dad*.

24 Cr. L. J. 573 :
73 I. C. 269.

—Ss. 89, 87—*Failure to specify date of proclamation, effect of.*

An order under S. 87 (3) stating that the proclamation was duly published but omitting to specify the date of the publication, cannot be considered as conclusive evidence that the requirements of S. 87 have been complied with. *Emperor v. Multan Singh*.

21 Cr. L. J. 210 :
54 I. C. 994 : 32 P. R. 1919 Cr. :
128 P. L. R. 1920 : A. I. R. 1920 Lah. 330.

—Ss. 89, 561-A—*Application for restoration of attached property two years after attachment—Inherent jurisdiction of High Court—Proper remedy.*

If an application for the restoration of property attached under S. 89, is not made within two years, as prescribed by S. 89, the High Court has no jurisdiction, under S. 561-A, to order the restoration of property, as such an order, if made, would conflict with S. 89. The proper remedy is an application to Government. *Gurunath Narayan Betgeri v. Emperor*.

25 Cr. L. J. 1293 :
82 I. C. 365 : 26 Bom. L. R. 719 :
A. I. R. 1924 Bom. 445.

—S. 90—*“After recording its reasons,” meaning of—Warrant, without recording reasons, validity of.*

A warrant which, on the face of it, is a good and valid warrant, is signed by the Magistrate, sealed with the seal of the Court, addressed to a Police Officer, and which states the reason upon which the Magistrate relied, is not invalid merely by reason of the fact that the Magistrate has omitted to record in writing, otherwise than in the warrant, the reason which actuated him to issue the warrant. *Government of Assam v. Sahibullah*.

24 Cr. L. J. 881 :
75 I. C. 129 : 38 C. L. J. 77 : 27 C. W. N. 857 :
51 Cal. 1 : A. I. R. 1924 Cal. 1.

—S. 90—*Magistrate—Cognizance—Jurisdiction—Complaint before one Magistrate without Government sanction—Complaint before another Magistrate with sanction—Cognizance by second Magistrate without withdrawing case from first, if legal.*

A complaint was made by Police to a Sub-Divisional Magistrate of the offence under S. 399, Penal Code. The facts stated in the complaint disclosed that the accused was also guilty of having bombs in his possession or control, which was a preparation to commit dacoity. Magistrate was informed that an application to Government had been made for the sanction. Subsequently, the Superintendent of Police put in a complaint before the District Magistrate with Government sanction. The District Magistrate then proceeded with the case : *Held*, that although the case was not formally withdrawn from the file of the Sub-Divisional Magistrate, the District Magistrate

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had jurisdiction to take cognizance of the offence under the Explosive Substances Act, as the offence was not and could not be taken cognizance of by the Sub-Divisional Magistrate for want of Government sanction. *Lalit Chandra v. Emperor*. 13 Cr. L. J. 19 : 15 I. C. 65 : 39 Cal. 119.

—S. 90—Magistrates, duty of, to record reasons.

Before issuing a warrant, the Magistrate should record his reasons specifically in writing and should not be satisfied with signing a warrant in the form given in the schedule to the Cr. P. C. The words "after recording its reasons in writing" in S. 90 are not imperative but directory. *Government of Assam v. Emperor*. 24 Cr. L. J. 881.

75 I. C. 129 : 38 C. L. J. 77 : 27 C. W. N. 857 : 51 Cal. 1. A. I. R. 1924 Cal. 1.

—S. 90—Warrant, issue of, in lieu of summons—"record reasons in writing"—Adoption of stereotyped printed form, whether sufficient.

Court should record its reasons in writing. The adoption of a stereotyped printed form is not a sufficient compliance with the imperative language of the section. Therefore, the issue of a warrant in the first instance without any reasons being recorded on the order sheet by the Court issuing the warrant, is illegal, and the resistance to such a warrant is not an offence. *Sukheshwar Phukan v. Emperor*. 12 Cr. L. J. 409 :

11 I. C. 593 : 15 C. W. N. 1001 : 38 Cal. 789 : 15 C. L. J. 186.

—S. 90—Warrant of arrest instead of summons.

In a case in which a summons should ordinarily issue, a warrant of arrest cannot be issued unless the conditions of S. 90 are fulfilled. A written report by a Police Officer is not evidence of service of summons under clause (b) of S. 90. *Emperor v. Poni*. 3 Cr. L. J. 353 : 3 L. B. R. 116.

—Ss. 90, 76—Warrant under S. 90, endorsement under, S. 76, if necessary.

The terms "bailable warrant" and "non-bailable warrant" are nowhere employed in the Code. There are bailable offences and non-bailable offences. There is nothing in the Code anywhere which says that a warrant issued under S. 90 to a person who is charged with a bailable offence must contain an endorsement under S. 76. Whether such a direction should be given or not is entirely in the discretion of the Court. *Lachmi Narain v. Emperor*. 40 Cr. L. J. 283 :

179 I. C. 899 : 1938 A. L. J. 1229 : 11 R. A. 398 : 1939 A. W. R. 63 : I. L. R. 1939 All. 272 : A. I. R. 1939 All. 156.

—Ss. 90, 501—Warrant—Reasons, failure to record, effect of.

Where a warrant purports to be issued under S. 90, it is a necessary preliminary for the exercise of the power by the Magistrate that reasons should be given in writing and failure

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to do so, vitiates the warrant. *In re : Karuthan Ambalam*. 17 Cr. L. J. 132 :

33 I. C. 308 : 18 Mad. 1088.

—Ss. 90, 514—Warrant for woman enticed away—Reasons not recorded, effect of—Bond executed by surety, forfeiture of on woman's failure to appear.

In a case under S. 498, Penal Code, the trying Magistrate is competent to issue a warrant, instead of issuing a summons for the attendance of the woman alleged to have been carried away, but in order to comply with the provisions of S. 90 of the Cr. P. C., it is necessary to record reasons for issuing the warrant in the first instance, and if the Magistrate fails to do so, the warrant must be regarded as wholly illegal and the bond given by the surety for the woman's attendance has no legal force and cannot be forfeited if the woman does not appear. *Bela Singh v. Emperor*. 19 Cr. L. J. 443 (b) :

44 I. C. 971 : 7 P. W. R. 1918 Cr : 50 P. L. R. 1918 : A. I. R. 1919 Lah. 67.

—S. 91—Scope of—Court's power to require execution of bonds.

S. 91 is only applicable to persons who are present in Court and cannot authorise the Magistrates to go to the houses of persons and compel them to execute bonds for appearance in Court, nor could he lawfully proceed to try the case unless he had issued a process as required by S. 204. *Ajudhia Prasad Sonar v. Municipal Committee, Khurai*. 37 Cr. L. J. 837 :

163 I. C. 413 : 18 N. L. J. 320 : 9 R. N. 1.

—S. 94—Constructions.

Although the first two clauses of S. 96 (1), Cr. P. C., relate back to S. 94, cl. (3) does not and is independent of the provisions of S. 94. *In re : Muhammad Tahir*. 35 Cr. L. J. 1024 :

149 I. C. 1021 : 36 Bom. L. R. 96 : 6 R. B. 406 : A. I. R. 1934 Bom. 104.

—S. 94—Applicability.

The provisions of S. 94 cannot be taken to apply to the case of an accused person, on his trial, to whom a notice has been issued to produce an incriminating document. *Ishwar Chandra Ghoshal v. Emperor*. 8 Cr. L. J. 224 : 12 C. W. N. 1016 : 8 C. L. J. 320 :

—S. 94.

Court's power in using machinery provided by S. 94, is not controlled by S. 257—Ss. 94 and 257 are not antagonistic. *Muhammad Rahim v. Emperor*. (F. B.) 36 Cr. L. J. 581 : 154 I. C. 762 : 29 S. L. R. 92 : 7 R. S. 167 : A. I. R. 1935 Sind 13.

—S. 94.

Discretion of Court under S. 94 should be exercised judicially. Money stolen and deposited in Bank becomes property of Bank, and no order under S. 94 can be passed nor can money in the Bank be attached. *In re : Lloyds Bank, Ltd.* 35 Cr. L. J. 1028 :

149 I. C. 1005 : 36 Bom. L. R. 88 : 58 Bom. 152 : 6 R. B. 409 : A. I. R. 1934 Bom. 74.

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—S. 94—*Failure to produce document—Offence.*

Where the production of a document is not necessary for the decision of the case in which the document is called for, the person failing to produce the document cannot be convicted under S. 175, Penal Code. *Damri Ram v. Emperor.* 19 Cr. L. J. 217 : 43 I. C. 793 : 4 P. L. W. 65 : A. I. R. 1918 Pat. 590.

—S. 94—*Order directing inspection of books—Bank, if can object—Powers of Court in matter of granting inspection.*

An order directing a person to produce or give inspection of his books in a dispute to which he is not a party, involves a serious inroad upon his normal rights as a citizen, and the Courts have always set their faces against giving anything in the nature of a roving or fishing commission to inspect documents. It is not the practice of the Court to allow inspection of Bankers' Books under the Bankers' Books Evidence Act unless a *prima facie* case is made out for thinking that there is some matter on which the books of the Bank are bound to be relevant. *Central Bank of India, Ltd. v. P. D. Shamdasani.* (S. B.) 39 Cr. L. J. 207 : 172 I. C. 684 : 39 Bom. L. R. 1187 : 10 R. B. 291 : I. L. R. 1938 Bom. 119 : A. I. R. 1938 Bom. 33.

—S. 94—*Order for production of document—Court, if must give inspection.*

When a Magistrate makes an order for production under S. 94, he does not thereby commit himself to the proposition that inspection of all the documents, production of which is ordered, must necessarily follow. Usually inspection should only be given of particular documents shown to be relevant, and not of documents in bulk and the party producing the documents in compliance with the order of the Court is not precluded from objecting to their subsequent inspection. *Central Bank of India Ltd. v. P. D. Shamdasani.* (S. B.) 39 Cr. L. J. 207 : 172 I. C. 684 : 39 Bom. L. R. 1187 : 10 R. B. 291 : I. L. R. 1938 Bom. 119 : A. I. R. 1938 Bom. 33.

—S. 94—*Production of documents—Discretion of Court.*

S. 94 applies to all cases including summons cases and gives the Magistrate discretion about the production of documents. When the discretion has been used judicially, the High Court will not interfere. *Chhotey Miyan v. Emperor.* 38 Cr. L. J. 482 : 167 I. C. 860 : 9 R. N. 228 : I. L. R. 1937 Nag. 165 : A. I. R. 1936 Nag. 250.

—S. 94—*Order for producing of documents—Solicitor's general lien, if good answer.*

Notwithstanding the lien, the solicitor can be compelled to produce the papers in his possession if his client would have been bound to produce them. *Alan E. Ker v. Pramatha Nath Sarkar.* 37 Cr. L. J. 825 : 62 Cal. 1037 : 163 I. C. 224 : 39 C. W. N. 917 : 8 R. C. 722.

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—S. 94—*Production of documents.*

Under S. 94 an accused person can be called upon to produce documents in his possession. *Damri Ram v. Emperor.* 19 Cr. L. J. 217 : 43 I. C. 793 : 4 P. L. W. 65 : A. I. R. 1918 Pat. 590.

—S. 94—*Production of document or other thing incriminating accused—Issue of summons.*

It is competent to a Magistrate to issue summons to an accused person under S. 94, to produce a document or other thing, the production of which might tend to incriminate him. *Surey Kondareddi v. Emperor.* 13 Cr. L. J. 493 : 15 I. C. 493.

—S. 94—*Statements of witnesses at inquest inquiry—Accused's right to copies.*

An accused person may be given copies of statements made by witnesses at the inquest inquiry. If the record of the inquest proceedings is in custody of the Court, the Magistrate may allow certified copies to be given on the application of the accused's Vakil. If the inquest report is not in Court, the Magistrate has power under S. 94, Cr. P. C., to call for it to be produced by the Police. *In re : Chanlet.* 26 Cr. L. J. 426 : 85 I. C. 42 : 20 L. W. 745 : A. I. R. 1925 Mad. 424.

—S. 94—*Summons to produce documents, legality of—Procedure.*

Certain books of account belonging to the petitioner were in the custody of the Police under the orders of the Magistrate. The High Court having directed the books to be returned to the petitioner, the Magistrate issued a notice on the petitioner requiring him to be present in his Court personally or by agent for taking delivery of the books. As soon as the books were made over to an agent of the petitioner in accordance with the order of the High Court, a notice was served upon the agent under S. 94 of the Cr. P. C. and the books were taken possession of by the Magistrate. *Held*, that the order under S. 94 was properly made and that the books which were taken charge of ought to be in the custody of the Magistrate. *Pratt T. R. v. Emperor.* 21 Cr. L. J. 577 : 57 I. C. 97 : 24 C. W. N. 410 : 31 C. L. J. 188 : 47 Cal. 647 : A. I. R. 1920 Cal. 349.

—S. 94—*Scope of.*

The jurisdiction of the Court to order the production of a document or thing carries with it the jurisdiction to allow the right of inspection. *Muhammad Rahim v. Emperor.* (F. B.) 36 Cr. L. J. 581 : 154 I. C. 762 : 29 S. L. R. 92 : 7 R. S. 167 : A. I. R. 1935 Sind 13.

—Ss. 94, 96—*Document in possession of accused—Search warrant.*

Under S. 96, a Magistrate is competent to issue a search warrant for documents in possession of the accused, and such documents can, after production, be inspected by the prosecution, or by any experts appointed by the Court in

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this behalf. *Municipal Committee, Jhang v. Muhammad Hayat*. 16 Cr. L. J. 225 :

27 I. C. 897 : 36 P. R. 1914 Cr. :
27 P. L. R. 1915 : A. I. R. 1914 Lah. 587.

—Ss. 94, 96—Person, meaning of—Document or thing—Inspection of documents found in search.

The words 'a person' in Ss. 94, 96, include the person accused in the case and the words 'document or thing' in the sections are general and cover any document, the production or inspection of which is 'necessary' or 'desirable' or will serve the ends of justice. There is nothing in the sections to limit their provisions to the finding of such documents or things only in respect of which the alleged offence may have been committed. *Municipal Committee, Jhang v. Muhammad Hayat*.

16 Cr. L. J. 225 :
27 I. C. 897 : 36 P. R. 1914 Cr. :
27 P. L. R. 1915 : A. I. R. 1914 Lah. 587.

—Ss. 94, 96, 192—Account books, production of—Procedure to be followed.

The complainant complained before a Magistrate that the accused had fraudulently tampered with the account books of a partnership business. The Magistrate directed the Police "to enquire and report and to take possession of the *khata* books". The Magistrate referred the case to an Honorary Magistrate for further enquiry and report. The Honorary Magistrate reported that the charge was not "utterly devoid of foundation." The Magistrate then directed the issue of process for the attendance of the accused to answer a charge under S. 477, Penal Code : *Held*, that the order upon the Police to take possession of the account books was illegal, and the Magistrate should have issued either a summons to produce under S. 94 or a search warrant under S. 96 : *Held*, also, that the order directing the Honorary Magistrate to enquire and report was not authorized by law, and the Magistrate should have transferred the case under S. 192 to other Magistrate not for report but for disposal.

11 Cr. L. J. 525 :
7 I. C. 747.

—Ss. 94, 165—Search of accused's house—Specific stolen property—General search.

Although a general search of the house of an accused for stolen property may not be authorized by law, a Police officer is empowered to search an accused's house even after his arrest for specified stolen property relevant to the case under S. 165. The powers conferred by Ss. 94 and 165 extend to accused persons. *Bisser Misser v. Emperor*.

14 Cr. L. J. 405 :
20 I. C. 229 : 17 C. W. N. 1209.

—Ss. 94, 257—Party's right to apply for production of document.

Under S. 94, any party can at any stage, apply to call for production of document and is entitled to its production if he satisfies Court that it is necessary—But under S. 257 only

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accused is entitled at particular stage mentioned therein to apply for same—Sections are not antagonistic but interdependent. *Muhammad Rahim v. Emperor*. 36 Cr. L. J. 581 :
154 I. C. 762 : 29 S. L. R. 92 : 7 R. S. 167 :
A. I. R. 1935 Sind 13.

—S. 94 (3)—Documents protected under S. 126, Evidence Act, whether exempted.

Clause 3 of S. 94, Cr. P. C. does not exempt documents protected under S. 126, Evidence Act, and the production of such documents is incumbent under S. 162, Evidence Act, notwithstanding any objection which there may be to the production or admissibility. *Public Prosecutor v. M. S. Menoki*. 41 Cr. L. J. 186 :
185 I. C. 419 : 1939 2 M. L. J. 634 :
1939 M. W. N. 1127 : 12 R. M. 563 :
50 L. W. 428.

—S. 96—Absence of material connecting accused with offence—Assurance by Police Officer of necessity of warrant—Warrant, legality.

Where no offence is alleged to have been committed, a general search warrant should not be issued under S. 96 on mere suspicions and on the assurance of Police Officers that a general search is necessary. *Ghai & Co. v. Emperor*. 31 Cr. L. J. 272 :
121 I. C. 499 : A. I. R. 1929 Lah. 837.

—S. 96—Copyright Act, S. 7, proceeding under—Magistrate, power of, to issue search warrant—Stay of warrant.

In a proceeding under S. 7 of the Copyright Act, a Magistrate has power to issue a search warrant under S. 96 and has jurisdiction to stay the execution of such warrant on the execution of a bond by the accused. *Kishori Mohan Bagchi v. Hari Das Bysack*.

21 Cr. L. J. 391 :
55 I. C. 999 : 47 Cal. 164 :
A. I. R. 1920 Cal. 83.

—S. 96—Information—Statement of Counsel, whether information.

The statement of a Counsel appearing for the prosecuting complainant is not information on which a Magistrate is entitled to issue a search warrant. *Mulchand v. Emperor*.

12 Cr. L. J. 175 :
9 I. C. 991 : 8 A. L. J. 517.

—S. 96—Issue of search warrant on complaint without examining complainant on oath.

A search warrant issued on a complaint without examination of the complainant, would at least be irregular. When a Court is about to issue a search warrant on the strength of information as distinguished from a complaint it should, if possible, examine the informant, on oath, and if evidence cannot be taken on oath, it should act with a due appreciation of the fact that it is taking upon itself the responsibility of considering the weight of the information as information preparatory to issuing an order of a very serious nature. *Mulchand v. Emperor*.

12 Cr. L. J. 175 :
9 I. C. 991 : 8 A. L. J. 517.

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—S. 96—*Power of Magistrate to issue search warrant.*

Form VIII of Schedule V of the Code contemplates the issue of a search warrant by a Magistrate under S. 96 before any proceedings of any kind are initiated under the Code before him, and in view of an "inquiry" about to be made" by him under the Code. *Clarke v. Brojendra Kishore Roy.*

13 Cr. L. J. 693 P. C. :
16 I. C. 501 : 23 M. L. J. 32 : 16 C. W. N. 865 :
12 M. L. T. 171 : 10 A. L. J. 193 :
1912 M. W. N. 760 : 14 Bom. L. R. 717 :
10 C. L. J. 231 : 39 Cal. 53.

—S. 96—*Search under S. 25, Arms Act—Condition precedent.*

The words "having first recorded the ground of his belief" in S. 25 of the Arms Act, prescribe a preliminary condition, and a Magistrate has no power to make a search under that section without having complied with that preliminary condition. *Clarke v. Brojendra Kishore Roy.*

13 Cr. L. J. 693 P. C. :
16 I. C. 501 : 23 M. L. J. 32 : 16 C. W. N. 865 :
12 M. L. J. 171 : 10 A. L. J. 193 :
1912 M. W. N. 760 : 14 Bom. L. R. 717 :
10 C. L. J. 231 : 39 Cal. 53.

—S. 96—*Search warrant—Duty of Court.*

Before issuing a search warrant, it is the duty of the Court in the first instance, to consider if a summons to produce would not have the desired effect. The Court ought to remember that it is a grave step to issue a search warrant directing that a man's house should be invaded and searched. It is necessary that the power to issue search warrants should not be exercised without full appreciation of the gravity of the step, and after the Court has come to the conclusion that the step is really necessary in the ends of justice. *Mulchand v. Emperor.*

12 Cr. L. J. 175 :
9 I. C. 991 : 8 A. L. J. 517.

—S. 96—*Search—Warrant—Magistrate, duty of.*

The act of issuing a search warrant is a judicial act, and before a Magistrate issues it, it is his duty to weigh the circumstances before making up his mind on the question. A mere statement in an affidavit that in the opinion of the deponent, a summons may not have the desired effect, is not sufficient to justify the issue of a search warrant. *Iyavoo Chetty v. Jehangir.*

18 Cr. L. J. 834 :
41 I. C. 66 : 1917 M. W. Mad. 491 :
6 L. W. 287 : A. I. R. 1918 Mad. 587.

—S. 96—*Search warrant—Magistrate acts in discharge of judicial functions.*

A Magistrate in directing a general search in view of an inquiry under Cr. P. C. is acting in the discharge of his judicial function and in an action against him for trespass in respect of the search as made, he may, if necessary, appeal for protection to the Act for the Pro-

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tection of Judicial Officers (Act XVIII of 1853). *Clarke v. Brojendra Kishore Roy.*

13 Cr. L. J. 693 P. C. :
16 I. C. 501 : 23 M. L. J. 32 :
16 C. W. N. 865 : 12 M. L. T. 171 :
10 A. L. J. 193 : 1912 M. W. N. 760 :
14 Bom. L. R. 717 :
10 C. L. J. 231 : 39 Cal. 53.

—S. 96—*Search warrant—Magistrate's jurisdiction to issue.*

The District Magistrate on receiving information of the commission of an offence cannot issue a search warrant under S. 96, para. (i) before he has acted judicially upon the information so received.

8 Cr. L. J. 235 :
12 C. W. N. 1075 : 35 Cal. 1076.

—S. 96—*Search warrant, addressed to accused—Non-compliance—Effect.*

A search warrant under S. 96 cannot be addressed to an accused person on his trial and he cannot be prosecuted under S. 175 because of his failure to produce the document mentioned in the warrant. *Raj Chandra v. Hara Kishore.*

12 Cr. L. J. 98 :
9 I. C. 564.

—S. 96.

Search warrant can be issued for purposes of enquiry being made or about to be made but not when it is made or about to be made otherwise than under the Code. *In re : Muhammad Tahir.*

35 Cr. L. J. 1024 :
149 I. C. 1021 : 36 B. L. R. 96 :
6 R. B. 406 : A. I. R. 1934 Bom. 104.

—S. 96 (1)—*Search warrant directing seizure of all goods of certain description, legality of—Duty of Magistrate to state reason.*

A Magistrate has no authority for issuing, on the application of the complainant, a search warrant ordering the summary seizure of all the goods of a certain description in the possession of the accused. Where the Magistrate gives no reasons whatever for believing that the accused would not produce the articles in question if a summons were issued to him for their production, the requirements of sub-s. (1), S. 96 are not complied with, and the order of the Magistrate issuing the search warrant is illegal and improper. *Piyare Lal v. Thakar Datt Sharma.*

17 Cr. L. J. 60 :
32 I. C. 652 : 12 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 274.

—S. 96—*Search warrant, legality of—Complainant's right to inspect articles.*

Once a Magistrate has taken cognizance of an offence, it is within his power to issue a search warrant under S. 96. It is not material to consider whether he will eventually decide to make an order for investigation by the Police or whether he will call upon the petitioner to stand his trial or whether he will dismiss the complaint. Once the articles are brought before the Court in execution of the search warrant, inspection thereof may be allowed to the

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complainant. *Ajoy Krishna Sarkar v. S. G. Bose.* 30 Cr. L. J. 705 :

116 I. C. 721 : 49 C. L. J. 164 :

33 C. W. N. 369 : I. R. 1929 Cal. 497 :

A. I. R. 1929 Cal. 176.

———Ss. 96, 98—*Search warrant, object of, in theft case.*

In a case of theft, the whole object of issuing a search warrant under Ss. 96 and 98, to search the house of the accused for the property alleged to be stolen, is to secure for the purpose of the trial identification of the property and to ascertain whether it is really in the possession of the accused or not. A delay of more than three weeks in the issue of a search warrant in a prosecution for theft, defeats the purpose for which the warrant is issued. *Bilas Roy Chaudhuri v. Ram Gopal Khemkar.* 19 Cr. L. J. 707 :

46 I. C. 291 : 22 C. W. N. 719 :

A. I. R. 1919 Cal. 959.

———S. 96—*Search warrant, scope and object of—Practice.*

The power of issuing a search warrant is not intended to be used for the purpose of giving complainants an opportunity of fishing for evidence. The warrant is intended for use in respect of definite documents believed to exist, which must be clearly specified in the warrant, and before issuing it, the Magistrate must have before him some information or evidence that the documents are necessary or desirable for the purposes of the inquiry before him. To issue a search warrant for the search of a man's house and for the production of all papers and books in it for the purposes of an inquiry as to whether he had used or sold articles with a counterfeit trademark, is a gross perversion of the law. *L. B. V. S. M. Moideen Brothers v. Eng Thaug & Co.* 17 Cr. L. J. 543 :

36 I. C. 591 : A. I. R. 1917 L. B. 131.

———S. 96—*Search warrant, when may be issued.*

Per *Chaudhuri, J.*—S. 96 does not contemplate an order thereunder to further a Police investigation which may or may not result in an inquiry, but refers "to an inquiry now being made or about to be made." Per *Newbould, J.*—S. 96 empowers a Magistrate to issue a search warrant before any proceedings of any kind are initiated and in view of an inquiry about to be made. There is a distinction between "an inquiry about to be made" and "an investigation that is being made" the former does not include every investigation. *Jagannath Agarwalla v. Emperor.* 21 Cr. L. J. 573 :

57 I. C. 93 : 24 C. W. N. 405 :

31 C. L. J. 267 : A. I. R. 1920 Cal. 352.

———S. 96—*Search warrant, when to be issued—Magistrate, duty of.*

When there is no inquiry or trial or other proceeding under Cr. P. C., a general search warrant cannot be issued under S. 96. The provision of the law requiring the sanction of a Magistrate before the issue of a search warrant means that the Magistrate should apply his

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mind to the facts and ought not to issue a search warrant simply because a Police Officer asks him to do so. *Pratt v. Emperor.*

21 Cr. L. J. 313 :

55 I. C. 473 : 24 C. W. N. 403 :

31 C. L. J. 345 : 47 Cal. 597 :

A. I. R. 1920 Cal. 43.

———S. 96.

The remarks of a Magistrate which are intended to supply the omissions or defects found in a warrant and to vary its terms are not admissible as evidence. *Public Prosecutor v. Subramania Shastri.* 36 Cr. L. J. 799 :

155 I. C. 496 : 1934 M. W. N. 1170 :

68 M. L. J. 421 : 41 L. W. 679 :

7 R. M. 582 : A. I. R. 1935 Mad. 648.

———S. 96—*Transfer of complaint by District Magistrate to Deputy Magistrate for disposal—Search warrant by latter—Omission to examine complainant on oath.*

Where a District Magistrate transferred a complaint to the Deputy Magistrate for enquiry and disposal, and the latter, without examining the complainant on oath, issued a search warrant under S. 96 : *Held*, that the issue of the search warrant was illegal and that the warrant should be discharged. (*Queen-Empress v. Mahant of Tirupatti*, 13 Mad. 18 followed.) *In re : Sinagurunatha Pillay.*

11 Cr. L. J. 835 :

7 I. C. 895.

———Ss. 96, 100—*Warrant—Requisite form.*

If the substance of a warrant issued under S. 100, complies with the requirements of that section, the warrant is perfectly legal, no matter what prescribed form is used for the warrant. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Mozam Molla.*

20 Cr. L. J. 47 :

48 I. C. 687 : 28 C. L. J. 304 :

45 Cal. 905 : A. I. R. 1918 Cal. 3.

———S. 96 (1)—*Proceedings in contemplation—Issue of warrant.*

A warrant can be issued not only in proceedings already started but also when proceedings are in contemplation. *M. I. Mamsa v. Emperor.* 38 Cr. L. J. 983 :

170 I. C. 870 : 10 R. Rang. 111 :

A. I. R. 1937 Rang. 206.

———S. 96 (1)—*Search warrant, when should be issued—Duty of Magistrate.*

A search warrant is not to be issued automatically or for the mere asking. It can only be issued when the Court considers that the purposes of an enquiry would be served. The Magistrate must apply his judicial mind to the question and must satisfy himself that the issue of the warrant is necessary and that the requirements of the law for the issue of the warrant are present. He must see whether there are sufficient materials before him to justify the drastic action which he is being invited to take. When it appears that a Magistrate has not applied his mind in this way, and when it appears that action has been taken on

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insufficient material, the High Court will always interfere. *K. Hoshide v. Emperor*.

41 Cr. L. J. 329 :
186 I. C. 486 : I. L. R. 1940 1 Cal. 231 :
44 C. W. N. 82 : 12 R. C. 510 :
A. I. R. 1940 Cal. 97.

—S. 96 (1) (3)—*Issue of warrant in anticipation of inquiry or trial—Search.*

For a Magistrate to use his powers under S. 96 (1) (3), it is not necessary that there should be an inquiry, trial or other proceeding pending at the time the search warrant is issued and he can use his powers under this clause in anticipation of such an inquiry or trial. *K. Hoshide v. Emperor*.

41 Cr. L. J. 329 :
186 I. C. 486 : I. L. R. 1940 1 Cal. 231 :
44 C. W. N. 82 : 12 R. C. 510 :
A. I. R. 1940 Cal. 97.

—S. 96 (1) (3)—*Issue of warrant to help investigation by Police or Customs Officers.*

Cl. 3 of S. 96 (1) has nothing whatsoever to do with an investigation. It does not provide for any step to be taken in aid of an investigation but it provides for something which the Magistrate may do for the purpose of serving an inquiry, trial or other proceeding under the Code. Cl. 3 of S. 96 (1) does not empower a Magistrate to issue a warrant to help the investigation by the Police and the Customs Authorities. *K. Hoshide v. Emperor*.

41 Cr. L. J. 329 :
186 I. C. 486 : I. L. R. 1940 1 Cal. 231 :
44 C. W. N. 82 : 12 R. C. 510 :
A. I. R. 1940 Cal. 97.

—S. 98—*Discovery of excisable article—Illegal search—Direct evidence available—Conviction, validity.*

Where the discovery of an excisable article in the possession of the accused is proved by direct evidence, any irregularity or illegality in the search can neither vitiate the trial nor affect the conviction. *Ali Ahmad Khan v. Emperor*.

25 Cr. L. J. 967 :
81 I. C. 615 : 21 A. L. J. 858 :
46 All. 86 : A. I. R. 1924 All. 214.

—S. 99-A.

See Penal Code, 1860, Ss. 124-A, 153-A.

—S. 99-A.—*Forfeiture of books—Conditions—Intention to promote enmity, necessity of—Penal Code, S. 153-A.*

In order to justify forfeiture under S. 99-A, it is necessary for the Government to satisfy the Court, that on the evidence produced by the prosecution, a conviction could have been had under S. 153-A of the Penal Code. *Lajpat Rai v. Emperor*.

29 Cr. L. J. 899 :
111 I. C. 659 : 29 P. L. R. 385 :
9 Lah. 663 : A. I. R. 1928 Lah. 245.

—S. 99-A.

Powers under S. 99-A are in public interest. *M. L. C. Gupta v. Emperor*. (S. B.)

37 Cr. L. J. 599 :
162 I. C. 507 :
1936 A. L. J. 165 : 1936 A. W. R. 227 :
8 R. A. 873 : A. I. R. 1936 All. 314.

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—S. 99-A—*Scope of—Conditions of applicability.*

In order to make S. 99-A applicable, two things are necessary : (1) promotion of feelings of enmity or hatred, and (2) between different classes of the subjects. Everything done which may have a remote bearing on promoting feelings of hatred or enmity would not be an offence. There should either be the intention to promote such feelings or such feelings should be promoted as a result of such publications. Again feelings of enmity and hatred should be aroused between two sections of the people which can be classified as two groups opposed to each other. A vague, indefinite and nameless body, even though given one name, may not, in certain circumstances, be considered as a class by itself, particularly if individuals overlap indiscriminately, although it is not necessary that the classes should be so distinct and separate as to make it easy to put an individual in one class or the other. The section does not contemplate the penalising of political doctrines, even though of the extreme kind like Communism, but merely such writings as directly promote feelings of hatred or enmity. *Gautam v. Emperor*.

37 Cr. L. J. 943 :
164 I. C. 253 : 1936 A. L. J. 786 :
9 R. A. 135 : 1936 A. W. R. 638 :
A. I. R. 1936 All. 561.

—S. 99-A—*Scope.*

Scope of S. 99-A, is wider than S. 153-A, Penal Code. *M. L. C. Gupta v. Emperor*. (S. B.)

37 Cr. L. J. 599 :
16 I. C. 507 : 1936 A. L. J. 165 :
1936 A. W. R. 227 :
8 R. A. 873 : A. I. R. 1936 All. 314.

—S. 99-A—*Translation of original book—Original authors not having His Majesty or British Government in mind—Translation, if comes within S. 99-A.*

It cannot be laid down as any general proposition that translations should be permissible when the originals are not proscribed. Translations in Indian vernaculars may become accessible to a very large population and the danger arising therefrom may be immensely greater, calling for the intervention of the Government. The Courts are not concerned with the policy underlying such forfeitures. The sole consideration is whether the books contain any objectionable matter referred to in S. 99-A. Where the authors of the original books did not have His Majesty the King-Emperor or the Government established by law in British India particularly in mind, and were attempting to deal with certain supposed conditions prevailing in the entire world, it is very difficult to hold that these books bring or attempt to bring into hatred or contempt or excite or attempt to excite disaffection towards His Majesty or the Government established by law in British India. It is possible that such writing may have the remote effect of causing some disaffection. But it cannot be said that there was any such intention directly implied. When they seem to be directed against supposed capitalists who exploit the working classes, the

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translation cannot be brought within the scope. *M. L. Gautam v. Emperor*.

37 Cr. L. J. 943 :
164 I. C. 253 : 1936 A. L. J. 786 :
9 R. A. 135 : 1936 A. W. R. 638 :
A. I. R. 1936 All. 561.

———Ss. 99-A, 99-B—*Forfeiture of seditious publication—Application to set aside forfeiture—Onus of proof—Right to begin.*

To set aside an order of the Local Government forfeiting a publication, it is convenient to allow the Government Advocate to begin and state the case in support of the Local Government's orders. The question of onus of proof is, however, after both parties have been fully heard, of very little importance. *Saigal v. Emperor*.

31 Cr. L. J. 840 :
125 I. C. 470 : 1930 A. L. J. 713 :
A. I. R. 1930 All. 401.

———Ss. 99-A, B—*Advertisements, forfeiture of.*

The mere fact that a document is only an advertisement of a forthcoming book is not sufficient to protect it from forfeiture under S. 99-A. Where the contents of an advertisement relating to a book do not themselves afford sufficient basis for an order of forfeiture, the advertisement cannot be forfeited even though the book is seditious. *Saigal v. Emperor*.

31 Cr. L. J. 840 :
125 I. C. 470 : 1930 A. L. J. 713 :
A. I. R. 1930 All. 401.

———Ss. 99-A, B—*Charges of translation.*

Where in an application under S. 99-B, the translation of the publication in question was made by the Government at its expense and both sides took advantage of it: *Held*, that the equitable course was to direct that the Government be recouped for such expenses as they had properly incurred in the proportion of the costs awarded to them. *R. Saigal v. Emperor*.

31 Cr. L. J. 840 :
125 I. C. 470 : 1930 A. L. J. 713 :
A. I. R. 1930 All. 401.

———Ss. 99-A, B—*Costs of application.*

In the absence of specific rules in that behalf, costs of an application under S. 99-B should be awarded according to the practice followed in miscellaneous civil proceedings. *Saigal v. Emperor*.

31 Cr. L. J. 840 :
125 I. C. 470 : 1930 A. L. J. 713 :
A. I. R. 1930 All. 401.

———Ss. 99-A, B—*Determination of seditious nature—Legality of—Publication to be considered as a whole.*

Where two views are reasonably possible with regard to a publication, which has been ordered to be forfeited, the applicant must have the benefit of that which is most favourable to him. In considering the nature of a book which has been ordered to be forfeited, it would be unfair, generally speaking, to pick out objectionable sentences here and there and condemn the

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whole book on account thereof; the book must be considered as a whole. *Saigal v. Emperor*.

31 Cr. L. J. 840 :
125 I. C. 470 : 1930 A. L. J. 713 :
A. I. R. 1930 All. 401.

———S. 99-B—*Attack on religion, whether amounts to attack on followers—Licence of missionaries, limits of.*

The liberty to criticize the religious beliefs of others does not include a licence to resort to vile and abusive language. The licence of a missionary to advocate his own religion and to denounce other religions is not unlimited. Holding up to obloquy and derision, a religious belief would amount to stirring up resentment and hatred on the part of those who accept it as their creed. There is no distinction between an attack upon a system of religion in the abstract and one upon the people who believe in it. *Kali Charan Sharma v. Emperor*.

29 Cr. L. J. 968 :
112 I. C. 56 : I. L. T. 40 All. 5 :
49 All. 856 : A. I. R. 1927 All. 649.

———S. 99-B—*Intention—Tests—Extrinsic evidence.*

The question whether a writer has promoted or attempted to promote enmity between the classes must be judged primarily by the language of the book itself, though it is permissible to receive and consider external evidence either to prove or rebut the meaning ascribed to it in the order of forfeiture. If the language of a book is of a nature calculated to produce or to promote feelings of enmity or hatred, the writer must be presumed to intend that which his act was likely to produce. *Kali Charan Sharma v. Emperor*.

29 Cr. L. J. 968 :
112 I. C. 56 : I. L. J. 40 All. 5 :
49 All. 856 : A. I. R. 1927 All. 649.

———S. 99-B—*Penal Code, S. 153-A—Forfeiture of book promoting class enmity—Application to set aside forfeiture—Burden of proof.*

Where an application is made under S. 99-B to have an order of forfeiture set aside on the ground that the matter published does not fall within the mischief of S. 153-A, Penal Code, it is for the applicant to convince the Court that the order is a wrong order. *Kali Charan Sharma v. Emperor*.

29 Cr. L. J. 968 :
112 I. C. 56 : I. L. R. 40 All. 5 :
49 All. 856 : A. I. R. 1927 All. 649.

———S. 99-B—*Burden of proof—Right to begin.*

The language of S. 99-B clearly indicates that it is the applicant who has to make out a case in his favour. Consequently, it is the right of the applicant to open the case. *M. L. C. Gupta v. Emperor*. (S. B.)

37 Cr. L. J. 599 :
162 I. C. 507 : 1936 A. L. J. 165 :
8 R. A. 873 : 1936 A. W. R. 227 :
A. I. R. 1936 All. 314.

———S. 99-D—*Application to set aside order of forfeiture—High Court, power of.*

Under S. 99-D, the High Court is precluded from considering any other point than the question whether in fact the matters contained

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in the document that has been proscribed were seditious or not. The onus is on the Government to prove that the publication of a document is seditious. *Bajinath Kedia v. Emperor*.

26 Cr. L. J. 679 :
86 I. C. 55 : 23 A. L. J. 1 : L. R. 6 All. 65 Cr. :
47 All. 298 : A. I. R. 1925 All. 195.

—S. 99-D—Benefit of doubt.

Where a passage is open to two interpretations and the matter is in doubt, the Bench would not be satisfied that the matter is objectionable : and must, therefore, set aside the order of forfeiture. *M. L. C. Gupta v. Emperor*. (S. B.)

37 Cr. L. J. 599 :
162 I. C. 507 : 1936 A. L. J. 165 :
8 R. A. 873 : 1936 A. W. R. 227 :
A. I. R. 1936 All. 314.

—S. 100.

See Cr. P. C., 1898, Ss. 55 and 99.

—S. 100—*Applicability of—Order for removal of child from custody of accused if no steps are taken to move higher Court for getting rid of order, propriety of.*

On a complaint made to the effect that the adopted son of the complainant's daughter-in-law living with her was removed from her house by his natural father without her consent and was not brought back, the accused produced the boy in Court before any search warrant was issued and admitted having made a contract for giving the boy in adoption but denied any actual ceremony of adoption. Thereafter when the complainant filed a written statement and produced the original contract, the Magistrate adjourned the case to a certain date and ordered that "if the High Court be not moved by that date, he would order the boy to be made over to the complainant." *Held*, (1) that the order was improper and should be set aside ; (2) that in a matter like this, the health or safety of the child was the paramount consideration ; (3) that it was doubtful whether S. 100 applied to the case. *Chagan Raj v. Hira Lal*.

20 Cr. L. J. 729 :
52 I. C. 889 :
29 C. L. J. 603 : 24 C. W. N. 104 :
A. I. R. 1920 Cal. 562.

—S. 100—*Complaint against husband for keeping wife in confinement—Procedure to be adopted by the Magistrate.*

On a complaint against a husband for keeping his wife in confinement, the Magistrate taking cognizance of the case is not justified in passing a hasty order. Before finally disposing of the proceedings, he is bound to hear both sides and make such inquiry as may seem necessary. If he finds that the confinement amounted to an offence, he should let the wife go and warn the husband against interfering with her except through a Civil Court. If, on the other hand, he arrives at the conclusion that such is not the case, he should advise the wife to go home with her husband warning the husband at the same

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time against using any coercion in taking the wife with him. *Sher Shah v. Sukina*.

11 Cr. L. J. 450 :
7 I. C. 354 : 29 P. W. R. 1910 Cr.

—S. 100—*Complaint by person against certain persons that they were carrying on intrigue with his wife—Wife living in her mother's house—No allegation that wife was illegally confined—Issue of warrant for wife's arrest, legality of.*

A person lodged a complaint against four persons charging them with an offence under S. 497, Penal Code, alleging that they were carrying on an intrigue with his wife. The information before the Magistrate was that the wife was living in her mother's house, and there was not even a suggestion in the complaint that she was being detained by her mother against her will. On receipt of that complaint, the Magistrate issued a warrant under S. 100 against the wife, and when she had been arrested under that warrant, he proceeded to make an order consigning her to a certain *ashram* : *Held*, that there was no jurisdiction to issue a warrant under S. 100, and the subsequent order directing what amounted to detention in custody, of the person arrested under that warrant was clearly, also without jurisdiction. *Thakamani Debi v. Nepal Chandra Bhattacharyya*.

40 Cr. L. J. 58 :
178 I. C. 405 : 11 R. C. 355 (2) :
43 C. W. N. 363 : A. I. R. 1938 Cal. 704.

—S. 100—*Grown-up ward denying allegation of wrongful confinement—Stay of proceeding under—Civil remedy of the guardian.*

On a complaint being made to the Magistrate that a minor ward of the complainant was being wrongfully confined by the accused, the Magistrate issued a search warrant for the production of the ward. The boy, who was quite grown-up and able to take care of himself, appeared before the Magistrate, before the warrant was executed and repudiated the fact of his being wrongfully confined. The Magistrate, however, fixed a day for inquiring into the allegations of the complainant : *Held*, that under the circumstances, the Magistrate should have declined to take any further action in the matter, leaving the guardian to his civil remedies for the custody of his ward. *Imperator v. Piru*.

10 Cr. L. J. 219 :
2 S. L. R. 2.

—S. 100—"Judicial proceedings," meaning of—*Inquiry under S. 100, whether judicial proceeding.*

Where a Magistrate has before him an application under S. 100, containing the allegations that are required by the section and asking him to issue a search warrant under it, it is incumbent on such Magistrate to satisfy himself that there is some foundation for the application. *Abdul Aziz v. Emperor*.

17 Cr. L. J. 491 :
36 I. C. 171 : 31 P. R. 19 Cr. :
A. I. R. 1916 Lah. 281.

—S. 100—"Respectable" meaning of.

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Per *Young, J.*—The word “respectable” in S. 100, does not mean “respectable and independent or unconnected with the police.” *Ti Ya v. Emperor.*

15 Cr. L. J. 441 :
24 I. C. 32 : 7 Bur. L. T. 143 :
A. I. R. 1914 L. Bur. 128.

———S. 100—*Search warrant—Irregular Resistance—Penal Code (Act XLV of 1860), Ss. 99, 147, 225-B, 323, 332—Right of private defence.*

In a search warrant under S. 100, the name and designation of the Police officer or other person who was to execute the warrant was inadvertently omitted. The warrant was made over to the Assistant Court Inspector who, by an endorsement, sent it to the Sub-Inspector of the *Thana* and to the officer for the time being in charge of the *Thana*. When the warrant reached the *Thana*, the Sub-Inspector was temporarily absent, and the head constable, who was for the time being in charge of the *Thana*, proceeded to execute the warrant. The woman searched for was found and apprehended with a view to producing her in Court in accordance with the warrant. The accused, however, who were 14 in number, took possession of the woman by force, and in the fight which took place, the Police officer received injuries : *Held*, that the accused could not be held to be protected by a right of private defence. They could not be convicted under Ss. 225-B and 332 of the Penal Code, but if the prosecution could establish that hurt was caused and that the causing of hurt was a common object of the accused, they would be liable to punishment under S. 147, I. P. C., or if it were found that hurt was caused by less than five persons, the persons who caused hurt would be liable to punishment under S. 323 of the I. P. C.

Emperor. v. Gaman. 14 Cr. L. J. 142 :
18 I. C. 894 : 155 P. L. R. 1913 :
20 P. W. R. 1913 Cr. : 16 P. R. 1913 Cr.

———S. 100.

“So confined” in S. 100, scope of—Police Officer executing search warrant, need not look to its legality—constables executing warrant under colour of office and in good faith—Technical flaw in warrant—persons against whom it was issued, have no right of private defence. *Kallan Beg v. Emperor.*

37 Cr. L. J. 548 :
162 I. C. 339 (b) : 1936 A. W. R. 223 :
1936 A. L. J. 468 : 8 R. A. 862 :
A. I. R. 1936 All. 306.

———S. 101—*Applicability to warrants under S. 6, Burma Gambling Act.*

S. 101 is not applicable to warrants issued under S. 6 of the Burma Gambling Act. *P. O. Thwai v. Emperor.*

21 Cr. L. J. 9 :
[54 I. C. 57 : 12 Bur. L. T. 165 :
A. I. R. 1920 L. Bur. 49.

———S. 102.

See Opium Act, S. 14.

———Ss. 102, 103—*Application to searches under—Bengal Excise Act.*

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The provisions of Ss. 102 and 103 do not apply to searches made under the Bengal Excise Act. *Harbhanjan Sao v. Emperor.*

28 Cr. L. J. 579.
102 I. C. 547 : 31 C. W. N. 667 :
8 A. Cr. R. 114 : 54 Cal. 601 :
A. I. R. 1927 Cal. 527.

———Ss. 102, 103—*Search by Police Officer—Non-compliance with S. 103—Search, whether illegal.*

The provisions of S. 165 (4) are not imperative but apply to provisions of Ss. 102 and 103 to a search made by the Police only so far as may be. The mere fact that in making a search under S. 165, the Police took two independent witnesses with them and did not call witnesses from the village does not necessarily render the search illegal. *Shiam Lal v. Emperor.*

28 Cr. L. J. 652 :
103 I. C. 108 : L. R. 8 All. 92 Cr.
8 A. I. Cr. R. 7 :
A. I. R. 1927 All. 516.

———S. 103.

See (i) Opium Act, 1878, Ss. 14, 15.
(ii) Penal Code, S. 187.
(iii) Public Gambling Act, 1867,
Ss. 3, 4, 5.
(iv) U. P. Excise Act, 1910, S. 53.
(v) U. P. Excise Act, 1914, S. 10.

———S. 103.

A dismissed constable is not a respectable inhabitant of the locality within the meaning of S. 103. *Indar Dat v. Emperor.*

32 Cr. L. J. 818 :
132 I. C. 185 : I. R. 1931 Lah. 537 :
A. I. R. 1931 Lah. 408.

———S. 103—*Bombay Abkari Act (V of 1878), S. 43 (1) (a)—Provisions as to search, object and importance of—Omission to comply with formalities, effect of.*

The provisions contained in S. 103, that the *Panchas* are to attend and witness the search, require that the *Panchas* should actually accompany the persons making the search and should be actual witnesses to the fact of the finding of the property. It is not sufficient that the *Panchas* should merely be summoned and kept present outside the building while the search is being carried on within it, and then called in to see what has been found. But the mere fact that the *Panchas* were not present throughout the search and did not witness every detail of it, would not be enough in itself to justify in setting aside the conviction. Even if the search has not been legally conducted, it is open to the Court to find the fact of possession of an illicit article proved. A conviction cannot, however, be sustained where the failure to comply with the provisions of the law relating to searches has created a reasonable doubt as to whether the article found was really in the possession of the accused. *Dinkar Nhamu Mangaonkar v. Emperor.*

31 Cr. L. J. 927 :
125 I. C. 713 : 32 Bom. L. R. 344 :
54 Bom. 471 : A. I. R. 1930 Bom. 169]

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—S. 103—*Burma Excise Act (V of 1917), S. 60—Search of premises—Witnesses not belonging to immediate vicinity.*

The provision contained in S. 103 of the Cr. P. C. that the witnesses to a search should be inhabitants of the locality, is intended to operate in favour of the accused, and, in a densely populated town like Rangoon, means persons in the immediate vicinity and not persons who live a couple of miles away and are friends of the officer making the search. The house of the accused was raided by the Inspector and Sub-Inspector of Excise along with certain other persons. The two respectable inhabitants of the locality who had been called in to witness the search, lived a couple of miles away from the house of the accused and were friends of the Sub-Inspector: *Held*, that the search contravened the provisions of S. 103 and that for these reasons and also because the Inspector of Excise was not called as a witness, the conviction of the accused for illegal possession of opium could not be maintained. *Ma Htay v. Emperor*. 26 Cr. L. J. 827 : 86 I. C. 475 : 4 Bur. L. J. 2 : A. I. R. 1925 Rang. 205.

—S. 103.

Conviction under S. 9 (a), Opium Act, set aside in appeal on ground that search witnesses did not substantiate evidence of Excise Officer—Evidence of officers substantiated by documentary evidence: *Held*, evidence of officers should be accepted—Provisions of S. 103 are meant for greater certainty and security. *Emperor v. Ma Thein*.

37 Cr. L. J. 331 : 160 I. C. 816 : 8 R. Rang. 434 : A. I. R. 1936 Rang. 15.

—S. 103—Duty of prosecution to examine witnesses to search list.

It is the duty of the prosecution to produce the persons who have signed the search list as witnesses at the trial. *Emperor v. Balai Ghosh*.

31 Cr. L. J. 667 : 124 I. C. 486 : 50 C. L. J. 518 : A. I. R. 1930 Cal. 141.

—S. 103—Examination of search witnesses.

No duty is cast on the prosecution to put every search witness into the witness-box. *Hari Narayan Chandra v. Emperor*.

29 Cr. L. J. 49 : 106 I. C. 545 : 46 C. L. J. 368 : 9 A. I. Cr. R. 228 : A. I. R. 1928 Cal. 27.

—S. 103.

Evidence Act, Ss. 35, 159 and 161—*Pandanamas* containing confession how to be used, explained. *Baloch Pirzali v. Emperor*.

34 Cr. L. J. 848 : 144 I. C. 772 : 6 R. S. 8 : A. I. R. 1933 Sind 220.

—S. 103—Failure to invite respectable witnesses, effect of—Search conducted by responsible officers, legality of.

The object of the Legislature in requiring

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the presence of two or more respectable witnesses of the locality is to guard against possible chicanery and unfair dealing on the part of the officers entrusted with the execution of the search warrant and to ensure that anything incriminating which may be said to have been found in the premises searched was really found there and was not introduced by the members of the search party. The failure to call such persons does not, however, render the search illegal, especially where the search is conducted by responsible and respectable officers in the presence of a Magistrate and there is an explanation forthcoming of such failure. *Abdullah v. Emperor*. 27 Cr. L. J. 73 : 91 I. C. 249 : 1 Lah. Cas. 5.

—S. 103—House search—Witness brought from distance.

The mere fact that one of the search witnesses is brought by the Police from a distance of about half a mile from the place of search is not sufficient to discredit that witness, unless it is shown that he was in any way connected with the Police. *Hari Narayan Chandra v. Emperor*.

29 Cr. L. J. 49 : 106 I. C. 545 : 46 C. L. J. 368 : 9 A. I. Cr. 228 : A. I. R. 1928 Cal. 27.

—S. 103.

In conducting a search, the Police are bound to allow the occupant of the place to attend during the search. *Bhikugir v. Emperor*.

34 Cr. L. J. 439 : 142 I. C. 790 : 1932 A. L. J. 530 : L. R. 13 A. 92 Cr. : I. R. 1933 All. 147 : A. I. R. 1932 All. 449.

—S. 103—Local Panchas.

In a search under S. 103, the fact that the Panchas were not local people, is an irregularity which can be cured under S. 537. *Raghunath v. Emperor*.

33 Cr. L. J. 733 : 139 I. C. 281 : 34 Bom. L. R. 901 : I. R. 1932 Bom. 484 : A. I. R. 1932 Bom. 610.

—S. 103—Local witnesses.

The failure to call inhabitants of the locality as witnesses to search does not make a search illegal. *Satagopala Charlu v. Safrughna Behara*.

13 Cr. L. J. 763 : 17 I. C. 25 : 23 M. L. J. 445 : 1912 M. W. N. 1111.

—S. 103—"Locality," meaning of.

The word 'locality' in S. 103 does not mean the same quarter of the town as the place which is searched. *Ah Sein v. Emperor*.

12 Cr. L. J. 479 : 12 I. C. 87 : 4 Bur. L. T. 222.

—S. 103—Locality, meaning of.

The word "locality" used in S. 103 is a comprehensive word, and may well include villages within three or four miles of the village where the search is to be conducted. *Emperor v. Mast Ram*.

32 Cr. L. J. 699 : 131 I. C. 441 : 8 O. W. N. 128 : I. R. 1931 Oudh 201 : A. I. R. 1931 Oudh 115.

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—S. 103—*Locality, meaning of.*

The word "locality" in S. 103 does not mean the same quarter of the town. The stress is on the word "respectable" and not on the word "locality" in sub-s. (1), S. 103. *Ghandal Kalidas v. Emperor*. 36 Cr. L. J. 704 : 154 I. C. 1038 : 28 S. L. R. 41 : 7 R. S. 181 : A. I. R. 1934 Sind 759.

—S. 103—*Object of—House search—Witnesses required.*

In laying down the procedure to be followed in a house search, the intention of the Legislature is to protect the person whose house is searched and to give confidence to the neighbours. Search witnesses should be of some standing whose words can be believed, and not necessarily those living within a stone's throw of the house to be searched. The stress is on the word 'respectable' and not the word 'locality' in sub-s. (1). *Ah Poh v. Emperor*. 18 Cr. L. J. 1009 : 52 I. C. 753 : A. I. R. 1917 L. Bur. 91.

—S. 103—*Penal Code (Act XLV of 1860), S. 332—Search, whether can be conducted without warrant—Witnesses, absence of, effect of—Search, legality of—Deterring public servant from doing duty.*

An officer of Police, empowered to conduct an investigation, is entitled to carry out a search without a warrant, but in carrying out such search, he is bound to follow the provisions of S. 103 in the matter of witnesses, and if he omits to do so, a house-holder would be justified in closing his door and refusing ingress into the house and would not be guilty of an offence under S. 332 of the Penal Code. While it may be necessary to oppose a Police Officer from forcing his way into a house in order to honestly prevent an illegal search, there would be no justification for compelling him to do something illegal. *Nirmal Singh v. Emperor*. 20 Cr. L. J. 695 : 52 I. C. 663 : 17 A. L. J. 1047 : 42 All. 67 : A. I. R. 1919 All. 41.

—S. 103—*Permitted, meaning of.*

The word "permitted" in S. 103 (3) cannot be taken to mean that the person whose premises are searched shall be present and that he must be given the option of being present. *Hari Narayan Chandra v. Emperor*. 46 Cr. L. J. 368 : 106 I. C. 545 : 9 A. I. Cr. R. 228 : A. I. R. 1928 Cal. 27.

—S. 103—*Police officers signing as witnesses, propriety of.*

An officer who is connected with the investigation cannot be deemed to be an entirely satisfactory witness for the purpose of proving the search. *Emperor v. Balai Ghosh*. 31 Cr. L. J. 667 : 124 I. C. 486 : 50 C. L. J. 518 : A. I. R. 1930 Cal. 141.

—S. 103.

Police officer taking with him witnesses of questionable responsibility when respectable persons can be found—Inference is that he was

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prompted by desire to have such witnesses as would believe any story he might put forward. *Sadhu v. Emperor*. 36 Cr. L. J. 742 : 155 I. C. 406 : 7 R. A. 926 : A. I. R. 1934 All. 374.

—S. 103—*Requirements of—Every process in conduct of search must be witnessed by respectable witnesses—Search under S. 103—Evidence of search, if can be given irrespective of evidence of search list—Criminal liability of person not bound by law to do a thing—Penal Code (Act XLI of 1860), S. 187.*

The requirements of a statute must be strictly observed and complied with before the liberty of the subject can be taken away by sending him to jail or by exacting a fine from him. Where no order in writing is issued by the officer concerned under S. 103, to attend and witness a search, no person is bound by law to render assistance to him in making the search, if a person who is not bound by law to do a certain act voluntarily agrees to do it, he will not be deemed to have made himself subject to any criminal liability that may attach to the non-performance of the act. If, therefore, the witnesses attend and witness a search on a verbal request of the officer concerned but refuse to sign the search list, they are not guilty of an offence under S. 187, Penal Code, as they are not bound to sign it. Per *Varma, J.*—S. 103, enacts that searches must be conducted with all due care, every process in the conduct of the search must, therefore, be witnessed by respectable search witnesses. Per *Manohar Lal, J.*—Where a search has been conducted under S. 103, evidence can be given regarding the things and regarding the places in which they were found irrespective of the evidence of the list which the law directs to be drawn up relating to the particulars of the property found and the provisions of the Evidence Act do not prevent the adoption of this course. A search cannot be made in writing and the observations of physical facts must always and can be allowed to be proved by oral testimony in Courts. *Ram Prasad v. Emperor (F. B.)*. 39 Cr. L. J. 796 : 176 I. C. 787 : 19 P. L. T. 461 : 4 B. R. 772 : 11 R. P. 107 : 17 Pat. 632 : A. I. R. 1938 Pat. 403.

—S. 103—*Search—Necessary precaution.*

The rule that the constables and the search witnesses should be searched before they enter the premises to be searched, ought never to be neglected. Rule should be strictly complied with. *Emperor v. Mahmud Ali Khan*. 34 Cr. L. J. 641 : 143 I. C. 781 : 1933 A. L. J. 746 : L. R. 14 All. 197 Cr. : 55 All. 557 : I. R. 1933 All. 333 : A. I. R. 1933 All. 438.

—S. 103—*Search by Police—Duty of Police to secure respectable witnesses.*

The Police in making a search must make an attempt to secure two or more respectable inhabitants of the locality to attend and witness the search, and if no such persons are available, some evidence to that effect must be given. *Emperor v. Bala Ghosh*. 31 Cr. L. J. 667 : 124 I. C. 486 : 50 C. L. J. 518 : A. I. R. 1930 Cal. 141.

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—S. 103—*Search irregular—Conviction.*

Where, as a result of irregular search, certain articles are found, the fact that the articles were found can nevertheless be proved and if the possession of the articles is found to be illegal, a conviction must follow. *Chera Hum Htvi v. Emperor.*

34 Cr. L. J. 652 :

143 I. C. 824 : 11 Rang. 107 :

I. R. 1933 Rang. 77 : A. I. R. 1933 Rang. 146.

—S. 103—*Search list—Evidence—Whether search list, the only evidence of its contents.*

The contents of a search list need not be proved by the search list alone. External evidence of its contents is admissible. *Elamathan v. Emperor.*

11 Cr. L. J. 136 :

5 I. C. 438.

—S. 103—*Search list—Parol evidence of the contents of, whether admissible.*

When a search has been conducted under S. 103, other evidence than the search list can be given regarding the things seized in the course of the search and regarding the places in which they were respectively found. If the narrative of an extrinsic fact has been committed to writing, it may be proved by parol evidence, even though such writing is required by law. *In re : Solia Naick.*

11 Cr. L. J. 576 :

8 I. C. 178.

—S. 103—*Search list ; value of—Oral evidence—Evidence Act (I of 1872), S. 91—Search list does not exclude oral evidence.*

A search list is simply a declaration, not on oath or affirmation or subject to cross-examination made by a Police Officer, and persons present at a search, that certain formalities were observed and certain events took place. A search list is not evidence of the facts stated therein, and oral evidence may be given as to what took place at the time of a search. The informalities in the manner in which a search is conducted may diminish the weight of the evidence given as to possession of the incriminating articles but they do not preclude the admission of oral evidence. *Public Prosecutor v. Sarabu Chennayya.*

11 Cr. L. J. 716 :

8 I. C. 809 : 33 Mad. 413.

—S. 103—*Search list added to after being signed by witnesses—Effect.*

A Police officer should not add any new items to a search list after it has been signed under S. 103, but his doing so, would not be a breach of S. 103 invalidating the search. *Htaung v. Emperor.*

15 Cr. L. J. 523 :

24 I. C. 835 : 7 Bur. L. T. 163 :

7 L. B. R. 275 : A. I. R. 1914 L. Bur. 258.

—S. 103—*Search of house—Witnesses present at search, evidence of—Arms Act (XI of 1878), Ss. 19 (f), 30—Search by Police Officer specially empowered to conduct searches.*

A Court is not bound to accept as true, the evidence of witnesses called in under S. 103 to witness a search. Where a Police Officer in charge of a reporting station is specially empowered by the Local Government to conduct searches in respect of offences under S. 19, clause (f) of the Arms Act, a search conducted

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by such officer in respect of an offence under that clause without obtaining a warrant from a Magistrate, is not illegal. *Babu Ram v. Emperor.*

19 Cr. L. J. 949 :

47 I. C. 801 : 16 A. L. J. 721 :

A. I. R. 1918 All. 113.

—S. 103.

Search should be conducted in a regular manner. *Muhammad Bashir v. Emperor.*

33 Cr. L. J. 943 :

140 I. C. 246 : 1932 A. L. J. 104 :

L. R. 13 All. 66 Cr. : I. R. 1932 All. 634 :

A. I. R. 1932 All. 185.

—S. 103—*Search under Opium Act not made in accordance with provisions of Code—Effect.*

A search under the Opium Act should conform to the provisions of S. 103, Cr. P. C. The Collector of Rangoon issued a warrant authorising an Excise Inspector and Excise Sergeant to search the shop of R. C. Sen and to seize or take possession of any morphia or marked money, &c. The Excise Inspector did not follow the course laid down by S. 103 of the former Cr. P. C. He went to an elder, and on the way, picked up a lighthouse-keeper, the Excise Sergeant and another person, who was afterwards sent to buy morphia, accompanying them to the elder's house. It did not appear that any list was made by the Excise Inspector and therefore none could have been signed by elders: *Held*, that the provisions of S. 103 were disregarded in two particulars, for the lighthouse-keeper had not been shown to be "a respectable inhabitant of the locality" but apparently an acquaintance of the Excise Inspector, who picked him up on the way, and asked him to accompany him; and secondly, no list was prepared by the Inspector and signed by the elder; and that, therefore, the appeal must succeed on these grounds alone: *Held*, also, that the appeal must succeed on the further ground that there was no proof that morphia was sold at all. *N. C. Sen v. Emperor.*

1 Cr. L. J. 992 :

10 Bur. L. R. 253.

—S. 103—*Search without witnesses—Complaint, cognizance of—Complainant, failure to examine—Irregularities in procedure—Prejudice to accused—Burden of proof—Opium Act (I of 1878), Ss. 9 (c), 14, 20—Illegal possession of opium—Search after sunset without witnesses—Failure to forward opium seized to nearest Police station, effect of.*

A Sub-Inspector of Excise entered the premises of the accused after sunset and after entering the premises, he sent for two search witnesses. A search was made and some opium was found. The Sub-Inspector thereupon arrested the accused and took him to the Police Station, but retained the opium found on the premises, which he produced in Court when he made his statement. He submitted a report and charge-sheet, and the Deputy Magistrate took cognizance of the case, treating the report of the Excise Sub-Inspector as a Police Report, and convicted the accused under S. 9 (c) of the Opium Act: *Held*, (1) that the proceedings

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before the Magistrate were irregular, inasmuch as he was not properly in seizin of the case—there was no regular complaint before him, and, even if there was, his omission to examine the complainant on oath as required by S. 200, Cr. P. C., was an illegality which vitiated the proceedings; (2) that the conviction could not be maintained by reason of the following serious irregularities by the Excise Sub-Inspector.

(a) his entry of the premises after sunset in contravention of S. 14 of the Opium Act;

(b) his entry of the premises without search witnesses in disregard of S. 103, Cr. P. C.;

(c) his keeping the investigation in his own hands and not delivering up the opium found to the nearest Police Station, in disregard of S. 20 of the Opium Act. *Lachmi Narain v. Emperor*.

20 Cr. L. J. 742 :

53 I. C. 150 : A. I. R. 1919 Pat. 452.

———S. 103—*Search witnesses previous convictions and one of them having civil suit against accused.*

On a search of the house of the accused by Excise Officers, a quantity of illicit liquor and materials for illicit distillation were recovered. There were serious discrepancies in the evidence given by the two search witnesses who had been previously convicted of criminal offences, and one of them had a civil suit against the accused: *Held*, that the search was illegal. *Haradhan Maity v. Emperor*. (S. B.)

40 Cr. L. J. 52 :

78 I. C. 398 : W. R. Rang. 228 :

A. I. R. 1938 Rang. 423.

———S. 103.

Search witnesses should be respectable persons—Non-compliance is not fatal unless accused is prejudiced in any way. *Daulat Ram v. Emperor*.

34 Cr. L. J. 723 :

144 I. C. 290 : 34 P. L. R. 689 :

I. R. 1933 Lah. 439 : A. I. R. 1933 Lah. 809.

———S. 103.

S. 103 refers only to the search of places and not of persons. *Local Government v. Nainsukh Teli*.

34 Cr. L. J. 721 :

144 I. C. 240 : 29 N. L. R. 67 :

I. R. 1933 Nag. 227 : A. I. R. 1933 Nag. 99.

———S. 103—*Several search lists—Proof.*

When in a case there are several search lists, in each of which several items of property are mentioned, the prosecution ought to prove their case with regard to the different items severally. *Rafique-ud-Din Ahmad v. Emperor*. (F. B.)

36 Cr. L. J. 808 :

155 I. C. 687 : 39 C. W. N. 368 :

62 Cal. 572 : 7 R. C. 606 :

A. I. R. 1935 Cal. 184.

———S. 103.

The stress is on word “respectable” and not on “locality.” *Gopi Mahto v. Emperor*.

33 Cr. L. J. 233 :

136 I. C. 60 : 13 P. L. T. 62 :

10 Pat. 821 : I. R. 1932 Pat. 60 :

A. I. R. 1932 Pat. 66.

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———S. 103—*Ward-headmen and block-elders, if ‘respectable inhabitants.’*

Per Full Bench (*Ormand, J.*, dissenting.)—The words ‘respectable inhabitants’ in S. 103, should not be construed to include ward-headmen and block-elders who are appointed by the Deputy Commissioner under Lower Burma Towns Act or Burma Towns Act. *Emperor v. Kan Haw*.

12 Cr. L. J. 251 :

10 I. C. 796 : 4 Bur. L. T. 91.

———S. 103—*Ward-headmen in Burma, if competent witnesses to search.*

Per Parlett, Young and Ormand, JJ.—(*Hartnoll, Offg. C. J.* and *Robinson J.*, dissenting.)—Ward-headmen in towns other than Rangoon are competent witnesses of searches under S. 103. *Tiya v. Emperor*.

15 Cr. L. J. 441 :

24 I. C. 32 : 7 Bur. L. T. 143 :

A. I. R. 1914 L. B. 128.

———S. 103—Where *Punchas* were present before search began, provisions of S. 103 are complied with. *Emperor v. Appa Rama Mah.*

35 Cr. L. J. 523 :

147 I. C. 1003 : 35 Bom. L. R. 1065 :

6 R. B. 929 : A. I. R. 1934 Bom. 16.

———S. 103 (1)—*Respectable inhabitants.*

A person having two convictions for serious crimes is not a respectable inhabitant and is unsuited as a search witness. *Ram Chandra v. Emperor*.

36 Cr. L. J. 551 :

154 I. C. 635 : 7 R. A. 781 :

A. I. R. 1935 All. 520.

———S. 103 (1) (2)—*Search.*

Panchnama signed by two *Panchas* is only useful to show that *Panchas* were employed and nothing else—If their evidence is sought in corroboration, they must be called—Accused allowed to cross-examine. *Rustam Cursetji Lam v. Emperor*.

33 Cr. L. J. 389 :

136 I. C. 868 : 34 Bom. L. R. 267 :

I. R. 1932 Bom. 228 : A. I. R. 1932 Bom. 181.

———S. 103 (2)—*Search witnesses, summoning of.*

Search witnesses are not to be called except on the special summons of the court. The Statute lays it upon the prosecution to explain why it desires the search witnesses to be called : and not why it does not call the search witnesses. *Mosaddi Rai v. Emperor*.

34 Cr. L. J. 427 :

142 I. C. 841 (2) : 13 P. L. T. 702 :

11 Pat. 807 : I. R. 1933 Pat. 180 :

A. I. R. 1933 Pat. 100.

———S. 106.

See (i) Cr. P. C., 1898, S. 123.

(ii) Madras Towns Nuisance Act, 1889, S. 3 (12).

(iii) Penal Code, 1860, S. 147.

———S. 106.

———Appeal.

———Appellate Court.

———Applicability.

———Construction.

———Evidence.

———Finding as to Breach of Peace.

———Grounds.

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- Jurisdiction.
- Offence involving Breach of Peace.
- Procedure.
- Security.
- Unlawful Assembly.
- Ss. 106, 107—Appeal from orders.

Orders under S. 106 can be appealed from under S. 406 of the Code, but no appeal lies in proceedings instituted under S. 107 for keeping the peace read with S. 118. *Shamrao v. Emperor*. 25 Cr. L. J. 67 : 74 I. C. 979 : 19 N. L. R. 160 : A. I. R. 1924 Nag. 60.

— S. 106—Appellate Court.

An Appellate Court cannot act under S. 106 (3) in all appeals before it, but only when the Court below had the power to take security itself. *Emperor v. Hardit Singh*. 10 Cr. L. J. 309 : 3 I. C. 577 : 7 P. R. 1909 Cr.

— S. 106—Appellate Court, power of, to demand security.

The power conferred on an appellate Court by S. 106 (3) is not limited by the fact that the Court whose decision is under appeal should have had power to direct security to be taken. *Hasan Beg v. Emperor*. 25 Cr. L. J. 657 : 81 I. C. 145 : 19 N. L. R. 154 : A. I. R. 1924 Nag. 49.

— S. 106—Appellate Court, power of, to make order for security.

Under S. 106 (3), an Appellate Court has power to make an order for security, even though the original trial Court had no such power. *Tilak Rai v. Emperor*. 22 Cr. L. J. 310 : 160 I. C. 998 : 19 A. L. J. 123 : 43 All. 372 : A. I. R. 1921 All. 217.

— S. 106—Appellate Court, power of, to order security in affirming conviction.

An Appellate Court has power, in affirming a conviction and sentence to pass an order binding down the accused under S. 106, even though the Court, convicting in the first instance, was not competent to do so. *Buchan Singh v. Emperor*. 18 Cr. L. J. 118 : 37 I. C. 470 : 2 P. L. J. 21 : 1917 Pat. 57 : 3 P. L. W. 250 : A. I. R. 1917 Pat. 701.

— S. 106—Appellate Court—Appellate Court, power of, to order execution of bond for keeping the peace.

Under S. 106 (3), an Appellate Court may pass an order directing security to be taken in cases coming to it on appeal from a Court incompetent to pass such an order as an original Court. *Bharat Singh v. Emperor*. 14 Cr. L. J. 592 : 21 I. C. 384 : 16 O. C. 281.

— S. 106—Appellate Court—Bond to keep the peace—Appellate Court, jurisdiction of.

An Appellate Court cannot exercise the

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power given by S. 106 (3), where the conviction has not been by a Court specified in sub-section (1). *Eusef Ali Ahmad v. Emperor*. 24 Cr. L. J. 308 : 72 I. C. 68.

— S. 176—Appellate Court—Convicting Court—Second Class Magistrate—Direction to execute bond in Appeal.

Where a convicting Court is the Court of the Second Class Magistrate, an Appellate Magistrate cannot direct in Appeal the execution of a bond for keeping the peace. *In re : Latchumana Talavan*. 11 Cr. L. J. 251. 5 I. C. 807 : 7 M. L. T. 104.

— S. 106—Appellate Court—Convicting Magistrate not empowered to take security—No jurisdiction to Appellate Court to demand security.

When the Magistrate originally convicting an accused person is not empowered by law to take security to keep the peace, the Appellate Court also has no jurisdiction to proceed under S. 106. *Radha Singh v. Emperor*. 6 Cr. L. J. 276 : 6 P. R. Cr. 1907 : 2 P. W. R. Cr. 77.

— S. 106—Appellate Court—Conviction by Second Class Magistrate—Appellate Court's power to demand security.

An Appellate Court on hearing an appeal from a conviction by a Second Class Magistrate can also direct the accused to execute a bond giving security to keep the peace. *In re : Gunda Ganji Reddi*. 15 Cr. L. J. 192 : 22 I. C. 768 : A. I. R. 1914 Mad. 280.

— S. 106—Appellate Court—Conviction by Third Class Magistrate—Appeal—Recommendation to First Class Magistrate as to binding down—Conviction and appeal good—Recommendation bad.

The accused were convicted by a Third Class Magistrate who submitted the record to the Sub-Divisional Magistrate under S. 319, Cr. P. C. in order that they might be bound down under S. 106. The Sub-Divisional Magistrate ordered the accused to be bound down. An appeal was then instituted from the original conviction, and the Appellate Court set it aside : *Held*, that the recommendation as to binding down the accused was without jurisdiction, and the action of the Sub-Divisional Magistrate under S. 106 was also without jurisdiction but the original conviction and the appeal against it, were good and within jurisdiction. *Lukhan Dasadh v. Bachi Singh*. 11 Cr. L. J. 170 : 5 I. C. 576.

— S. 106—Appellate Court—Conviction of accused by a Second Class Magistrate—Appeal to the Sub-Divisional Magistrate—Dismissal of Appeal—Appellant directed to give security—Legality.

The Appellate Court cannot pass an order under S. 106 (3), unless the accused has been convicted by one of the Courts specified in cl. (1) of the section, and the requirements essential to justify an order to give security

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to keep the peace are not satisfied by the fact that an Appellate Court confirms a conviction, of an offence specified in the section, passed by a Second or Third Class Magistrate. *Doraisami Naidu v. Emperor*. 4 Cr. L. J. 498 : 1 M. L. T. 343 : 30 Mad. 162.

———S. 106—Appellate Court—Indian Penal Code (Act XLV of 1860), Ss. 379, 143, conviction under—Recognizance to keep peace, where justifiable.

A conviction under S. 143 or S. 379, Penal Code, is not of itself sufficient to sustain an order under S. 106, unless it is clearly found that there was force employed, or that there were armed men present. *Chandra Bhusan Sen v. Emperor* 7 Cr. L. J. 200 : 7 C. L. J. 172.

———S. 106—Appellate Court—Jurisdiction of a Appellate Court to demand security, limits of.

The jurisdiction of a Court of Appeal is limited to the jurisdiction conferred on the Court of first instance, and where the Trial Court cannot pass an order requiring the accused to furnish security, the Appellate Court cannot do so in appeal. *Baij Nath v. Emperor*. 6 Cr. L. J. 302 : 10 O. C. 287.

———S. 106—Appellate Court—Order for security by Appellate Court, legality of.

Where a District Magistrate on appeal ordered a person who had been convicted by a Second Class Magistrate to give security : *Held*, the order was bad and must be set aside. *In re : Momin Malita*. 8 Cr. L. J. 9 : 7 C. L. J. 602 : 12 C. W. N. 752 : 4 M. L. T. 340 : 35 Cal. 434.

———S. 106—Appellate Court—Order passed by Appellate Court binding accused to keep peace, whether enhancement of sentence.

On a conviction under Ss. 147 and 325 of the Penal Code, the applicants were sentenced to imprisonment on each charge and the sentences were directed to run consecutively. On appeal, the Sessions Judge directed that the sentences should run concurrently and passed an order binding over each of the accused to keep the peace for a period of three years : *Held*, that in view of S. 106 (3), the order of the Sessions Judge did not amount to an enhancement of the sentence. *Jaffar Husain v. Emperor*. 20 Cr. L. J. 302 : 50 I. C. 350 : 1 U. P. L. R. AII. 44 : A. I. R. 1919 AII. 375.

———S. 106—Appellate Court—Order to furnish security—Appeal Court.

An order for security under S. 106 (3) may be made in appeal, whether the original Court had jurisdiction to pass such an order or not. The word "also" in the section plainly implies that the order may be independently made by an Appellate Court or by a Courts in revision, as well as by the original Court specified in the first clause ; and it is not implied, that the powers of the original Court should, in any way, control or

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limit those of the appellats or revisional authority. *Emperor v. Bhausingh Dhumalsingh*. 8 Cr. L. J. 267 : 10 Bom. L. R. 759.

———S. 106—Appellate Court, powers of—Absence of finding as to breach of peace—Appellate Court, whether may demand security.

In the absence of a finding that any breach of peace occurred, an Appellate Court has no power under S. 106 (3) to direct the accused to enter into a bond for keeping the peace. *In re : Thirumal Reddy*. 25 Cr. L. J. 294 : 76 I. C. 966 : 30 M. L. T. 348 : A. I. R. 1923 Mad. 133.

———S. 106—Appellate Court, powers of.

An Appellate Court cannot exercise the power under S. 106 when accused has not been convicted by a Court such as is referred in the section. *Muthiah Chetti v. Emperor*. 3 Cr. L. J. 461 : 29 Mad. 190.

———S. 106—Appellate Court—Powers.

An Appellate Court may pass an order under S. 106, even when the Trial Court had no such powers. *Jai Singh v. Emperor*. 27 Cr. L. J. 1112 : 97 I. C. 421 : 1927 Pat. 37.

———S. 106—Appellate Court—Powers of Appellate Court to demand security.

Sub-Divisional Magistrate, while confirming the sentence of the lower Court, ordered some of the accused to furnish security to keep the peace : *Held*, that the order was illegal. *Emperor v. Thoddamatha*. 11 Cr. L. J. 640 : 8 I. C. 392 : 8 M. L. T. 291.

———S. 106—Appellate Court—Power of Appellate Magistrate to order security to keep the peace.

A Magistrate hearing an appeal from the judgment of a Magistrate, subordinate to him, is not empowered to call upon the accused to furnish security to keep the peace. *Gnanamuthu Udayan v. Emperor*. 10 Cr. L. J. 289 : 3 I. C. 434.

———S. 106—Appellate Court, power of, to require security—Conviction by Magistrate of Second or Third Class.

An Appellate Court cannot exercise the powers given by S. 106 (3) where the conviction has not been by a Court specified in sub-section (1) of the section. *Karim Buksh v. Emperor*. 19 Cr. L. J. 220 A : 42 I. C. 796 : A. I. R. 1918 Cal. 517.

———S. 106—Appellate Court—Power to order security after disposal of appeal.

An appellate Court has power to require a bond under S. 106 even after disposal of the appeal and the confirmation of the sentence passed by the trial Court. The order need not be made at the time of passing the sentence. *Hussein Gulam Nabi v. Emperor*. 29 Cr. L. J. 502 : 109 I. C. 230 : 30 Bom. L. R. 373 : 10 A. I. Cr. R. 211 : A. I. R. 1928 Bom. 134.

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—S. 106—Appellate Court—S. 106 (3).
Power of Appellate Court to demand security.

An order requiring security cannot be passed by an Appellate Court in an appeal from an order of a Second Class Magistrate. *Karam Singh v. Emperor.* 23 Cr. L. J. 457 : 67 I. C. 729.

—S. 106—Appellate Court—Security on conviction—Appellate Court, power of, to demand security.

One of the essentials for justifying an Appellate Court in requiring security under S. 106 is that the accused must have been tried and convicted by a Court of the Magistrate not inferior to a Magistrate of the First Class. *Lal Khan v. Emperor.* 19 Cr. L. J. 336 B. : 44 I. C. 352 : 5 P. R. 1918 Cr. : A. I. R. 1918 Lah. 370.

—S. 106—Appellate Court—Security, power of Court of Appeal or Revision to demand.

The fact that a case is tried by a Second or Third Class Magistrate, does not deprive a Court of Appeal or Revision of the power to demand security under S. 106. *Lachmi Narain v. Emperor.* 22 Cr. L. J. 276 : 60 I. C. 676 : 23 O. C. 380.

—S. 106—Appellate Court—Security to keep peace—Power of Appellate Court.

The Appellate Court is competent under S. 106 (3) upon an appeal against a conviction to pass an order requiring the appellant to furnish security to keep the peace. *Miran Bakhsh v. Emperor.* 2 Cr. L. J. 190 : 6 P. L. R. 148 : 21 P. R. Cr. 1905.

—S. 106—Applicability.

A Patkari was doing his duty in making a patrol accompanied by two tenants of the village, when the accused emerged from his house followed by two servants. An altercation issued between him and the Patkari resulting in grievous hurt being caused to the latter: *Held*, that there was nothing in the circumstances to suggest that the grievous hurt was caused in a manner or under conditions which would either necessarily or likely cause a breach of the peace. *Durga Bharathi v. Emperor.* 24 Cr. L. J. 491 : 72 I. C. 955 : A. I. R. 1923 Oudh 37.

—S. 106—Applicability — Convictions under S. 143 or S. 297, I. P. C.

An order under S. 106 cannot be passed on a conviction under S. 143 or S. 297, I. P. C. as these offences do not necessarily involve use of force. *Abdulla v. Emperor.* 22 Cr. L. J. 709 : 63 I. C. 869 : 2 Lah. 279 : A. I. R. 1921 Lah. 96.

—S. 106—Applicability of.

It is not sufficient, in order to justify the passing of an order under S. 106 that the accused should have committed the offence of criminal intimidation, it is necessary that he should have been convicted of that offence. An order cannot be passed under S. 106, Cr. P. C., on a conviction for an offence under S. 143 or S. 297 of the Penal Code, as those offences do not

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necessarily involve the use of force. *Abdulla v. Emperor.* 22 Cr. L. J. 709 : 63 I. C. 869 : 2 Lah. 279 : A. I. R. 1921 Lah. 96.

—S. 106—Applicability—Land dispute—Order binding down persons convicted of rioting—Propriety.

Where on the complainant trying to take possession of land in the occupation of the accused, the accused used more force than was necessary to prevent the complainant's party from doing so: *Held*, that although the accused were rightly convicted of rioting, they should not be bound down under S. 106, Cr. P. C., to keep the peace, as that would have the effect of preventing the accused from resisting any further attempt by the complainant to take possession of the land. *Nahar Khan v. Emperor.* 6 Cr. L. J. 40 : 11 C. W. N. 800.

—S. 106—Applicability—Offence of hurt.

Where the offence of voluntarily causing hurt includes an assault on the person to whom the hurt has been caused, the Court has jurisdiction to pass an order under S. 106 when convicting the accused. *Ramaswami Thevar v. Emperor.* 24 Cr. L. J. 455 : 72 I. C. 615 : 44 M. L. J. 485 : 17 L. W. 499 : 1923 M. W. N. 314 : 32 M. L. T. 297 : A. I. R. 1923 Mad. 618.

—S. 106—Applicability—Offence under S. 103, I. P. C.—Demand of security.

S. 106 is not applicable to a person not convicted of any of the offences specified in the section. Although intimidation is one of the elements of an unlawful assembly, the criminal intimidation specified in S. 106 is the offence specifically defined by S. 503, the sentence provided by S. 506 being more severe than that provided by S. 143, and S. 106 cannot be applied to a person convicted under S. 143 merely because intimidation by show of criminal force is in the fourth and fifth parts of the definition in S. 141, an element of the offence punishable under S. 143. *Abdulla Khan v. Emperor.* 11 Cr. L. J. 680 : 8 I. C. 551 : 126 P. L. R. 1910.

—S. 106—Applicability—Security to keep the peace—Offence of simple hurt.

Where a person has been convicted under S. 323 of the Penal Code, he may be bound over to keep the peace under S. 106, Cr. P. C. *Chajju v. Emperor.* 22 Cr. L. J. 663 : 63 I. C. 460 : 19 A. L. J. 856 : 3 U. P. L. R. A. 173 : A. I. R. 1921 All. 32 :

—S. 106—Applicability—Security to keep the peace after conviction on a summary trial—Imprisonment in default of furnishing security not a part of a substantive sentence—Non-appellable Sentence.

There is nothing to prohibit the making of an order under S. 106 after a conviction for simple hurt on a summary trial, and the imprisonment to be undergone in default of furnishing security is not a part of substantive sentence. The sentence not being in itself appealable, does not become so, because the person convicted has

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been ordered to find security to keep the peace.
Meghu v. Emperor. 1 Cr. L. J. 1054 :
7 O. C. 338.

—S. 106—Applicability.

Where a person is made constructively liable for an offence by calling in the aid of the provisions of S. 149, Penal Code, it is not proper to take action against him under S. 106. *Saun Pande v. Emperor.* 35 Cr. L. J. 1159 :

150 I. C. 945 : 1934 O. L. R. 658 :
11 O. W. N. 992 : 7 R. O. 74 :
A. I. R. 1934 Oudh 279.

—S. 106—Construction—Assault—Penal Code (Act XLV of 1860), Ss. 325, 351, 352—Grievous hurt, voluntarily causing, whether assault.

An offence under S. 325, the Penal Code involves the use of criminal force and is, in that sense, an assault, but the word "assault," as used in S. 106, Cr. P. C. refers to the offence of assault as defined in S. 351 of the Penal Code and made punishable by S. 352. *Dubri v. Emperor.* 24 Cr. L. J. 227 :

71 I. C. 691 : 8 O. L. J. 318.

—S. 106 — Construction — "Breach of peace", what is.

The expression "breach of the peace" used in the accepted meaning which it bears in England, implies some offence against the public. *Dubri v. Emperor.* 24 Cr. L. J. 227 :
71 I. C. 691 : 8 O. L. J. 318.

—S. 106 — Construction — "Offences involving breach of peace," meaning of—Conviction of accused under Penal Code—Order under S. 106.

The expression "offences involving a breach of the peace" means offences in which the commission of a breach of the peace is a necessary ingredient, or offence, the commission of which has actually led to a breach of the peace (irrespective of the party by which that breach is committed). It is impossible to construe the word 'involve' as equivalent to the words 'likely to lead to.' The mere use of abusive language in a public place is not of itself a breach of the peace, though of course it is likely to lead to one. It is not one of the offences affecting the public tranquillity mentioned in S. 106. The word 'peace' is used as a synonym for security rather than for tranquillity. Where, therefore, an accused person is convicted of an offence under S. 294, I. P. C., an order under S. 106 cannot be made unless there is a finding that active criminal intimidation or assault, etc., have actually occurred in consequence of the obscene abuse. *The King v. Maungkat Nyo.* 41 Cr. L. J. 420 :

187 I. C. 149 : 1940 Rang. 256 :
12 R. Rang. 320 : A. I. R. 1940 Rang. 50.

—S. 106—Construction—Lathis, whether "arms."

Lathis are 'arms' within the meaning of S. 106, *Pat Sarjug Lal v. Emperor.* 17 Cr. L. J. 313 :
35 I. C. 489 : A. I. R. 1916 Pat. 390.

—S. 106—Construction "offences in-

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volving breach of peace" meaning of—Conviction under S. 504, I. P. C.—Demand of security.

The expression "offences involving a breach of the peace" in S. 106, Cr. P. C., means offences in which breach of the peace is an ingredient and not offences provoking or likely to lead to a breach of the peace. An order cannot, therefore, be passed under S. 106 upon a conviction under S. 504, Penal Code. *Asoke Parsanna Bal v. Emperor.* 32 Cr. L. J. 359 :

34 C. W. N. 651 : 129 I. C. 413 :
I. R. 1931 Cal. 189 :
A. I. R. 1930 Cal. 802.

—S. 106—Construction—"Offence involving a breach of the peace", meaning of—Necessary breach of peace or probable breach of peace.

The words "offence involving a breach of the peace" refer not only to a necessary breach of the peace, but also to a probable breach of the peace. *Emperor v. Manik Rai.*

12 Cr. L. J. 405 :
11 I. C. 589 : 8 A. L. J. 925 : 33 All. 771.

—S. 106—Construction—"Involving breach of peace", meaning of.

The words "involving a breach of the peace" in the section, require that a breach of the peace should be an ingredient of the offence proved, and before the section can be put in force, there must be a finding that a breach of the peace has occurred. *Ladho Ram v. Emperor.* 33 Cr. L. J. 193 :

135 I. C. 691 : 8 O. W. N. 1286 :
I. R. 1932 Oudh 51 : A. I. R. 1932 Oudh 33.

—S. 106—Construction—"Offences involving breach of peace", meaning of.

The words "offences involving a breach of the peace" include cases of offences in which an evident intention to commit a breach of the peace is expressly found. *Abdul Gafur v. Mahammad Mirza.* 33 Cr. L. J. 82 :

134 I. C. 1187 : 35 C. W. N. 1150 :
59 Cal. 659 : I. R. 1932 Cal. 67 :
A. I. R. 1931 Cal. 645.

—S. 106—Construction—"Other offences involving breach of peace", interpretation of.

The words "other offences involving a breach of the peace" refer to the actual definition of an offence in the substantive law, that is to say, the commission or intention to commit a breach of the peace must be one of the elements which would go to make up the offence. *Ankulal Shah v. Sadhan Chandra Mondal.*

40 Cr. L. J. 836 :
183 I. C. 672 : 69 C. L. J. 565 :
43 C. W. N. 867 : I. L. R. 1939 Cal. 261 :
12 R. C. 177 :
A. I. R. 1939 Cal. 484.

—S. 106—Construction—Order requiring security appeal—Suspension of order—Period of bond, calculation of.

Where an accused is ordered to execute a bond with sureties for keeping peace for one year and an appeal is lodged from such order together with an application for stay of the order and the Appellate Court suspends the order until the decision of the appeal, the time from

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which the period of one year begins to run is the date of the order of the Appellate Court possibly after deduction of the time between the original order of the Magistrate and the order of the Appellate Court staying such order. *Abdus Sattar v. King-Emperor*.

39 Cr. L. J. 831 :
176 I. C. 948 : O. W. N. 676 :
11 R. O. 7 : 1938 O. L. R. 355 :
A. I. R. 1938 Oudh 195.

—S. 106—Construction—S. 118 is restrictive of S. 106.

S. 118, in the matter of the amount of the bond, is really restrictive of S. 106. In other words, although the maximum is fixed by S. 106, the circumstances of the case may be such as to make it unnecessary to take as great a bond as would be permissible under S. 106. *Abdus Sattar v. King-Emperor*.

39 Cr. L. J. 831 :
176 I. C. 948 : 1938 O. W. N. 676 :
11 R. O. 7 : 1938 O. L. R. 355 :
A. I. R. 1938 Oudh 195.

—S. 106—Construction—Security to keep peace—Offence under S. 504, I. P. C.—“Offences involving a breach of the peace,” meaning of.

A breach of the peace or a probable breach of the peace being an ingredient of the offence made punishable by S. 504 of the Penal Code, it is not illegal to direct a person convicted under that section to furnish security to keep the peace under S. 106 of the Cr. P. C. The words “other offences involving a breach of the peace” in S. 106 are applicable where there actually has been a breach of the peace, and also where the definition of the offence involves a breach of the peace. *Syed Yacoob v. Emperor*.

20 Cr. L. J. 543 :
51 I. C. 783 : 21 Bom. L. R. 270 :
43 Bom. 554 : A. I. R. 1919 Bom. 150.

—S. 106—Construction.

The expression “other offences involving a breach of the peace” in S. 106 embraces all offences *eiusdem generis* with the offences of assault and rioting mentioned in the section. *Ramaswami Thevar v. Emperor*.

24 Cr. L. J. 455 :
72 I. C. 615 : 44 M. L. J. 485 :
17 L. W. 499 : 1923 M. W. N. 314 :
32 M. L. T. 297 : A. I. R. 1923 Mad. 618.

—S. 106—Construction.

The words “assault or other offence involving a breach of the peace” in S. 106, mean that an assault involves a breach of the peace.

34 Cr. L. J. 859 :
144 I. C. 954 (2) : 1938 A. L. J. 1345 :
L. R. 14 All. 450 Cr. : 6 R. A. 21 :
55 All. 850 : A. I. R. 1933 All. 609.

—S. 106—Construction.

The word “involves” in S. 106 connotes the inclusion not only of a necessary but also of a probable feature, circumstance, antecedent condition or consequence. *Nanha v. Kanhaiyalal*.

24 Cr. L. J. 71 :
75 I. C. 933 : A. I. R. 1924 118.

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—S. 106—Evidence—Conviction for simple hurt—Security.

An accused convicted of causing hurt under S. 323, Penal Code, can be ordered to find security under S. 106. *Surajpal v. Kamta*.

35 Cr. L. J. 284 (1) :
146 I. C. 918 (1) : 10 O. W. N. 1228 :
9 Luck. 272 : 6 R. O. 197 :
A. I. R. 1934 Oudh 425.

—S. 106—Finding as to breach of peace—Breach of peace, finding as to, absence of.

An order under S. 106 of the Cr. P. C. cannot be passed in the absence of a finding that there is a likelihood of a breach of the peace. *Rajaram v. Govinda*.

25 Cr. L. J. 1064 :
81 I. C. 888 : A. I. R. 1925 Nag. 36.

—S. 106—Finding as to breach of peace—Conviction for assault—Security to keep peace—Breach of peace, apprehension of.

The accused went about canvassing for votes at an election and he and his companions the co-accused beat a certain person who refused to vote for him. They were convicted of assault and the Magistrate expressing an opinion to the effect “that the accused persons appear to be very troublesome,” bound them over under S. 106. It was urged in revision that the order was improper inasmuch as there was no express finding that there was an apprehension of a breach of the peace: *Held*, that under the circumstances, the Magistrate must have thought it necessary to bind the accused over and there was no legal flaw in the judgment. *Jafar Husain v. Emperor*.

25 Cr. L. J. 906 :
81 I. C. 442 : 46 All. 105 :
A. I. R. 1924 All. 306.

—S. 106—Finding as to breach of peace—Conviction for hurt—No finding as to breach of peace—Security.

An order under S. 106 cannot follow a conviction under S. 323, Penal Code, on the ground that the parties were on bad terms. There should be a finding that the assaults involved a breach of the peace or public tranquillity. *Muhammad Rahim v. Emperor*.

26 Cr. L. J. 1457 :
89 I. C. 1025 : 23 A. L. J. 1053 :
A. I. R. 1926 All. 144.

—S. 106—Finding as to breach of peace—Conviction for simple hurt—Security.

If a Magistrate finds that an offence of causing simple hurt has been committed, it is not necessary for him to come to a separate finding that a breach of the peace was involved. *Wazir-ul-Din v. Emperor*.

34 Cr. L. J. 859 :
144 I. C. 954 (2) : 55 All. 850 :
1933 A. L. J. 1345 : L. R. 14 All. 450 Cr. :
6 R. A. 21 : A. I. R. 1933 All. 609.

—S. 106—Finding as to breach of peace—Conviction under S. 447, Penal Code—No finding that there actually was breach of peace—Security.

The words “involving a breach of the peace” in S. 106, Cr. P. C. require that a breach of the peace should be an ingredient of the offence proved, and before the section can be put in force, there must be a finding that a breach of

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the peace has occurred. Where, therefore, an accused is convicted of an offence under S. 447, Penal Code, but there is no finding that there actually was a breach of peace, the accused cannot be bound over under S. 106, Cr. P. C. *Bans Gopal v. Emperor*.

40 Cr. L. J. 183 :
179 I. C. 269 : 1938 O. W. N. 1361 :
11 R. O. 156 : 1939 O. L. R. 19 :
14 Luck. 360 : A. I. R. 1939 Oudh 45.

—S. 106—*Finding as to breach of peace—Conviction under S. 452, Penal Code—Security.*

An order under S. 106, does not follow a conviction under S. 452, Penal Code, unless the facts of a particular case justify such order. *Jung Bahadur Misir v. Mahadeo Shaw*.

40 Cr. L. J. 721 :
182 I. C. 850 : 12 R. C. 112 :
A. I. R. 1939 Cal. 320.

—S. 106—*Finding as to breach of peace—Order requiring security on conviction—Finding as to breach of peace whether necessary—“Other offence involving breach of the peace”, meaning of.*

In order to give jurisdiction to a Court to take action under S. 106 (1), it is not necessary that the Court should record a finding that a breach of the peace was actually caused. If the offence of which the accused is convicted is one which does not of itself necessarily involve a breach of the peace, such as criminal trespass, mischief or unlawful assembly, it is proper that the Court should make it clear in its order that a breach of the peace was committed. *Ramaswami Thevan v. Emperor*.

24 Cr. L. J. 455 :
72 I. C. 615 : 44 M. L. J. 485 :
17 L. W. 499 : 1923 M. W. N. 314 :
32 M. L. T. 297 : A. I. R. 1923 Mad. 618.

—S. 106—*Findings as to breach of peace—Order under, findings, necessary for—Revision.*

Where the findings of the lower Courts do not show that the acts for which the accused were convicted under S. 143, I. P. C., necessarily involved a breach of the peace or any evident intention of committing the same, a High Court in revision would set aside an order under S. 106. *Abdul Ali Choudhury v. Emperor*.

17 Cr. L. J. 241 :
34 I. C. 961 : 20 C. W. N. 197 :
23 C. L. J. 108 : 43 Cal. 671 :
A. I. R. 1916 Cal. 883.

—S. 106—*Findings as to breach of peace—Security for keeping the peace on conviction under Ss. 143, 379 of I. P. C.—Finding and conviction of criminal intimidation necessary to sustain an order for keeping the peace.*

A conviction under Ss. 143 or 379 of the Penal Code is not itself sufficient to sustain an order under S. 106, although such conviction coupled with clear and explicit findings bringing the case within the scope of S. 106 may sustain an order under that section. There must be finding of criminal intimidation and also conviction for the offence of criminal intimidation. *Kishore Sarkar v. Emperor*.

1 Cr. L. J. 447 :
8 C. W. N. 517 :

—S. 106—*Finding as to breach of peace—*

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Security proceedings—Conviction for simple hurt—No finding of breach of peace—Binding over, legality of.

An order under S. 106 can be passed against a person on a conviction for simple hurt only when it is found that the offence involved a breach of the peace. *Atma Ram v. Emperor*.

28 Cr. L. J. 88 :
99 I. C. 120 : L. R. 8 All. 9 Cr. :
7 A. I. Cr. R. 127 : 49 All. 131 :
A. I. R. 1927 All. 157.

—S. 106—*Finding as to breach of peace—Security to keep the peace—Intention to commit a breach of the peace at the time of committing the offence essential.*

Before an accused can be called upon to give security under S. 106, it must be proved that there was an intention on his part to commit a breach of the peace at the time of committing the offence of which he has been convicted. *Maulvi Maqbul Ahmad v. Emperor*.

5 Cr. L. J. 25 :
9 O. C. 381.

—S. 106—*Finding as to breach of peace.*

To justify an order for security under S. 106, there must be an express finding to the effect that the act involves a breach of the peace or an evident intention of committing the same, or the evidence must be so clear as to satisfy the Court (without an express finding) that such was the case. *Nauba v. Kashoyalal*.

25 Cr. L. J. 71.
75 I. C. 983 : A. I. R. 1924 Nag. 118.

—S. 106—*Finding as to breach of peace.*

When accused are convicted under S. 324, Penal Code, and ordered to furnish security, it is not necessary that a formal finding should have been given as to breach of peace. *Hayat Khan v. Emperor*.

33 Cr. L. J. 746 (1) :
139 I. C. 127 (1) : 13 Lah. 336 :
33 P. L. R. 588 : I. R. 1932 Lah. 564 :
A. I. R. 1932 Lah. 435.

—S. 106—*Grounds.*

An order to give security is uncalled for when a sentence of imprisonment or transportation for so long a term as seven years is passed for the offence committed. *Kyaw Wa v. Emperor*.

10 Cr. L. J. 69.
2 I. C. 531 : 5 L. B. R. 34.

—S. 106—*Grounds.*

Conviction under S. 504, Penal Code, is not by itself ground for ordering security. *Lodha Ram v. Emperor*.

33 Cr. L. J. 193 :
135 I. C. 691 : 8 O. W. N. 1286 :
I. R. 1932 Oudh 51 : A. I. R. 1932 Oudh 33.

—S. 106—*Jurisdiction—Offence of rioting and grievous hurt—Security.*

Where the accused were found guilty of rioting and of offences punishable under S. 326 read with S. 149, Penal Code, but were only convicted of the latter offence, and not also under S. 147: *Held*, that technically, an order passed against them under S. 106 would be illegal. *Ghasita Singh v. Emperor*.

33 Cr. L. J. 576 (1) :
138 I. C. 289 (2) : I. R. 1932 Lah. 455 (a) :
A. I. R. 1932 Lah. 489.

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—S. 106—*Jurisdiction—Second Class Magistrate, who is also Sub-Divisional Officer, whether can pass order binding accused to keep peace for over six months.*

A Magistrate of the Second Class, who is also a Sub-Divisional Magistrate, can pass an order under S. 106 binding over a person to keep the peace for a period exceeding six months. *Raja Singh v. Emperor.* 16 Cr. L. J. 350 : 28 I. C. 734 : 13 A. L. J. 268 : 37 All. 230 : A. I. R. 1915 All. 15.

—S. 106—*Jurisdiction—Security, order to furnish—Jurisdiction of District Magistrate—Application for enhancement of sentence.*

A District Magistrate, while considering an application for enhancement of sentence and not trying the case as a Court of Appeal, has no jurisdiction to order the accused to furnish security under S. 106. *Doobar Tewari v. Emperor.* 19 Cr. L. J. 732 A : 46 I. C. 412 : 16 A. L. J. 536 : A. I. R. 1918 All. 216.

—S. 106—*Offence involving breach of peace.*

An accused cannot be bound over under S. 106 unless he is convicted of an offence of which a breach of the peace is a necessary ingredient, and unless it is found that a breach of the peace has actually occurred. *Muthiah Chetty v. Emperor.* 3 Cr. L. J. 461 : I. L. R. 29 Mad. 190.

—S. 106—*Offence not involving breach of the peace.*

An order under S. 106 can be passed against a person convicted of an offence which does not necessarily involve a breach of the peace, if there is an express finding that the offence did in fact, involve a breach of the peace. *Rafatulla Pramanik v. Rajek Sardar.* 32 Cr. L. J. 828 : 132 I. C. 96 : 34 C. W. N. 988 : I. R. 1931 Cal. 528 : A. I. R. 1930 Cal. 646.

—S. 106—*Offence involving breach of peace—Breach of peace—Penal Code (Act XLV of 1860), Ss. 441, 442—Criminal trespass—Security.*

A person who commits criminal trespass on a *panatchut* under the circumstances set forth in S. 44, I. P. C., commits house-trespass, and it is an offence involving breach of the peace within the meaning of S. 106, where the object is to cause hurt to one of the persons in the house. *Sit Hon v. Emperor.* 18 Cr. L. J. 81 : 37 I. C. 145 : 9 Bur. L. T. 204 : 8 L. B. R. 463 : A. I. R. 1917 L. B. 76.

—S. 106—*Offence involving breach of peace—Conviction under S. 149, Penal Code—Order under S. 106, if legal—Conviction also under Ss. 147 and 325, Penal Code—Order for security under S. 106, legality of.*

Where an accused is convicted by virtue of S. 149, Penal Code, an order for security

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under S. 106 is bad. But where the accused is also convicted under Ss. 147 and 325, Penal Code, both of which involve a breach of the peace, even though, an order under S. 106 cannot be passed owing to the accused's conviction under S. 325 read with S. 149, Penal Code, yet such an order can properly be made owing to his conviction under Ss. 147 and 325. *Mani Lal v. Emperor.*

39 Cr. L. J. 341 : 173 I. C. 386 : 1938 O. W. N. 218 : 1938 O. L. R. 117 : 10 R. O. 222 : A. I. R. 1938 Oudh 95.

—S. 106—*Offence involving breach of peace—Conviction under S. 325, Penal Code, set aside and one under S. 312, Penal Code, maintained—Security order reversed.*

One has to see not whether on the facts the persons against whom an order under S. 106 is passed, did commit a breach of the peace but whether they were convicted of an offence which necessarily involves a breach of the peace. If the offence is one in which a breach of the peace may have been committed but which does not necessarily involve a breach of the peace, an order under S. 106 cannot be passed. Where the Judge has set aside the conviction under S. 323, I. P. C., leaving only the conviction under S. 312, I. P. C., an order under S. 106, Cr. P. C., cannot be passed. *Akhtar Husain v. Emperor.* 41 Cr. L. J. 505 : 187 I. C. 808 : 1940 O. W. N. 423 : 1940 O. L. R. 248 : 12 R. O. 417 : A. I. R. 1940 Oudh 323.

—S. 106—*Offence involving breach of peace—Conviction under S. 448, Penal Code—Legality of order under S. 106.*

An order under S. 106 cannot be passed when the accused is convicted of an offence under S. 448, I. P. C., even though in the commission of an offence, the accused did acts involving a breach of the peace. *In re : Panttanbi Moideen.* 9 Cr. L. J. 88 : 4 M. L. T. 468 : 19 M. L. J. 66.

—S. 106—*Offence, involving breach of peace—Conviction under S. 501, Indian Penal Code—Order under S. 106, legality of.*

It is not illegal to direct a person convicted under S. 501, I. P. C. to furnish security to keep the peace. *Syed Yacoob v. Emperor.*

20 Cr. L. J. 543 : 51 I. C. 783 : 21 Bom. L. R. 270 : 43 Bom. 554 : A. I. R. 1919 Bom. 150.

—S. 106—*Offence involving breach of peace—Hurt caused in public place—Security.*

As an attack in a public place involves a breach of the peace, an order requiring security under S. 106 is justified against a person convicted under S. 323, I. P. C. *Emperor v. Sheo Ram.* 24 Cr. L. J. 319 : 72 I. C. 791 : 9 O. & A. L. R. 191.

—S. 106—*Offence involving breach of peace—House trespass with intent to commit theft—Security.*

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House trespass with intent to commit theft is not an offence involving a breach of the peace, and consequently a person convicted of that offence cannot be required to execute a bond for keeping the peace. *Marali v. Emperor*.

8 Cr. L. J. 476 :
4 L. B. R. 277.

—S. 106—Offence involving breach of peace—Offence of mischief—Security.

Security under S. 106 cannot legally be taken from a person who has been convicted under S. 426, Penal Code, as the offence of mischief does not involve breach of the peace. *Ram Roop v. King-Emperor*.

40 Cr. L. J. 138 :
178 I. C. 665 : 1938 O. W. N. 1127 :
1938 O. L. R. 509 : 11 R. C. 121 :
A. I. R. 1939 Oudh 38.

—S. 106—Offence involving breach of peace—Offence of mischief—Security.

Offence under S. 426, I. P. C. does not involve a breach of the peace and the order under S. 106 cannot be sustained. *In re : Maddukuri Subha Rao*.

41 Cr. L. J. 235 :
185 I. C. 753 : 50 L. W. 51 (1) :
1939 M. W. N. 1012 : 1939 2 M. L. J. 750 :
12 R. M. 593 : A. I. R. 1940 Mad. 55.

—S. 106—Offence involving breach of peace—Order under, when can be passed.

When a person is convicted of an offence, a necessary ingredient of which is a breach of the peace, an order under S. 106 may lawfully be passed by the Magistrate. *Dharam Raj v. Emperor*.

21 Cr. L. J. 288 :
55 I. C. 304 : 2 U. P. L. R. All. 61
18 A. L. J. 300 : 42 All. 345 :
A. I. R. 1920 All. 164.

—S. 106—Offence involving breach of peace—Penal Code (Act XLV of 1860), S. 294—Conviction for uttering obscene abuse—Security.

A conviction under S. 294, Penal Code, for uttering obscene abuse in a public place may amount to a conviction for an offence involving a breach of the peace within the meaning of S. 106. *Emperor v. Mi Kun Ya*.

1 Cr. L. J. 555 :
U. B. R. 1904 : 1st Qr. P. C. 4.

—S. 106—Offence involving breach of peace—Penal Code (Act XLV of 1860), S. 342—Wrongful confinement, conviction for—Security.

It cannot be said that a breach of the peace is necessarily involved in the commission of the offence of wrongful confinement, and, therefore, an order under S. 106 cannot be passed where a person is convicted of the offence of wrongful confinement. *Muhammad Afzal v. Emperor*.

24 Cr. L. J. 271 :
71 I. C. 879.

—S. 106—Offence involving breach of peace, Penal Code Act (XLV of 1860), S. 452, conviction under—Security for keeping peace.

On conviction under S. 452, Penal Code, no security can be demanded for keeping the peace

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as the offence does not involve any breach of the peace. *Santosh Singh v. Emperor*.

27 Cr. L. J. 571 :
94 I. C. 139 : A. I. R. 1926 Lah. 675.

—S. 106—Offence involving breach of peace—Penal Code (Act XLV of 1860), S. 452.—House trespass with intent to cause hurt—Conviction—Security.

Trespassing into a man's house for the purpose of causing him injury is an offence involving a breach of the peace within the meaning of S. 106, and where a person is convicted of such offence, an order under S. 106 may properly be passed against him. *Dullah v. Emperor*.

26 Cr. L. J. 1462 :
89 I. C. 1030 : 1 L. C. 278 :
A. I. R. 1925 Lah. 621.

—S. 106—Offence involving breach of Security for keeping peace—Hurt—Forfeiture of bond.

When an accused has been ordered to execute a bond with sureties for keeping peace and the bond is so executed and the accused subsequently commits an offence of simple hurt, there is a breach of peace entailing the forfeiture of the bond and the sureties. *Abdus Sattar v. King-Emperor*.

39 Cr. L. J. 831 :
176 I. C. 948 : O. W. N. 676 : 11 R. O. 7 :
1938 O. L. R. 355 : A. I. R. 1938 Oudh 195.

—S. 106—Offence involving breach of peace—Security proceedings—Conviction for causing hurt—Security, whether can be ordered.

A person convicted of offence under S. 323, I. P. C., can be ordered to find security to keep the peace under S. 106, Cr. P. C. *Emperor v. Ramanuj*.

28 Cr. L. J. 144 :
99 I. C. 352 : 3 O. W. N. 311 Sup. :
A. I. R. 1927 Oudh 101.

—S. 106—Offence involving breach of peace—Abusive language.

Using abusive language and being generally disorderly at a Railway Station, amounts to a breach of the peace. *Raja Ram v. Emperor*.

37 Cr. L. J. 358 :
160 I. C. 1088 : 1936 A. W. R. 195 (1) :
1936 A. L. J. 82 : 8 R. A. 709 :
A. I. R. 1936 All. 140.

—S. 106—"Offence involving a breach of the peace," meaning of.

The words "offence involving a breach of the peace" mean, an offence in which a breach of the peace is an ingredient and not merely an offence provoking or likely to lead to breach of the peace. *Abdulla v. Emperor*.

22 Cr. L. J. 709 :
63 I. C. 869 : 2 Lah. 279 :
A. I. R. 1921 Lah. 96.

—S. 106—Order by Appellate Court—Notice.

It is not an incorrect procedure contrary to general principles of justice for the Appellate Court to pass an order under S. 106 without special notice to the parties. *Dewan Singh v. Emperor*.

37 Cr. L. J. 63 :
159 I. C. 246 : 16 Pat. L. T. 793 : 2 B. R. 66 :
8 R. P. 262 : A. I. R. 1936 Pat. 36.

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—S. 106—Period of bond—Alteration.

The Court has no power, after the order under S. 112 is drawn up and communicated to the accused, to alter the period during which the accused is to be of good behaviour. *Nim v. Emperor*.

34 Cr. L. J. 9 :
140 I. C. 170 : 27 S. L. R. 19 :
I. R. 1932 Sind 182 : A. I. R. 1933 Sind 8.

—S. 106—Procedure.

Although the law does not provide that the Court shall record its reasons for forming that opinion, yet it is desirable for the Court to do so. *Nazir-ud-Din v. Emperor*.

34 Cr. L. J. 859 :
144 I. C. 954 (2) : 55 All. 850 :
1933 A. L. J. 1345 : L. R. 14 All. 450 Cr. :
6 R. A. 21 : A. I. R. 1933 All. 609.

—S. 106—Procedure—Conviction for offence involving breach of peace—Bond to keep the peace—Notice to show cause, whether required.

An order under S. 106 after conviction to execute a bond to keep the peace must be passed at the same time when there is a conviction and passing of the sentence. No notice to show cause why such an order should not be passed is necessary. *Ram Adhin v. Emperor*.

25 Cr. L. J. 965 :
81 I. C. 613 : 21 A. L. J. 839 :
A. I. R. 1924 All. 230.

—S. 106—Procedure.

Imprisonment in default of furnishing security under S. 123—Appeal, does not lie—Order under S. 106 should not be passed with non-appellable sentence. *Emperor v. Nga Tun Lu*.

36 Cr. L. J. 1510 :
158 I. C. 1115 : 13 Rang. 287 :
8 R. Rang. 239 : A. I. R. 1935 Rang. 363.

—S. 106—Procedure.

In offence in itself not coming under S. 106, Magistrate is bound to record clear finding in report of facts making section applicable. *Haroon v. Sumri*.

33 Cr. L. J. 713 :
139 I. C. 130 : 26 S. L. R. 18 :
I. R. 1932 Sind 98 : A. I. R. 1932 Sind 87.

—S. 106—Procedure—Security for keeping the peace—Appellate Court, power to order—Notice to parties and statement of grounds, necessity of—Report of Sub-Inspector, whether can be relied on where he is not examined.

A Court of Appeal may pass an order under S. 106 even where the trial Court had no such powers. An order under S. 106 cannot be passed without notice to the parties; nor can such an order be supported when the Magistrate does not give the reasons for requiring the accused to execute a bond to keep the peace. A Court cannot draw material for a conviction from the report of a Sub-Inspector of Police when that Sub-Inspector has not, in fact, been examined in Court. *Jai Singh v. Emperor*. 27 Cr. L. J. 1112 : 97 I. C. 421 : 1927 Pat 37.

—S. 106—Procedure—St. 120, 123—Security to keep the peace on expiration of period of imprisonment or transportation—Commencement of period of security—Security, when to be

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demanded—Proceedings when to be laid before Sessions Judge—Jurisdiction of Sessions Judge to order imprisonment in default of security before expiration of sentence.

The petitioner was convicted of an offence under S. 326, I. P. C., and sentenced to seven years' transportation. He was further ordered to furnish security for keeping the peace for two years after his release, such security to be furnished within one month from the date of sentence. The petitioner failed to furnish security within time and the proceeding were submitted to the Sessions Judge, who, without giving the petitioner an opportunity of being heard, ordered that after the expiration of his sentence, the petitioner should suffer imprisonment in default of his furnishing security : *Held*, that the order requiring the security to be furnished within one month was wrong. The case fell under sub-section (1) and not under sub-section (2) of S. 120, Cr. P. C. : *Held, further*, that the Sessions Judge had jurisdiction to pass orders in the case before the expiration of the petitioner's sentence. The proceedings in such a case should be submitted forthwith to the Sessions Judge, who should pass orders as soon as possible after he receives the Magistrate's proceedings; the law does not require him to wait until the expiration of the sentence before passing an order. *Kyaw Wa v. Emperor*. 10 Cr. L. J. 69 : 2 I. C. 531 : 5 L. B. R. 34.

—S. 106—Second Class Magistrate feeling need of security—Procedure.

A Magistrate of the 2nd class, who is of opinion that security for keeping the peace should be taken from the accused, should not convict the accused himself but should forward the accused persons, with the file, to the District Magistrate, merely recording his opinion that the accused are guilty, and with the recommendation that the accused should be convicted and sentenced and that security should be taken under S. 106. *Emperor v. Hardit Singh*.

10 Cr. L. J. 309 :
3 I. C. 577 : 7 P. R. 1909 Cr.

—S. 106—Security—Duty of Court.

The Court is not bound to take security from a person convicted of an offence which involves a breach of the peace. *Nazir-ud-Din v. Emperor*.

34 Cr. L. J. 859 :
144 I. C. 954 (2) : 55 All. 850 :
1933 A. L. J. 1345 : L. R. 14 All. 450 Cr. :
6 R. A. 21 : A. I. R. 1933 All. 609.

—S. 106—Duty of Court to fix date for furnishing security before sentence—Sentence, form of.

S. 123, Cr. P. C., contemplates that the accused shall be separately brought up for sentence, if security is not furnished, so that the Court should, in its judgment, fix a date for the furnishing of security, without any order for alternative imprisonment and then, if by that date accused has not furnished the security, he must appear and receive sentence. As an accused sentenced under S. 123, Cr. P. C., is entitled to be released from custody, the

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moment he furnishes security, the Court should not pass an absolute sentence of imprisonment for a particular period, but should sentence the accused for imprisonment for a particular period or until such date within that period as the required security is furnished. *In re : Ibraya Rowthan.*

28 Cr. L. J. 1034 :
106 I. C. 218 : 1927 M. W. N. 788 :
26 L. W. 537 : 53 M. L. J. 762 :
39 M. L. T. 658 : 51 Mad. 178 :
A. I. R. 1927 Mad. 976.

—S. 106—Security—Judge directing security to be furnished in appeal—Period of bond—Exclusion of bail period.

In certain cases a Judge has in appeal power to extend the period during which security is required to be furnished and thereby extend the period of imprisonment to be suffered in default, but this power should be exercised only in exceptional circumstances. Ordinarily the period for which persons are ordered to give security, when they are out on bail, should be excluded from the period for which they are finally ordered to give security in appeal. *Emperor v. Kadu.*

37 Cr. L. J. 1093 :
164 I. C. 576 : 29 S. L. R. 353 : 9 R. S. 49 :
A. I. R. 1936 Sind 125.

—S. 106—Security—Liability of surety and principal is joint and several—Bond executed by person with sureties for keeping peace—Peace not kept—Amount greater than under bond, if can be forfeited.

The liability of a surety under Cr. P. C. cannot be differentiated from that of a surety under the Civil Law. Where, therefore, persons execute bonds for keeping peace together with sureties, upon the failure to keep, peace the principals can be called upon to pay the amount under the bond and any one of the sureties can also be called upon to pay the same amount but if any one is called upon to pay the whole amount under the bond, any other on that bond be he principal or surety cannot be ordered to pay anything more. *Abdus Sattar v. King-Emperor.*

39 Cr. L. J. 831 :
176 I. C. 948 : 1938 O. W. N. 676 : 11 R. O. 7 :
1938 O. L. R. 355 : A. I. R. 1938 Oudh 195.

—S. 106—Security—Liability of surety, nature of.

The fact that the real object of the Crown is to have the peace kept and not to obtain money, does not necessarily lead to the conclusion that the liabilities of the sureties under the Cr. P. C. are different from those of sureties under the Civil Law. *Abdus Sattar v. King-Emperor.*

36 Cr. L. J. 831 :
176 I. C. 948 : 1938 O. W. N. 676 : 11 R. O. 7 :
1938 O. L. R. 355 : A. I. R. 1938 Oudh 195.

—S. 106—Security—Order, when can be passed.

No order can be passed under S. 106 as amended in 1923, where the only section under which the accused are convicted is a section of the Penal Code which is read with S. 149 of the Code. *Chhedi Singh v. Emperor.*

26 Cr. L. J. 426 :
85 I. C. 42 : 3 Pat. 870 : 6 P. L. T. 330 :
A. I. R. 1925 Pat. 117.

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—S. 106—Security—Revision—Security to keep peace—Security proceedings—Preventive sections—Order of security on expiration of substantive sentence of imprisonment—Order for imprisonment in default of furnishing security.

A person convicted of criminal intimidation was sentenced to three months' rigorous imprisonment, and was further ordered to give security to keep the peace for six months under S. 106. At the time of the sentence, the Magistrate added an order to the effect that if the accused failed to give the security demanded, he was to undergo six months' simple imprisonment. The case was referred to the Chief Court by the Sessions Judge as it had been held in a previous case that an order made in similar circumstances for imprisonment in default of furnishing security was premature: *Held*, that it was unnecessary to interfere with the order in revision. *Emperor v. Tha Hlaing.*

7 Cr. L. J. 742 :
4 L. B. R. 205.

—S. 106—Security—Security to keep the peace—District Magistrate, power of, to direct cancellation of bonds, scope of.

S. 406 of the Cr. P. C. allows an appeal to the Court of District Magistrate against an order to find security for good behaviour. In respect of an order for security to keep the peace, the District Magistrate's powers are limited to the cancellation of the bonds under S. 125, and the words of the section seem to imply that the District Magistrate has no power to revise the original order of a Subordinate Magistrate passed under S. 106 or 107 of that Code. The words of the section contemplate cancellation of a bond for reasons arising subsequently to its execution and not for the reason that the District Magistrate is of opinion that execution ought not to have been ordered. *Khushal v. Emperor.*

21 Cr. L. J. 591 :
57 I. C. 111 : A. I. R. 1920 Nag. 138.

—S. 106—Security—Surety for another to keep the peace—Liability of surety—Forfeiture of bond.

Prima facie a surety merely agrees to pay the creditor failing the debtor, and his liability is, as a rule, co-extensive with that of the principal. But where a person has stood surety for another bound down to keep the peace, both persons are liable if the condition of the bond is broken, for that is not a case of ordinary suretyship for the payment of money, but the surety is an additional security for the principal's keeping the peace and not merely a surety for his paying for it. *Saligram Singh v. Emperor.*

10 Cr. L. J. 89 :
36 Cal. 562 : 9 C. L. J. 296 :
13 C. W. N. 555.

—S. 106—Security—Surety if liable to pay even if payment is made by principal.

Where a surety bond is executed in accordance with the provisions of S. 106, the surety is liable to pay the amount specified in the bond on breach of peace by the principal even if payment has been made by the prin-

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principal of the amount due on his own bond. The power to require sureties has been given with some object other than that of ensuring the recovery of the amount of the bond: in other words, an additional security for the principal's keeping the peace, not a surety for his paying forfeit demandable. *Sardar Khan v. Emperor*. 38 Cr. L. J. 420 : 167 I. C. 746 : 17 Lah. 523 : 38 P. L. R. 951 : A. I. R. 1937 Lah. 133 : 9 R. L. 538.

S. 106—Security—Surety's liability, extent of.

A surety, under S. 106, cannot be made liable for an amount larger than the one for which the principal has executed the bond. *Emperor v. Ellis*. 13 Cr. L. J. 482 : 15 I. C. 482 : 5 Bur. L. T. 101.

S. 106—Unlawful assembly—Security to keep the peace—Penal Code (Act XLV of 1860), S. 143—Unlawful assembly.

An order under S. 106 upon a conviction under S. 143 of the Penal Code is illegal. *Raj Narain Roy v. Bhagabat Chunder Nandi*. 7 Cr. L. J. 392 : I. L. R. 35 : Cal. 315.

S. 106—Forming unlawful assembly and overawing people—'Breach of peace'—Order under S. 106.

To form an unlawful assembly, and by means of that unlawful assembly, to overawe and intimidate other persons, preventing them from doing what they are legally entitled to do and compelling them to abandon their property which they are entitled to keep, does actually amount to a breach of the peace of a most serious nature within the meaning of S. 106. *Lal Mohammad v. Emperor*. 32 Cr. L. J. 739 : 131 I. C. 539 : 12 P. L. T. 556 : I. R. 1931 Pat. 219 : A. I. R. 1931 Pat. 337 (2).

S. 107.

Appeal.

Applicability.

Bail.

Both parties dangerous.

Consent of accused.

Dispute about land.

Evidence.

Fresh enquiry.

Fresh proceedings.

Grounds.

Joint-trial.

Jurisdiction.

Lawful Acts.

Nature of proceeding.

Procedure.

Reference.

Revision.

Scope.

Security.

S. 107.

See also (i) Cr. P. C., S. 106.

(ii) Cr. P. C., S. 115.

S. 107.

See Legal Practitioners' Act, 1879, S. 12.

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S. 107—Appeal.

A person bound down to keep peace has no remedy by way of appeal to the District Magistrate. The proper course for him is to bring his case in revision before the Sessions Judge. *Sheo Singh v. Emperor*.

15 Cr. L. J. 721 :

26 I. C. 69 : 1 O. L. J. 541 :

A. I. R. 1914 Oudh 305.

S. 107—Appeal—Stay of security.

Appellate Court has power to suspend execution of order relating to furnishing of security. *Katecaroo Rai v. Emperor*. 33 Cr. L. J. 731 (2) : 139 I. C. 141 : 1932 A. L. J. 624 : L. R. 13 All. 119 Cr. : 54 All. 861 : I. R. 1932 All. 523 : A. I. R. 1932 All. 680.

S. 107—Appeal—De novo trial.

In appeal against order to give security, *de novo* trial cannot be ordered by Appellate Court. It can only alter or reverse under S. 423 (1) (c) and under S. 423 (1) (c) pass any consequential order which is just and proper. *In re : Narappa Reddy*.

34 Cr. L. J. 947 (1) :

145 I. C. 306 : 1933 M. W. N. 241 :

6 R. M. 48 : A. I. R. 1934 Mad. 202 (1).

S. 107—Appeal.

No appeal lies against an order for security to keep the peace. The Code makes a careful distinction between an order directing security to be given for keeping the peace and an order directing security to be given for good behaviour. S. 406 gives the right of appeal only in cases where there is an order for security for good behaviour. *Suleman Adam v. Emperor*.

10 Cr. L. J. 375 :

3 I. C. 774 : 11 Bom. L. R. 740.

S. 107—Appeal.

No appeal lies in proceedings instituted under S. 107 for keeping peace read with S. 118 of the Code. *Shamrao v. Emperor*.

25 Cr. L. J. 67 :

74 I. C. 979 : 19 N. L. R. 160 :

A. I. R. 1924 Nag. 60.

S. 107—Appeal.

No appeal whatsoever lies to a District Magistrate from an order of a Magistrate, First Class, ordering a certain person to keep peace. *Banarsi Das v. Partap Singh*.

14 Cr. L. J. 63 (a) :

18 I. C. 351 : 11 A. L. J. 16 : 35 All. 103.

S. 107—Appeal—Order to keep peace—Appeal—Re-trial.

In an appeal under S. 406 against an order binding over a person to keep the peace, in proceedings under S. 107, the Appellate Court is competent to order a re-trial. *Bhagrat Singh v. Emperor*.

27 Cr. L. J. 945 :

96 I. C. 497 : 24 A. L. J. 566 :

L. R. 7 A. 121 Cr. : 48 All. 501 :

A. I. R. 1926 All. 403.

S. 107—Appeal—Security for keeping peace—Appeal—Jurisdiction of District Magistrate to take executive action.

No appeal lies from an order under S. 107, but where a person bound down applies to the District Magistrate to consider the case under

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S. 125 an l cancel the bond, the latter is within his jurisdiction to take executive action for the settlement of the dispute and direct the applicant to be discharged from his security, that is, cancel the bond. *Monmohan Dass v. Babu Lall*. 24 Cr. L. J. 627 :

73 I. C. 513 : A. I. R. 1922 Pat. 420.

————S. 107—*Applicability*.

S. 107 applies to persons likely to commit a breach of the peace themselves as also to those who merely instigate a breach of the peace or disturbance of public tranquillity by others. *Baines v. Emperor*. 23 Cr. L. J. 394 :

67 I. C. 346 : A. I. R. 1922 Nag. 180.

————S. 107 — *Applicability* — Manager of zemindar encouraging illegal acts likely to cause breach of peace—Manager bound down in security, legality of.

Petitioner, as Manager of a zemindar who owned a *hat*, employed peons to realize a toll from the users of the *hat*; the peons, in attempting to realize the toll, resorted to acts of violence and force and threatened to molest the users in order to obtain payment. As these acts were found to have been committed with the knowledge and consent of the petitioner and there was a reasonable apprehension that if, persisted in, a breach of the peace would occur, he was directed, to furnish security to keep the peace : *Held*, that the order was justified. *Bepin Behari Mukherji v. Emperor*.

21 Cr. L. J. 651 :

57 I. C. 667 : 2 U. P. L. R. Pat. 161 :

A. I. R. 1920 Pat. 667.

————S. 107—*Applicability*—Apprehension of breach of peace, necessity of.

An order under S. 107, can only be passed if there is evidence that the person sought to be bound over is about to commit a breach of the peace and not otherwise. *Narindra Bahadur Pal v. Emperor*. 1 Cr. L. J. 696 :

1 A. L. J. 418.

————S. 107—*Applicability*—Security for breach of the peace—Bad feeling existing between two sections of community.

Under S. 107 of the Cr. P. C., the condition precedent to taking security is that the Magistrate should be informed that some person is likely to commit a breach of the peace or disturb the public tranquillity or to do some wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. Where there is nothing definite to go upon with reference to each accused person individually and no proof of use of violence, security cannot be taken merely because a bad feeling exists between two sections of a population. *Sher Khan v. Emperor*.

12 Cr. L. J. 186 :

9 I. C. 1026 : 126 P. L. R. 1911 :

43 P. W. R. 1911 Cr.

————S. 107—*Applicability*—Breach of peace, apprehension of—Action against peaceful citizens, legality of.

When a breach of the peace is anticipated, action is to be taken against the potential law-breakers and not against peaceful citizens

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whom it is expected that the law-breakers will molest. *Khazan Chand v. Emperor*.

28 Cr. L. J. 345 :

100 I. C. 825 : A. I. R. 1927 Lah. 430.

————S. 107—*Applicability*—Breach of peace, apprehension of.

Where acts committed by an accused person are of such a nature that the continuity of these acts or the commission of similar acts by the accused is apprehended to be tending to a breach of the peace. S. 107 is applicable notwithstanding that the acts already committed by the accused constitute specific offences under the Penal Code. *Khetrabasi Sahu v. Emperor*. 19 Cr. L. J. 246 :

44 I. C. 38 : A. I. R. 1918 Pat. 184.

————S. 107—*Applicability*—Dispute over band—Order as to removal of band, propriety of—Proper order.

Where a party alleges that he has a right to irrigate his land and that the opposite party has constructed a *band* preventing him from exercise of his right and that there is an apprehension of breach of peace and prays that the opposite party be directed to remove the *band*, the proper order to be made is to place both sides on security under S. 107, and leave the parties to have their rights settled by Civil Courts. An order directing removal of the *band* is not a proper order. *Ahmed Din v. Jiwan*.

27 Cr. L. J. 801 :

95 I. C. 465 : A. I. R. 1926 Lah. 550.

————S. 107—*Applicability*—Dispute relating to property—Binding down only one party, not proper.

Where there are disputes between two parties as to their civil rights in respect of the management and control of certain temples, it is not desirable that one party should be bound down so as to give an advantage to the other. *Ghasi Ram v. Emperor*. 20 Cr. L. J. 194 :

49 I. C. 642 : 1919 Pat. 98 :

A. I. R. 1919 Pat. 22.

————S. 107—*Applicability*—Information that person was committing acts involving breach of peace in the past—Whether in itself justifies order under S. 107.

The object of S. 107 is to guard against apprehended breaches of the peace or wrongful acts which might probably lead to breach of the peace. Where a person was committing various acts involving breach of peace in the past, an order under S. 107 is not justified. *In re : Maruthapalli Gounder*. 381 Cr. L. J. 699 :

169 I. C. 97 : 1937 M. W. N. 48 :

45 L. W. 308 : 9 R. Mad. 685 :

A. I. R. 1937 Mad. 356.

————S. 107—*Applicability*.

It must be shown that there are definite facts from which an inference can be warranted that the persons charged would disturb the public tranquillity unless preventive measures are adopted, and further, the evidence must show that the persons sought to be bound are individually and not merely collectively connected with those facts. *Ghasi Ram v. Emperor*.

20 Cr. L. J. 194 :

49 I. C. 642 : 1919 Pat. 98 : A. I. R. 1919 Pat. 22.

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—S. 107—*Applicability—Measurement of joint land by one co-sharer landlord against the will of the other landlord.*

Where one of two co-sharer landlords proceeded to make a measurement of lands which he was not justified by law to do without the consent of the other and the other objected to the action but did not use any force: *Held*, that the objecting co-sharer could not be bound down. *Bhabataran Ghose v. Bankatesh Lal Mitra.*

2 Cr. L. J. 336 :
9 C. W. N. 618.

—S. 107—*Applicability—Mere apprehension of breach of peace, sufficient.*

In order to attract the application of S. 107, it should not only be shown that there is an apprehension of a breach of the peace but it must also be shown that the particular persons, against whom proceedings are drawn up, were likely to commit a breach of peace. The mere fact that certain persons are interested in a dispute does not by itself afford a ground for taking proceedings against them. *Ainuddin v. Emperor.*

24 Cr. L. J. 230 :
71 I. C. 694 : A. I. R. 1922 Cal. 97.

—S. 107—*Applicability—Object of proceedings under that section—Orders set aside as improper.*

There being dispute between the *zemindars* and the tenants with regard to possession of certain land, the Deputy Magistrate instituted proceedings under S. 145, between the parties and attached the land and made a temporary settlement thereof with a third party. One of the parties to the proceedings having moved the High Court, the proceedings were held to be defective and the Deputy Magistrate allowed them to be dropped holding that there was no further apprehension of a breach of the peace. The third party, however, remained in possession of the land, and there being in the meantime a survey and settlement of rights in the village, the Settlement Officer recorded them as being persons in possession, and the *zemindars* apparently acquiesced in the arrangement. The tenant, however, attempted to interfere and were eventually bound down under S. 107: *Held*, that proceedings under S. 107 taken under such circumstances were based on a misunderstanding of the real position of the parties and, therefore, could not be maintained. *Maigh Lal Singh v. Ambica Jha.*

5 Cr. L. J. 344 :
5 C. L. J. 447.

—S. 107—*Applicability—Person not likely to commit breach himself but inducing others to do so.*

Security for keeping the peace under S. 107 should not be taken from a person, who is not likely to commit any breach of peace himself, but is likely to induce another person to do so. *Deval Singh v. Emperor.*

13 Cr. L. J. 126 :
13 I. C. 782 : 11 P. W. R. 1912.

—S. 107—*Applicability—Person preparing to enforce claim through armed servant, whether can be bound down.*

S. 107 is applicable to a man who asserts a claim, and keeping himself in the background,

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makes preparations for the enforcement of that claim through a servant who is continuously armed. *Bala Lal Mahon v. Emperor.*

18 Cr. L. J. 374 :
38 I. C. 758 : 1 P. L. J. 361 : 2 P. L. W. 386 :
A. I. R. 1916 Pat. 52.

—S. 107—*Applicability—Possession delivered by Civil Court—Criminal Court, duty of—Possession, how to be maintained.*

The possession delivered by the Civil Court must be upheld by the Criminal Court and the only way to maintain the possession of the auction-purchaser is by proceedings under S. 144 or S. 107 of the Cr. P. C. *Sukan Singh v. Prayag Singh.*

21 Cr. L. J. 575 :
57 I. C. 95 : 1 P. L. T. 81 : 2 U. P. L. R. Pat. 35 :
1920 Pat. 124 : A. I. R. 1920 Pat. 210.

—S. 107—*Applicability—Preparation to obstruct festival—Festival passing away without disturbance—Security proceedings, whether to be continued.*

There was evidence that the petitioners were making preparations to commit a breach of the peace during a particular festival, and proceedings were started against them under S. 107. The festival passed away without any disturbance, and the petitioners applied to the Court to drop the proceedings: *Held*, that the proceedings ought to be quashed. *Pat Zulfakar Beg v. Emperor.*

28 Cr. L. J. 719 :
103 I. C. 607 : 8 P. L. T. 370 :
A. I. R. 1927 Pat. 231 : 8 A. I. Cr. R. 376.

—S. 107—*Applicability—Reg. VIII of 1819—Putni taluk sold—Durputnidar resisting the Purchaser—Wrongful collection of rents—likelihood of a breach of the peace.*

Where a *Putni taluk* was sold and everything necessary to put the purchaser in possession was done, but the *dur-patnidar* continued to be in possession and insisted upon collecting rents in opposition to the purchaser: *Held*, that such acts on the part of the *dur-patnidar* were wrongful, and as there was a likelihood of a breach of the peace being caused by such acts, he was rightly bound down under S. 107. *Bisarat Ali v. Unnapada Banerjee.*

2 Cr. L. J. 415 :
9 C. W. N. 792.

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the peace and offer violence to the law-abiding citizens. Acts in respect of which security is required, must not be acts, the repetition of which, may be merely apprehended from past commission of similar acts, but acts from which a reasonable inference can be drawn that the accused are likely (not were likely) to commit a breach of the peace. The fact that the persons hold a respectable position in the community to which they belong and wield an enormous influence with its members, is not enough to institute proceedings under S. 109 against those persons, for acts done by the members unless it is shown that they themselves are likely to commit a breach of the peace or disturb the public tranquillity or do any wrongful act which may probably occasion the breach of peace. *H. Mohammad Abdul Qayum v. Emperor.*

40 Cr. L. J. 901 :

184 I. C. 231 :

1939 N. L. J. 101 : I. L. R. 1939 Nag. 488 :

12 R. N. 101 :

A. I. R. 1939 Nag. 95.

—S. 107—Applicability.

S. 107 is a section essentially to be directed against individuals who personally are, to the reasonable belief of the Magistrate, likely themselves to act in a wrongful manner which may probably occasion a breach of the peace or disturb the public tranquillity. *Grant v. Emperor.*

22 Cr. L. J. 745 :

64 I. C. 137 : 2 P. L. T. 669 :

A. I. R. 1921 Pat. 440.

—S. 107—Applicability.

S. 107 was not intended by the Legislature to give any redress to the person making an application under that section, for there can be no redress without an injury. *Ram Lal v. Bankateshar Rawan Bahadur Pal Singh.*

25 Cr. L. J. 1149 :

81 I. C. 973 :

11 O. L. J. 732 : A. I. R. 1925 Oudh 138 :

1 O. W. N. 359.

—S. 107—Applicability—Security for keeping peace—When to be taken.

Security for keeping peace should be taken where it is probable that breaches of the peace will take place in the near future even though the occasion on which ill-feeling between the parties first came to a head has passed away.

Ayodhya Prasad v. Emperor. 12 Cr. L. J. 493 :

12 I. C. 213 : 8 A. L. J. 1080.

—S. 107—Applicability—Security to keep public peace—Possession of immovable property, dispute as to—Procedure.

Proceedings under S. 107 are only intended for the security of the public peace and not for the purpose of enabling one of the two contending parties to help themselves in recovering possession of immovable property after having their adversaries' hands tied down by an order under this section. Where the dispute relates to the possession of immovable property, the proper course is to institute proceedings under S. 145, and not under S. 107. *Jalal v. Emperor*

19 Cr. L. J. 446 (a) :

42 I. C. 974 : 144 P. L. R. 1917 :

A. I. R. 1918 Lah. 344.

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—S. 107—Applicability—Security to keep peace, when to be demanded.

Before demanding security from a person under S. 107, the Court ought to be satisfied that there is some apprehension of a breach of the peace on his part. *Abdul Rahman v. Emperor.*

22 Cr. L. J. 590 :

62 I. C. 830 : 8 O. L. J. 282 :

A. I. R. 1921 Oudh 26.

—S. 107—Applicability—Security to keep the peace—Practice—Principle.

It is a common and proper practice to take security from the leaders of opposing factions that are shown to be likely to commit breaches of the peace. But before a person is bound over to keep the peace, it must be shown that he is himself likely to commit a breach of the peace or do a wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. He cannot be bound down merely because he is a wealthy or influential member of his party. *Jagat Narain v. Emperor.*

11 Cr. L. J. 719 :

8 I. C. 818 : 7 A. L. J. 1161.

—S. 107—Applicability—Security when to be demanded—Wrongful act—Breach of peace—Proof.

Accused, owners of a certain piece of land, intended to open a market upon it near a place where there already was an old market. The Magistrate, apprehending that that circumstance would very likely cause a breach of the peace, made an order against the accused under S. 107: *Held*, that as the Magistrate was only informed that the accused intended to hold a market on their land without being at the same time informed that they intended to commit a breach of the peace by doing any wrongful act, the order of the Magistrate was illegal. *Mahu v. Emperor.*

19 Cr. L. J. 437 :

44 I. C. 965 : 16 A. L. J. 279.

—S. 107—Applicability—Speech likely to break the peace—Security.

An hasty speech likely to break the peace does not justify an order under S. 107 against the speaker particularly when all fear of a breach of the peace passes away before the order is passed. *Beli Ram v. Emperor.*

7 Cr. L. J. 232 :

2 P. W. R. Cr. 90.

—S. 107—Applicability.

To justify an order under S. 107, the Magistrate should find that the person proceeded against is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that probably may occasion a breach of the peace or disturb the public tranquillity. *Brijnandan Prasad v. Emperor.*

16 Cr. L. J. 46 :

26 I. C. 638 : 12 A. L. J. 1246 :

37 All. 33 : A. I. R. 1914 All. 268.

—S. 107—Applicability.

What the law requires to justify an order under S. 107, is a finding that there is a likelihood of a breach of the peace being committed, the public tranquillity being disturbed or any wrongful act being done that might occasion a

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breach of the peace or disturb the public tranquillity. *Mathura Sahu v. Emperor*.

17 Cr. L. J. 484 :
36 I. C. 164 : 14 A. L. J. 769 :
A. I. R. 1917 All. 421.

—S. 107—Applicability.

Where in a proceeding under S. 107, it was found that acts done by each of the accused persons were of such a provocative nature that the only probable result was the disturbance of the public tranquillity : Held, that, the order of the Magistrate requiring the accused to furnish security to keep the peace was proper. *Chuni Lal v. Emperor*.

17 Cr. L. J. 301 :
35 I. C. 173 : 14 A. L. J. 430 :
A. I. R. 1916 All. 276.

—S. 107—Applicability—Rival parties.

Where the difficulty is to say which of the parties to the dispute is the party who is creating a disturbance, the proper procedure is under S. 107, and not under S. 144. *Hansraj Prasad Singh v. Abdul Jabbar*.

36 P. L. J. 1268 :
157 I. C. 760 : 1 B. R. 812 :
1 P. R. 161 (2) : 16 P. L. T. 624 :
A. I. R. 1935 Pat. 461.

—Ss. 107, 145—Applicability—Rights of parties—Civil suit pending—Breach of peace apprehended—Proper course.

Where a civil suit is pending for the determination of the rights of the parties in certain property, it is improper to start proceedings under S. 145, if immediate steps are necessary to avert a serious breach of the peace, proceedings under S. 107 are more appropriate. *Ali Muhammad v. Fakiruddin Munshi*.

22 Cr. L. J. 131.
59 I. C. 643 : 24 C. W. N. 1839 :
32 C. L. J. 255.

—S. 107—Bail.

In the case of proceedings under S. 107, the accused is entitled as of right to bail. *Maung Saw Hlaing v. Emperor*.

34 Cr. L. J. 1195 :
146 I. C. 23 : 6 R. Rang. 70 :
A. I. R. 1933 Rang. 165.

—S. 107—Bail.

No bail should be called for from a person against whom proceedings under S. 107 are contemplated but not actually initiated. The most that can be required of him is to furnish recognizance and that only when there is any likelihood of his absents himself from Court. *Maca Lal Thakur v. Emperor*.

5 Cr. L. J. 194 :
11 C. W. N. 415.

—S. 107—Bail.

Person against whom proceedings under S. 107 are taken, is of right entitled to bail. Procedure to be followed stated. *Gandama v. Emperor*.

34 Cr. L. J. 950 (2) :
145 I. C. 344 : 6 R. Rang. 41 :
A. I. R. 1933 Rang. 164.

—S. 107—Bail—Right to be released.

The provision in S. 107, clause (4), is not subject to or controlled by S. 496. The latter

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section does not give an absolute right to bail to any person, who is not charged with a non-bailable offence and should be read along with other provisions of the Code giving a special right of detention to a Court. *Narainsawamy Naicken v. Emperor*.

13 Cr. L. J. 447 :
15 I. C. 79 : 1912 M. W. N. 169 :
11 M. L. T. 253 : 22 M. L. J. 357.

—S. 107—Both parties dangerous—Security to keep peace—Security from both necessary.

Where there is reason to suppose that a dispute between two parties in a village may possibly end in a riot, and both parties are equally dangerous, both the parties ought to be bound over. *Bindrabai v. Emperor*.

22 Cr. L. J. 701 :
63 I. C. 829 : 3 U. P. L. R. A. 185.

—S. 107—Both parties having old-standing feuds—Security.

Where there are old standing feuds between two parties or two branches of a family, which in the course of events, have come to a head by a very serious and heavy litigation, it does not necessarily follow that a Magistrate ought to assume a possibility of a breach of the peace, and bind over one party or the other to keep the peace under S. 107. *Din Dayal v. Emperor*.

26 Cr. L. J. 981 :
87 I. C. 517 : 23 A. L. J. 300 :
A. I. R. 1925 All. 443.

—Ss. 107, 145—Concurrent proceedings under two sections.

Proceedings under Ss. 107 and 145 may go on concurrently between the same parties. *Nasir-ud Din Sirkar v. Gofur-ud-Din Mohamad*.

18 Cr. L. J. 129 :
37 I. C. 481 :

21 C. W. N. 160 : A. I. R. 1917 Cal. 226.

—S. 107—Consent of accused—Effect.

A statement by a person, in answer to a notice to show cause why security should not be taken from him, that he is not a quarrelsome person but is willing to give the security demanded, would not justify an order requiring him to furnish security. *Prabhudas v. Emperor*.

21 Cr. L. J. 656 (a) :
57 I. C. 672 : A. I. R. 1920 Nag. 145.

—S. 107—Consent of accused—Accused ready to give security—Procedure.

When an accused says that he is willing to give security, it is sufficient proof that it is necessary for keeping the peace that he should execute a bond, and it is not necessary that the Magistrate should, in such a case, take the prosecution evidence and hold an independent inquiry. *Nasir Ahmad v. Emperor*.

28 Cr. L. J. 609 :
102 I. C. 897 : L. R. 8 A. 94 Cr. :
8 A. I. Cr. R. 18 : 25 A. L. J. 819 :
50 All. 120 : A. I. R. 1927 All. 579.

—S. 107—Consent of accused—Effect—Accused willing to give security—Sufficient ground.

The mere statement of a person that he is willing to give security is not sufficient ground

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for taking security from him for keeping the peace. *Karam v. Emperor*.

23 Cr. L. J. 145 :
65 I. C. 639.

S. 107—Consent of accused, effect.

In proceedings under S. 107, the Court is perfectly entitled to act upon a solemn consent given before it by the accused to be bound over. Such a consent amounts to a plea of guilty, and the Court need not record any further evidence. *Ghariba v. Emperor*.

25 Cr. L. J. 750 :
81 I. C. 238 : 21 A. L. J. 881 :
46 All. 109 : L. R. 5 All. 21 Cr. :
A. I. R. 1924 All. 269.

S. 107—Consent of accused.

It cannot be said that on no account is the plea of the accused sufficient to warrant an order under S. 107 read with S. 117. *Sadhu Singh v. Emperor*.

36 Cr. L. J. 1212 :
157 I. C. 755 : 8 R. Pesh. 33 :
A. I. R. 1935 Pesh. 116.

S. 107—Consent of accused, no evidence—Party agreeing to be bound down—Order without jurisdiction.

No person can be bound down under S. 107 without any evidence being recorded that he is about to commit a breach of the peace, even though he may agree to be bound down. *Ram Chandra Halder v. Emperor*.

8 Cr. L. J. 128 :
8 C. L. J. 68 : 35 Cal. 674.

S. 107—Consent of accused—Security to keep peace—Consent of accused—Proof.

The mere fact that an accused person says he is willing to give security to keep the peace is not the kind of proof required by S. 118, as condition precedent to the taking of security under S. 107, and an order for furnishing security under the latter section cannot be made merely upon the strength of such statement. *Prem Singh v. Emperor*.

18 Cr. L. J. 847 :
41 I. C. 671 : 37 P. R. 191 Cr. :
236 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 304.

S. 107—Consent of accused—Security to keep peace—consent of accused, effect of.

The mere consent of the persons to be bound down is not sufficient: the fact of a likelihood of a breach of the peace must be established by independent testimony of oath. *Jagdat Tewari v. Emperor*.

21 Cr. L. J. 176 :
54 I. C. 784 : 2 U. P. L. R. All. 38 :
A. I. R. 1920 All. 20.

S. 107—Consent of accused.

The fact that a person has, in obedience to an order, expressed his willingness to furnish the security demanded to keep the peace, is no bar to his moving the High Court to set that order aside. *Chander Shekhar v. Emperor*.

21 Cr. L. J. 59.
54 I. C. 411 : A. I. R. 1919 All. 1919.

S. 107—Discharge of accused on complainant's absence—Fresh complaint.

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If after the cancellation of notice and the discharge of the accused, owing to complainant's absence in proceedings under S. 107, a fresh complaint is filed, there is no bar to the complaint being entertained. *Jasua v. Emperor*.

24 Cr. L. J. 232.
71 I. C. 696 : 21 A. L. J. 215 :
A. I. R. 1923 All. 232.

S. 107—Dispute about land.

Although the normal procedure in a dispute relating to possession of immovable property is that under S. 145, in special cases, the Court can proceed under S. 107, but it is is not proper to proceed against one of the partners alone under S. 107 and bind him over without determining the question of possession. *Ragunath Puri v. Prem Narain Puri*.

32 Cr. L. J. 1014 (2) :
133 I. C. 161 : 12 P. L. T. 535 :
I. R. 1931 Pat. 321 :
A. I. R. 1931 Pat. 347.

S. 107—Dispute about land—Attempt to eject by force person in possession of immovable property—Security.

Where certain persons wrongfully and without any *bona fide* claimed possession, sought to eject another by force from the possession of certain land and a breach of the peace was imminent: Held, that a Magistrate might legally take action against the aggressors under S. 107 and it was not necessary, on the finding that their claim was not *bona fide*, to take proceedings under S. 145. *Emperor v. Ram Baran Singh*.

3 Cr. L. J. 323 :
26 A. W. N. 61 : I. L. R. 1928 All. 406.

S. 107—Dispute about land—Bona fide dispute of possession—Duty of Magistrate to proceed under S. 145.

Whether a person is in possession of the land in dispute or not, if he raises a *bona fide* dispute of possession, the only course open to a Magistrate is to proceed under S. 145. Procedure in order to finally determine and declare the possession of one of the parties or to attach the land and thus put an end to the danger of the breach of the peace. He can, of course, take steps under Ss. 107 and 144 to prevent an immediate danger to the breach of the peace; but he is bound to start a proceeding under S. 145. He has no power to warn a party without taking such proceedings. *Amir Ali v. Dukhan Momin*.

29 Cr. L. J. 613 :
109 I. C. 805 : 10 A. I. Cr. R. 320 :
A. I. R. 1928 Pat. 574.

S. 107—Dispute about land—Complainant out of possession—Proceedings justified under S. 145—Opposite party, whether may be bound over.

A dispute about land which would justify proceedings under S. 145 does not bar proceedings under S. 107. But if the complainant is out of possession, and there is no danger of a breach of the peace unless he resumes possession, he should be referred to his remedies under S. 145 or in the Civil Courts, and the facts that his attempting to

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resume possession may cause a breach of the peace and that his dispossession was illegal are not sufficient grounds for binding over the opposite party to keep the peace. *Dhuma v. Emperor*.
23 Cr. L. J. 567 :
68 I. C. 407.

—S. 107—Dispute about land.

Court might take possession of property in dispute under S. 145 but is not entitled to do so under S. 107. *Emperor v. Araksami*.

35 Cr. L. J. 991 :
149 I. C. 429 : 30 N. L. R. 298 :
6 R. N. 228 : A. I. R. 1934 Nag. 142.

—S. 107—Dispute about land—Dispute about land justifying proceedings under S. 145—Proceedings under S. 107 not barred.

The fact that there is a dispute about land, which might be made the subject of proceedings under S. 145, does not bar proceedings under S. 107. *Hira Singh v. Mohan Singh*.

10 Cr. L. J. 221 :
3 I. C. 64 : 5 N. L. R. 94.

—S. 107—Dispute about land—Dispute as to possession—Binding over one party alone, legality of—Procedure.

Where there is a dispute as to possession of immovable property between two parties, the proper course is to institute proceedings under S. 145, and to decide the dispute as to possession once for all so far as the Criminal Court is concerned, or to proceed under S. 107 of the Code against both the parties and to bind down the party who is proved to be not in possession of the land. It is not proper to proceed against one of the parties alone under S. 107 and bind him over without determining the question of possession. *Amanat Ali v. Emperor*.

30 Cr. L. J. 492 :
115 I. C. 545 : I. R. 1929 Pat. 209 :
10 P. L. T. 639 : A. I. R. 1929 Pat. 67.

—S. 107—Dispute as to possession—Proceedings under S. 107, validity of.

Proceedings under S. 107 are justified only in a case of undisputed possession; where there is a dispute about possession over land, proceedings under S. 145 should be instituted. *Kali Pershad Gope v. Dhodhai Gope*.

22 Cr. L. J. 574 (a) :
62 I. C. 590 : A. I. R. 1924 Cal. 260.

—S. 107—Dispute about land—Dispute as to possession of land—Likelihood of breach of the peace—Discretion of Magistrate.

Where there is likelihood of a breach of the peace taking place in relation to disputed possession of land, it is discretionary with a Magistrate to proceed under S. 107 or Ss. 144 and 145. *Sheoraj v. Chatter Roy*.

2 Cr. L. J. 769 :
10 C. W. N. 288 : I. L. R. 32 Cal. 966.

—S. 107—Dispute about land—Dispute concerning land—Breach of the peace—Magistrate, duty of.

When parties are quarrelling over land, one of which claims to be in exclusive possession

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and the other to be in joint possession of the land, and there is every likelihood of a breach of the peace taking place, the proper procedure for a Magistrate is to proceed under S. 145 and not under S. 107. *Emperor v. Debendra Nath Bose*.

2 Cr. L. J. 658 :
1 C. L. J. 632.

—S. 107—Dispute about land—Dispute regarding property—Bona fide dispute—Order requiring security from one party, if proper—Pro-
—Judice to proceedings in another Court.

Where two parties had both applied to the Land Registration Court for registration of their names as proprietors of an estate, and pending these proceedings, a Magistrate instituted proceedings under S. 107 against one of the disputing parties, and it was contended on their behalf that there being a *bona fide* dispute between the parties as to title and possession, the proceeding under S. 107, Cr. P. C., taken against one party alone to the exclusion of the other would prejudice the former in the land registration proceedings : *Held*, that such a consideration was foreign to the matter under enquiry in the proceeding under S. 107; *Held*, further, that the question whether the one party or the other were in peaceful possession, would have to be decided in the proceeding, but no objection could, on that account, be taken to the initiation of proceeding under S. 107 against one or the other party, if on the facts presented before the Magistrate at the time of its initiation, it appeared that such party were out of possession and were seeking to obtain possession by unlawful means which were likely to cause a breach of the peace. *Bibee Kulsum v. Umatul Mehdi*.

4 Cr. L. J. 456 :
11 C. W. N. 121.

—S. 107—Dispute about land—Jurisdiction of Magistrate to take action.

The jurisdiction of a Magistrate to take action under S. 107 is not ousted merely because the breach of the peace relates to immovable property. *Suppa Thevan v. Ramaswami Aiyar*.

16 Cr. L. J. 211 :
27 I. C. 835 : A. I. R. 1916 Mad. 621.

—S. 107—Dispute about land—Magistrate's jurisdiction under S. 107, if ousted by dispute concerning land.

The fact that there is a dispute concerning land likely to cause a breach of the peace, does not deprive a Magistrate of jurisdiction under S. 107. Whether after proceeding under S. 107, it will be proper for a Magistrate to act under S. 145, must depend on the circumstances of each case. *Emperor v. Abbas*.

12 Cr. L. J. 596 :
12 I. C. 833 : 14 C. L. J. 429 :
16 C. W. N. 83 : 39 Cal. 150.

—S. 107—Dispute about land—Procedure.

The complainant alleged that the Petitioners had threatened to use violence to him if he should go upon the land of which he was in possession. The Magistrate passed an order under S. 107 : *Held*, that the jurisdiction of

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the Magistrate to proceed under S. 107, was not ousted by the fact that it appeared in the course of the enquiry that the dispute was one relating to the possession of land and that the apprehended breach of the peace was in consequence of that dispute, though ordinarily when there is a dispute with regard to the possession of land and there is a likelihood of the breach of the peace, the more appropriate procedure is that provided by Chap. XII of the Code. *Jafar Mandol v. Jaribulla Saha*. 2 Cr. L. J. 273 : 9 C. W. N. 551.

———S. 107—Dispute about land—Procedure.

The principle that to support an order for security, it is incumbent on the Crown to show not only that there was a likelihood of a breach of the peace at some past time, but that this likelihood continued to the present date, has no application to cases where claims are to immovable property and there is no indication that the party of the accused are likely to abandon their claims or to give up the intention of using violence in support of them. *Mahabir Gope v. Samrathi Singh*. 41 Cr. L. J. 746 : 189 I. C. 457 : 21 P. L. T. 652 : 6 B. R. 837 : 13 R. P. 124 : A. I. R. 1940 Pat. 252.

———S. 107—Dispute about land—Procedure.

Where one party who is clearly in the wrong threatens to disturb the rights of another who is in actual possession of the land, the provisions of S. 145, Cr. P. C., have no application. But the proper course when there is a real dispute regarding land is to proceed under S. 145. *Saddique v. Mohid*. 32 Cr. L. J. 208 : 129 I. C. 85 : I. R. 1931 Pat. 69 : A. I. R. 1930 Pat. 556.

———S. 107—Dispute about land—Procedure.

Where there is a real dispute as to possession of immovable property, it is necessary before proceedings under S. 107 can be properly instituted, to ascertain which of the parties to this dispute is in possession, and this can be more conveniently done by proceedings under S. 145. *Sadique v. Mohid*. 32 Cr. L. J. 208 : 129 I. C. 85 : 10 Pat. 630 : I. R. 1932 Pat. 5 : A. I. R. 1930 Pat. 426.

———S. 107—Dispute about land—Question to be determined—Breach of peace, likelihood of—Remedy.

Where it is probable that parties to a land dispute will break the King's peace before the decision of the Civil Court can be given, the danger may be guarded against by an order under S. 107. *In re : Malappa Basappa Kurhaballu*. 27 Cr. L. J. 734 : 95 I. C. 62 : 28 Bom. L. R. 488 : A. I. R. 1926 Bom. 313.

———Ss. 107, 145—Dispute about land—Dispute concerning jalkar—Procedure.

Where a dispute likely to cause a breach of the peace is a *bona fide* one relating to a fishery right, proceedings under S. 145 and

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not under S. 107 should be instituted. The words in S. 145 are mandatory, while those in S. 107 are discretionary. *Balajit Singh v. Bhaju Ghose*. 6 Cr. L. J. 398 : 6 C. L. J. 697 : 12 C. W. N. 487 : 35 Cal. 117.

———Ss. 107, 145—Dispute about land—Market—Chaudhrana dues—Profits of market—Dispute at about Chaudhrana dues—Breach of peace.

Certain persons who attended a market to sell their goods, appointed one A as *chaudhri* of the market. They agreed to remunerate him for his services by allowing him to collect two pice per head of cattle brought into the market laden with articles for sale. The payment to the *chaudhry* was purely voluntary, and was in no way connected with the ordinary rents and profits of the market and was not the prerequisite of the *zamindar*. A dispute arose as regards the collection of the dues, between A and the servants of the *zamindar* on whose land the market was held: *Held*, (1) that the dispute did not relate to the profits of a market within the meaning of S. 145, which was inapplicable; (2) that S. 107 was the appropriate section to take proceedings under. *Ram Lochan v. Emperor*. 15 Cr. L. J. 27 : 22 I. C. 171 : 12 A. L. J. 162 : 36 All. 143 : A. I. R. 1914 All. 62.

———S. 107—Dispute about land—Security—Procedure.

When there is a *bona fide* dispute as to the right to the possession of land between two rival parties, giving rise to a likelihood of a breach of the peace, it is unfair to bind down only the party who happens to be in possession under S. 107, to keep the peace. The proper order in such a case would be to bind down both the parties under S. 107, or to institute a proceeding under S. 145. *Baisnab Das Babaji v. Emperor*. 7 Cr. L. J. 403 : 12 C. W. N. 606.

———S. 107—Dispute about land—Dispute regarding land—Order confirming possession of one party, without following procedure laid down in S. 145, legality of revision.

The police submitted a report to a Magistrate recommending action under S. 144 followed by proceedings under S. 145 in respect of a plot of land against certain parties. The Magistrate passed an order directing that the parties should appear before him on a certain date, and that in the meantime, they should not commit a breach of the peace by going to the land in dispute. On the parties appearing before him, the Magistrate heard the lawyers and passed an order that one of the parties was in possession of the land and that the others were forbidden to interfere with the former's possession and that in case of interference with such possession, the parties guilty of interference, would be proceeded against under S. 107, and that if they had any right, they had better go to the Civil Court: *Held*, that the order was, in substance though not in form, an order under S. 145 and that having been passed without observing the formalities indispensable under

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that section was passed without jurisdiction and must be set aside. *Pat Harbans Narain Singh v. Mohammed Sayeed*. 26 Cr. L. J. 1511 : 90 I. C. 295 : A. I. R. 1926 Pat. 51.

—Ss. 107, 145—Dispute about land—Procedure.

Where a dispute relating to possession of immovable property is likely to cause a breach of the peace, a Magistrate has a direction to proceed either under S. 107 or under S. 145. *Thakur Pandey v. Emperor*. 13 Cr. L. J. 526 : 15 I. C. 795 : 9 A. L. J. 582.

—Ss. 107, 145—Dispute about land—Procedure.

In case of a *bona fide* dispute as to the possession of land, the proper course to follow is to proceed under S. 145, and unless and until the Court is in a position to say that the party sought to be bound down is clearly in the wrong, S. 107 should not be resorted to. *Shama Charan v. Emperor*. 27 Cr. L. J. 1562 : 90 I. C. 412 : 1925 Pat. 263 : 6 P. L. T. 766 : A. I. R. 1925 Pat. 610.

—Ss. 107, 145—Dispute about land—Procedure.

It is inconvenient that proceedings under S. 107 and also under S. 144 or 145 should be going on at the same time. *Abinash Chandra Mandal v. Lokenath Gani*. 19 Cr. L. J. 367 : 44 I. C. 591 : A. I. R. 1919 Cal. 465.

—Ss. 107, 145—Dispute about land—Procedure.

On being satisfied that the accused had a dispute *inter se* between them over partition of their land, and that there was a likelihood of a breach of the peace, the Magistrate took proceedings against them under S. 107 and not under S. 145 : *Held*, that it was quite open to the Magistrate to take proceedings under either of the sections, the word "shall" in S. 145, being "directory" and not "mandatory": *Held, further*, that as under the present Cr. P. C., the High Court had no power to revise orders under S. 145, *a fortiori* it had no power to direct a Magistrate to initiate proceedings under that section. *Imperator v. Lakhano*. 10 Cr. L. J. 231 : 2 S. L. R. 18.

—Ss. 107, 145—Dispute about land what is—Procedure.

Where one party is clearly in possession of property and another party wants to take forcible possession of it, there is no dispute as to possession of the property within the meaning of S. 145 and the appropriate course is to initiate proceedings under S. 107. *Lachman Singh v. Emperor*. 22 Cr. L. J. 86 : 59 I. C. 374 : 1 P. L. J. 681.

—S. 107—Doubt as to rights of parties—Security from both parties.

In a proceeding under S. 107, if there are doubts as to the existence of the respective rights and obligations of the parties, the Magistrate should bind down both parties so

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that his order may not be detrimental to either. *Din Dyal v. Emperor*. 6 Cr. L. J. 230 : 11 C. W. N. 1002 : I. L. R. 34 : Cal. 935.

—S. 107—Evidence, absence of—Effect.

Where evidence to show that the petitioner is likely to commit breach of the peace does not exist on the record, an order under S. 107, is liable to be set aside on revision. *Sher Singh v. Hari Singh*. 13 Cr. L. J. 720 : 16 I. C. 720 : 34 P. W. R. 1912 Cr. : 195 P. L. R. 1912.

—S. 107—Evidence—Accused having no opportunity for defence—Security order illegal.

On 15th January 1906, an order was passed for transfer of the case from the Court of A. to that of the District Magistrate. Notice was then issued to the parties and the witnesses for the complainant to attend on 8th February 1906. On 8th February 1906, the accused were not present and an order was passed to inform them that the case would be heard on 12th February 1906 at Shujabad. The witnesses for the prosecution were also informed of the change of date. The District Magistrate was not at Shujabad on 12th February 1906, and consequently the case was heard on 13th February 1906. As the proceedings on 13th February 1906 were continued till 8 p. m., an application for summoning defence witnesses was filed on 14th February 1906, but the District Magistrate rejected it, recording thereon that he saw no good reason to delay proceedings and pronounced his judgment : *Held*, this was a material irregularity on the part of the District Magistrate. *M. R. v. Emperor*. 4 Cr. L. J. 363 : 1 P. W. R. Cr. 16.

—S. 107—Evidence—Commission of breach of peace after initiation of proceedings, evidentiary value of.

In a criminal case, if the accused persons, seeing proceedings under S. 107 against them pending, attempt to commit a breach of the peace, such evidence would be the best evidence to prove their intention. *Emperor v. Jewan Singh*. 31 Cr. L. J. 710 : 124 I. C. 706 : 1930 A. L. J. 866 : A. I. R. 1930 All. 408.

—S. 107—Evidence—Conduct on previous occasions, relevancy of.

Incidents in connection with processions which an accused has led previously are admissible under S. 11 of the Evidence Act to show the particular line of action which the accused would probably take in regard to similar processions on subsequent occasions. *Satendra Nath Sen Gupta v. Emperor*. 29 Cr. L. J. 844 : 111 I. C. 396 : 32 C. W. N. 477 : 47 C. L. J. 444 : A. I. R. 1928 Cal. 438.

—S. 107—Evidence—Expression of opinion before District Magistrate, admissibility of, to prove intention.

Where a person sought to be dealt with under S. 107, made a statement to the District Magistrate, who had a conversation with him, that he would not desist from holding a procession,

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which was likely to create a breach of the peace: *Held*, that the statement was admissible in evidence to prove the intention of the accused. *Satindra Nath Sen Gupta v. Emperor*.

29 Cr. L. J. 844 :
111 I. C. 396 : 32 C. W. N. 477 :
47 C. L. J. 444 : A. I. R. 1928 Cal. 438.

———S. 107—Evidence—Formalities to be observed before passing order.

In proceedings under S. 107, no final action should be taken and no final order calling upon a person to furnish security to keep the peace should be passed without formal evidence being recorded. *In re : Venkataswami*.

6 Cr. L. J. 278 :
17 M. L. J. 407 : I. L. R. 30 Mad. 330.

———S. 107—Evidence—Guilt, no plea of—Magistrate bound to record evidence.

Where in proceedings under S. 107, there is no unqualified plea of guilt, the Magistrate is bound to record evidence before passing orders. *Prabhudas v. Emperor* 21 Cr. L. J. 656 (a) :
57 I. C. 672 : A. I. R. 1920 Nag. 145.

———S. 107—Evidence—Indefinite information—Magistrate, duty of.

Where proceedings under S. 107 drawn up by a Magistrate against one party to a dispute concerning some property recite simply that he has received a report from the Police that that party is likely to commit a breach of the peace or do a wrongful act which may occasion a breach of the peace, inasmuch as it is using threats of violence to the other party, the information is too vague and indefinite to justify action and the proceedings must be set aside. *Nand Kishore Nath Sahai Deo v. Emperor*. 25 Cr. L. J. 369 :
77 I. C. 417 : 5 P. L. T. 353 :
2 Pat. L. R. 159 Cr. :
A. I. R. 1922 Pat. 209.

———S. 107—Evidence—Litigating parties—Absence of proof of apprehension of breach of peace.

S. 107 should not be put in force unless substantial grounds for an apprehension of a breach of the peace are established by proof of facts against each person implicated, and it is not enough to show that the parties are continually bringing false cases one against the other. *Radha Kishen v. Emperor*. 4 Cr. L. J. 429 :
1 P. W. R. Cr. 24.

———S. 107—Evidence—Nature of facts to be proved.

It is not necessary under S. 107 to prove that any offences have actually been committed : it will be enough if facts are proved, from which it may be reasonably inferred that the persons sought to be bound are likely to disturb the public peace. The facts must, however, be of definite nature, and must show that the person sought to bound are individually and not merely collectively connected with them. *Pran Krishna Sahu v. Emperor*. 1 Cr. L. J. 58 :
8 C. W. N. 180.

———S. 107—Evidence—Nature of information necessary for issue of process.

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In order to issue process under S. 107, the information must be of a clear and definite kind directly affecting the person against whom process is issued, and it should disclose tangible facts and details, so that it may afford notice to such person of what he is to come prepared to meet. *Farid v. Piru*. 16 Cr. L. J. 235 :
27 I. C. 907 : 8 S. L. R. 207 :
A. I. R. 1914 Sind 8.

———S. 107—Evidence—No overt act—Opinion of witnesses—Danger of breach—Security.

In the absence of any overt act mere expression of opinion by a few witnesses that there is an apprehension of a breach of the peace is not sufficient to prove that there is really any danger of the breach of the peace. *Joti Sarup v. Emperor*. 27 Cr. L. J. 1002 :
96 I. C. 858 : A. I. R. 1926 Lah. 689.

———S. 107—Evidence—Obiter.

A Magistrate, dealing with proceedings under S. 107, should not base his judgment upon facts obtained from sources outside record but should base it upon evidence relevant to the case. *Mathura Sahu v. Emperor*. 17 Cr. L. J. 484 :
36 I. C. 164 : 14 A. L. J. 769 :
A. I. R. 1917 All. 421.

———S. 107—Evidence—Order requiring security to keep the peace made without enquiry, legality of.

It is illegal to make an order requiring a person to furnish security without any inquiry as to whether he was likely to commit a breach of the peace, or was otherwise a proper subject for proceedings under S. 107. *Chander Thekhor v. Emperor*. 21 Cr. L. J. 59 :
54 I. C. 111 : A. I. R. 1919 All. 19.

———S. 107—Evidence—Personal knowledge of Magistrate—Breach of public peace—Magistrate should base his order on evidence on record and not on personal knowledge outside record.

A Magistrate who possesses outside knowledge of matters which are not evidence in a case under S. 107, should keep that knowledge out of his judgment and endeavour to base his decision entirely upon the relevant evidence in the case. *Brijnandan Prasad v. Emperor*. 16 Cr. L. J. 46 :
26 I. C. 638 : 12 A. L. J. 1246 :
37 All. 33 : A. I. R. 1914 All. 268.

———S. 107—Evidence—Plea of guilt—Magistrate, duty of.

Under S. 107, a Court is entitled to act upon a solemn and free consent amounting to a plea of guilty given before it by the person summoned. *Emperor v. Kishen Narain*. 30 Cr. L. J. 6 :
112 I. C. 774 : 26 A. L. J. 312 :
L. R. 9 A. 39 Cr. : 9 A. I. Cr. R. 291 :
50 All. 599 : I. R. 1939 All. 73 :
A. I. R. 1928 All. 270.

———S. 107—Evidence—Proceedings under—Hearsay evidence.

Proceedings under S. 107 cannot be based upon hearsay evidence. *Mohan v. Emperor*. 21 Cr. L. J. 560 :
56 I. C. 864 : A. I. R. 1920 Nag. 203.

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—S. 107—*Evidence—Reports of witnesses regarding past conduct of accused and his disposition to use violence—Admissibility under S. 157. Evidence Act (I of 1872).*

Court can admit under S. 157, Evidence Act, as evidence of the past conduct of accused and their disposition to use violence, *sanchas* or reports made by several of the prosecution witnesses on various dates in the absence of the accused, to corroborate what the witnesses have testified, though these *sanchas* are not substantive evidence of the matters mentioned in them. *Mahabir Gope v. Samrathi Singh*.

41 Cr. L. J. 746 :
189 I. C. 457 : 21 A. L. J. 652 : 6 B. R. 837 :
13 R. P. 124 : A. I. R. 1940 Pat. 252.

—S. 107—*Evidence required.*

Where a Magistrate does not find any specific act of instigation or provocation against a legal practitioner, the fact of his conducting cases in the exercise of his profession for some of the connections of the persons related to a co-accused with him, is no ground for putting him on security under S. 107. *M. R. v. Emperor*.

4 Cr. L. J. 363 :
1 P. W. R. Cr. 16.

—S. 107—*Evidence required, nature of.*

Where persons belonging to the same party are acting in concert with a common object in view, it may not be necessary to specify particular acts against them, still it is essential that the information upon which the process is issued, should disclose "tangible facts and details." *Ainuddin v. Emperor*.

24 Cr. L. J. 230 :
71 I. C. 694 : A. I. R. 1922 Cal. 97.

—S. 107—*Evidence—Security for breach of peace—Accused agreeing to give security—Breach of peace, proof of, absence of—Order, legality of.*

A Magistrate called upon the accused under S. 112 of the Cr. P. C., to show cause why they should not furnish security to keep the peace under S. 107, on the ground that they were members of an unlawful assembly. The accused denied these allegations but expressed their willingness to execute bonds to keep the peace. Thereupon the Magistrate directed them to execute bonds for Rs. 100 to keep the peace for one year : *Held*, that the order was illegal, inasmuch as the accused did not plead guilty and there was no evidence on the record. *Emperor v. Rai Singh*.

20 Cr. L. J. 105 :
48 I. C. 985 : A. I. R. 1918 Nag. 140.

—S. 107—*Evidence—Security for breach of peace—Vague apprehension.*

An order under S. 107, Cr. P. C., should not be passed merely on a vague apprehension. *Gurusamy Nadan v. Emperor*.

13 Cr. L. J. 143 :
13 I. C. 831 : 1912 M. W. N. 47 :
11 M. L. T. 32 : 22 M. L. J. 251.

—S. 107—*Evidence—Security for good behaviour—Proof.*

To bring a case within the provisions of S. 107, it is not enough to show that there is a great

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probability of a breach of the peace ensuing ; it must further be shown that the party is likely to do illegal acts of violence. *Emperor v. Chanhasari*.

1 Cr. L. J. 940 :
6 Bom. L. R. 862.

—S. 107—*Evidence—Security order on consent, legality of.*

An order for taking security under S. 107, is illegal and should not be passed simply on the petitioner's own statement before the Magistrate that he had no objection to giving security. *Emperor v. Sheodan*.

16 Cr. L. J. 784 :
3 I. C. 384 : 24 P. R. 1915 Cr. :
A. I. R. 1915 Lah. 82.

—S. 107—*Evidence—Security proceedings—Assault case, evidence and judgment in, whether can be considered.*

Where a Magistrate is trying security case and an assault case on the same day against the same persons, there is no harm if he uses his knowledge of the one to govern his judgment in the other, and makes such use appear in his judgment. If the Magistrate convicts them in the assault case, and thinks that they ought to be bound over, he ought to bind them over as part of the decision of the assault case. The result of that would be that when the assault case is upset in appeal, the binding over would be upset too. Where, however, the persons accused are not identical, the proceedings and judgment in the assault case cannot be taken into consideration in arriving at a conclusion with regard to the security proceedings. *Din Dayal v. Emperor*.

26 Cr. L. J. 981 :
87 I. C. 517 : 23 A. L. J. 300 :
A. I. R. 1925 All. 443.

—S. 107—*Evidence—Security proceedings—Proof of overt act.*

In order to bind over persons, it is sufficient if there is danger of breach of the peace, it is not necessary to prove that the accused were guilty of some overt act. *Emperor v. Jagan Singh*.

31 Cr. L. J. 710 :
124 I. C. 705 : 1930 A. L. J. 865 :
A. I. R. 1930 All. 408.

—S. 107—*Evidence—Security to keep peace—Order made on admission of accused—Evidence, whether necessary.*

It is illegal to place a person on security merely on his stating that he has no objection to furnish it. There must be some evidence indicating that there is an apprehension of the breach of the peace or of some act likely to cause a breach of the peace on the part of the person concerned. *Joti Malik v. Emperor*.

25 Cr. L. J. 710 :
81 I. C. 198 : A. I. R. 1925 Lah. 135.

—S. 107—*Evidence—Security to keep peace—Evidence that a breach of the peace was, not is, likely to be committed.*

The evidence which goes to show that certain persons at the utmost were likely to cause a breach of the peace at a past annually recurring festival, does not justify the presumption that they are likely to do the same thing at the next

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recurrence of the festival, and an order to furnish security to keep the peace ought not to be based on such evidence. *In the matter of the : Petition of Basdeo.* 1 Cr. L. J. 360 : I. L. R. 26 All. 190.

—S. 107—Evidence.

There must be evidence of specific conduct of accused. Mere *ipse dixit* of witnesses is not enough. Nor is the mere fact that he was raising shouts causing mental excitement to a crowd sufficient. *Suraj Parkash v. Emperor.* 32 Cr. L. J. 693 : 131 I. C. 205 : I. R. 1931 Lah. 445 : A. I. R. 1931 Lah. 184.

—S. 107—Fresh proceedings—Facts forming subject of previous enquiry resulting in discharge whether ground for fresh enquiry under S. 107.

In initiating proceedings under S. 107, a Magistrate should not rely upon facts and information which formed the subject of a previous enquiry and in which the accused were discharged. There must be fresh materials available on which it can be said that a fresh apprehension has arisen of a breach of the peace being committed by the accused. *In re : Nagireddy Kondareddy.* 18 Cr. L. J. 878 : 41 I. C. 990 : 41 Mad. 246 : A. I. R. 1918 Mad. 555.

—S. 107—Grounds—Apprehension of breach of peace, necessity of—Mere enmity between two parties, insufficient.

The mere existence of enmity between two persons or factions is no ground for instituting proceedings under S. 107, against one or both the parties. In order to bring a case within that section, it must be established that a breach of the peace is imminent. *Parman Ram v. Emperor.* 29 Cr. L. J. 417 : 103 I. C. 517 : 10 L. L. J. 72 : 29 P. L. 434 : 10 A. I. Cr. R. 141 : A. I. R. 1928 Lah. 243.

—S. 107—Grounds—Boycotting servants of zemindar—No sufficient ground.

Where the tenants were boycotting the servants of the zemindar but beyond that they were doing nothing from which it might be apprehended that they were likely to commit a breach of the peace or disturb the public tranquillity : *Held*, that the tenants were not liable to be bound down under S. 107. *Behari v. Emperor.* 14 Cr. L. J. 238 : 19 I. C. 334.

—S. 107—Ground—Breach apprehended from opposite party if one party exercises his right.

No security to keep the peace can be demanded from a party, simply because the opposite party would commit such breach if the former party would exercise his right. *In re : Desikachari.* 15 Cr. L. J. 661 : 26 I. C. 989 : A. I. R. 1915 Mad. 81.

—S. 107—Grounds—Complainant out of possession—Breach of peace likely to result from complainant's efforts to resume possession—Security.

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The facts that the dispossession of the complainant under S. 107 was apparently illegal and forcible and that a breach of the peace is likely to result from his attempting to resume possession are not sufficient grounds for binding over the opposite party to keep the peace. *Hira Singh v. Mohan Singh.* 10 Cr. L. J. 221 : 3 I. C. 64 : 5 N. L. R. 94.

—S. 107 — Grounds — Person inducing others to commit breach of peace, liability of.

A person is liable to be dealt with under S. 107, not only when he himself is likely to commit a breach of the peace, but also where for any wrongful act on his part other persons may do things which would probably occasion a breach of the peace or disturb the public tranquillity. *Satindra Nath Sen Gupta v. Emperor.* 29 Cr. L. J. 844 : 111 I. C. 396 : 32 C. W. N. 477 : 47 C. L. J. 444 : A. I. R. 1928 Cal. 438.

—S. 107—Grounds—Proof of violence in past not sufficient.

What must be proved in order to justify an order binding over persons under S. 107, is that they are likely to break the peace in future. Mere proof that they have committed certain acts of violence in the past is not sufficient. *In re : Kumarappa Chettiar.* 39 Cr. L. J. 416 : 174 I. C. 248 : 1937 M. W. N. 1072 : 47 L. W. 322 : 10 R. M. 684 : 1938 M. W. N. 212 : A. I. R. 1938 Mad. 213.

—S. 107—Grounds—Taking different sides in Municipal politics—Security order, passing of.

The mere fact that two parties had taken different sides in Municipal politics is not sufficient for passing an order taking security under S. 107. *Kura Mal v. Emperor.* 29 Cr. L. J. 714 : 110 I. C. 458 : 10 A. I. Cr. R. 434 : A. I. R. 1928 Lah. 863.

—S. 107—Grounds.

The mere fact that certain *sahukars* were threatening to get the *zemindars* imprisoned as they would not pay their debts, is not sufficient for an order under S. 107. *Ram Kishan v. Emperor.* 33 Cr. L. J. 915 : 140 I. C. 91 : 33 P. L. R. 935 : I. R. 1932 Lah. 684 : A. I. R. 1933 Lah. 36.

—S. 107—Grounds.

The mere fact that there has been a series of disputes, litigation and strong feeling between the parties, that is to say, there is only a possibility of a breach of the peace, is no justification for an order under S. 107. *Mathura Sahu v. Emperor.* 17 Cr. L. J. 484 : 36 I. C. 164 : 14 A. L. J. 769 : A. I. R. 1917 All. 421.

—S. 107—Joint trial.

All persons who have joined in a conspiracy to molest and to cause injuries can, if their common aims and objects are once established, be tried together and be bound over in one case under S. 107. *Bajirao v. Emperor.* 25 Cr. L. J. 132 : 76 I. C. 228 : A. I. R. 1924 Nag. 166.

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—S. 107—Joint trial—Charge against collective body of persons—Proof against each person, necessity of—General hostility, effect of.

In a charge under S. 107 against a collective body of persons, it is insufficient to suggest that they are indulging in feelings of hostility towards another body of persons. There must be definite evidence in the case of each and every person that there is a danger of a breach of the peace by him. *Shambhu Nath v. Emperor*.

17 Cr. L. J. 400 :
35 I. C. 832 : 14 A. L. J. 656 :
38 All. 468 : A. I. R. 1916 All. 100.

—S. 107—Joint trial—Evidence Act (I of 1872), S. 30—Security for being of good behaviour—Joint enquiry, when permissible—Statements made by some accused incriminating others, whether admissible.

Persons against whom proceedings are being jointly taken under S. 117 in one and the same enquiry, cannot be said to be on their joint trial for the same offence within the meaning of S. 30 of the Evidence Act. *Sarju v. Emperor*.

20 Cr. L. J. 206 :
49 I. C. 654 : 17 A. L. J. 147 :
41 All. 231 : 14 P. L. R. All. 89 :
A. I. R. 1919 All. 220.

—S. 107—Joint trial—Liability of servants, to be bound down for acts done in obedience to their master's orders.

The servants of a powerful zamindar acting together as well as independently of each other in obedience to the orders of their master, committed and intended to commit certain acts of oppression upon the *raiyats*: Held, that the common object of the servants being to serve their common master's interest, a joint enquiry into their case was lawful: Held, further, that the servants cannot escape their liability under S. 107, by pleading or showing that they acted in obedience to the orders of their employer. *Srikanta Nath v. Emperor*.

2 Cr. L. J. 554 :
9 C. W. N. 898 : 1 C. L. J. 616.

—S. 107—Joint trial of gang, if legal—Quantum of evidence.

If a gang of persons join together in jointly committing acts of violence of criminal intimidation, proceedings under S. 107, against the whole gang in the same case are proper, and it suffices in such a case to establish that some members of the gang committed various acts. It is not necessary to prove that on every occasion the whole gang were together. *Bakaram v. Emperor*.

23 Cr. L. J. 741 :
69 I. C. 629.

—S. 107—Joint trial—Order binding down party without separate finding against individuals.

Where in a proceeding under S. 107, against a party consisting of 17 persons, the Magistrate bound down all of them without coming to a separate finding as regards each of them individually: Held, the order is bad in law and ought to be set aside. *In re: Ajodhya Prasad Singh v. Emperor*.

8 Cr. L. J. 207 :
12 C. W. N. 992 : 35 Cal. 929.

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—Ss. 107, 537—Joint trial—Principle of joinder of charges and persons applicable to inquiries for keeping the peace—Misjoinder of opposite parties—Irregularity not cured.

The main principles applicable to a criminal trial regarding joinder of charges, and the joint trial of accused persons may well be held to be applicable to inquiries under S. 107. Where persons belonging to the two opposite parties were all tried together under the said section, some amongst them having also been examined as witnesses in the case: Held, that they could not be said to have been concerned in the same transaction in any proper sense of the term, and that the inquiry was, therefore, most irregular: Held, further that S. 537 did not cure the irregularity. *Pran Krishna Saha v. Emperor*.

1 Cr. L. J. 58 :
8 C. W. N. 180.

—S. 107—Joint trial—Proceedings against several persons—Duty of Magistrate to consider case against each accused separately.

In a proceeding under S. 107, against several persons, the Magistrate should consider the case against each of the accused separately. *Dhanoo v. Emperor*.

31 Cr. L. J. 944 :
125 I. C. 855 : 34 C. W. N. 144 :
A. I. R. 1930 Cal. 294.

—S. 107—Joint trial.

S. 117 (4) permits the joint trial under S. 107 of several persons who are ranged on the same side. *Ganga Prasad v. Emperor*.

25 Cr. L. J. 200.
76 I. C. 568 : A. I. R. 1923 All. 476.

—S. 107—Joint trial—Several accused—Duty of Magistrate to consider evidence against each accused separately.

In security proceedings, the Magistrate should not treat all the accused in a lump without discrimination and without an attempt to discover which of them is likely to commit a breach of the peace. *Emperor v. Jiwan Singh*.

31 Cr. L. J. 710.
124 I. C. 706 : 1930 A. L. J. 866 :
A. I. R. 1930 All. 408.

—S. 107—Joint trial.

When wrongful overt acts are committed or threatened to be committed jointly by a number of persons, the act is really committed severally and jointly by each of them, and all of them would be liable to the penalty of S. 107. *Lachmi Singh v. Emperor*.

21 Cr. L. J. 86 :
59 I. C. 374 : 1 P. L. T. 681.

—S. 107—Jurisdiction—Accused belonging to a different District—Competent Court.

Where the accused, in proceeding under S. 107 belong to a different District, the case should be tried by the District Magistrate. *Parlap Singh v. Emperor*.

35 P. L. R. 341 :
7 R. L. 375 :
153 I. C. 27 (1):

—S. 107—Jurisdiction—Accused's temporary pressure—Competent Court.

Under S. 107 (2) it would be quite sufficient if

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the accused were temporarily present within the jurisdiction at the time the proceedings were taken. But sub-s. (2) of S. 107 is obviously intended to provide for cases where the accused although living outside the jurisdiction is alleged to have come temporarily within the jurisdiction in order to commit offences. In such cases, it is the District Magistrate alone who has jurisdiction and not the Sub-Divisional Magistrate. *Hriday Nath Roy v. Emperor*.

38 Cr. L. J. 1078 :
171 I. C. 335 : 41 C. W. N. 1091 :
10 R. C. 265 : 66 C. L. J. 177 :
A. I. R. 1937 Cal. 520.

—S. 107—Jurisdiction—Application to start proceedings against several accused—Institution of proceedings against one accused—Transfer of case—Magistrate, power of, to start proceedings against other accused.

On the application of a complainant for institution of proceedings under S. 107, against several accused, the Sub-Divisional Officer called for a Police Report, and on its receipt, instituted proceedings against one only of the accused reported against by the Police. He then transferred the case for disposal to a Magistrate. The latter on the application of the complainant directed fresh proceedings to be drawn up against all the accused mentioned in the Police Report : *Held*, that the entire case had been transferred to the Magistrate and that he had, therefore, jurisdiction to make that order. *Jai Palhi Mahalon v. Nagina Singh*.

19 Cr. L. J. 96 :
43 I. C. 256 : 1 P. L. W. 610 :
1918 Pat. 12 : A. I. R. 1917 Pat. 8.

—S. 107—Jurisdiction—Breach of peace apprehended in sub-division—Accused living in Sudder Division—Procedure Irregularity—Overt acts—Apprehension of breach of peace.

In a case under S. 107, the breach of the peace apprehended being in a sub-division and the accused residing in the Sudder Division, the District Magistrate was moved for the commencement of the proceedings but he, instead of drawing up the proceedings and sending them to the Sub-Divisional Magistrate for trial, merely said that he "sanctioned the proceedings" and sent the case to the Sub-Divisional Magistrate : *Held*, that the irregularity in expression did not deprive the trying Magistrate of jurisdiction in the case and could not affect the merits of the trial in any way : *Held*, also, that though there was no actual overt acts on the part of the accused during the six months preceding the commencement of the proceedings, still the proceedings were not bad as there was a likelihood that the accused might commit a breach of the peace or disturb the public tranquillity or do some wrongful act which might occasion a breach of the peace. *Ohiduddin Choudhury v. Emperor*.

19 Cr. L. J. 266 (b) :
44 I. C. 182 : A. I. R. 1919 Cal. 469.

—Ss. 107, 145—Jurisdiction—Dispute about lands.

Per *Suhrawardy, J.*—If one party is in possession of land and the other is trying to

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oust him, it would be a sound discretion to pass a prohibiting order against the party which is trying to disturb the peaceful possession of the other. But even in such a case, it cannot be held that the Magistrate has no jurisdiction to start proceedings under S. 145. *Ahmed Ali Sheikh v. Sabad Sardar*.

30 Cr. L. J. 1027 :
119 I. C. 37 : 49 C. L. J. 428 :
33 C. W. N. 858 : I. R. 1929 Cal. 788 :
A. I. R. 1929 Cal. 468.

—S. 107—Jurisdiction—District Magistrate's power to proceed against a person outside his territorial jurisdiction.

A District Magistrate acting in the exercise of his power under S. 107, can pass an order against an accused person, residing outside the local limits of his jurisdiction, when the breach of the peace or disturbance is apprehended within the local limits of his jurisdiction. *Shcobaran Dube v. Emperor*.

23 Cr. L. J. 396 :
67 I. C. 348 : 20 A. L. J. 523 :
A. I. R. 1922 All. 337.

—S. 107—Jurisdiction—Initiation of proceedings by Magistrate having territorial jurisdiction—Transfer to Magistrate without territorial jurisdiction, legality of.

Where a Magistrate having jurisdiction under the terms of S. 107, has made an order under S. 112, the District Magistrate is empowered to transfer the case so initiated to another Magistrate competent according to his grade or class to try this class of cases although not qualified by the requirements of S. 107, as regards territorial jurisdiction. *Kalia Goundan v. Emperor*.

32 Cr. L. J. 27 (b) :
127 I. C. 652 : 1930 M. W. N. 698 :
32 Luck. 320 : I. R. 1930 Mad. 1036 :
A. I. R. 1930 Mad. 859.

—S. 107—Jurisdiction—Jurisdiction of Magistrate, essential condition of.

An essential condition of the jurisdiction of a Magistrate to act under S. 107, is that he should have some tangible evidence that some definite wrongful act is contemplated, which act, if committed, is likely to cause a breach of the peace. *Pir Ali v. Emperor*.

21 Cr. L. J. 453 :
56 I. C. 437 : A. I. R. 1920 Pat. 550.

—S. 107—Jurisdiction—Magistrate—Bad character—Person resident of place beyond jurisdiction—Proceedings, legality of.

Under S. 107, a Magistrate can deal with persons who have a general reputation as bad characters and who happen to be within his jurisdiction, no matter whether they are residents of a place within his jurisdiction or not. *Emperor v. Munna*.

17 Cr. L. J. 390 :
35 I. C. 822 : 14 A. L. J. 1074 :
A. I. R. 1917 All. 441.

—S. 107—Jurisdiction—Magistrate warning both parties—Subsequent order to draw up proceedings under S. 107—Legality of second order.

A Sub-Inspector of Police made a report to a Magistrate that proceedings under S. 107, may

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be taken against a party. The Inspector suggested that both parties may be warned and the Magistrate issued warning notice on both parties. Subsequently, the Magistrate ordered that proceedings should be drawn under S. 107 against both the parties : *Held*, that the Magistrate, by issuing the warning, did not become *functus officio* inasmuch as there is no provision in the Code whereby such an order could be passed, and the subsequent order drawing up proceedings under S. 107 was not illegal. *Abdul Mannaf v. Muhammad Nurulla Chaudhury*. 31 Cr. L. J. 58 :

120 I. C. 256 : A. I. R. 1929 Cal. 506.

S. 107—Jurisdiction.

Mere presence of person and not residence, within limits of local jurisdiction of Magistrate is sufficient. *In re : S. R. Varadarajulu Naidu*. 35 Cr. L. J. 626 (1) :

148 I. C. 226 (1) : 39 L. W. 215 :
66 M. L. J. 420 : 1934 M. W. N. 404 :
6 R. M. 449 (1), A. I. R. 1934 Mad. 255.

S. 107—Jurisdiction.

One party bound down under S. 107—If circumstances so require Magistrate can act under S. 145. *Baisnab Charan Manjhi v. Goti Nath Munshi*. 13 Cr. L. J. 142 :

13 I. C. 830 : 16 C. W. N. 384.

S. 107—Jurisdiction—Order refusing to take action under S. 107—Sessions Judge, power of, to set aside order.

When a Magistrate passes an order refusing to take action under S. 107, a Sessions Judge has no jurisdiction to set aside the order and to direct the Magistrate to draw up proceedings under the section. *Phani Bhusan Roy v. Kunja Behari Biswas*. 25 Cr. L. J. 679 :

81 I. C. 167 : A. I. R. 1925 Cal. 262.

S. 107—Jurisdiction—Order under S. 145 after passing order under S. 107—Jurisdiction.

A Magistrate by reason of having passed an order under S. 107 does not lose his jurisdiction to make an order under S. 145 in proceedings pending before him though the order may be defective on other grounds. *Nasiruddin Sircar v. Gofuuddin Mohamed*. 18 Cr. L. J. 129 :

37 I. C. 481 : 21 C. W. N. 160 :
A. I. R. 1917 Cal. 226.

S. 107—Jurisdiction—Person not residing within District—Jurisdiction of District Magistrate and other Magistrates.

It is not sufficient for the District Magistrate of a District to direct a proceeding under S. 107 to be drawn up by a Deputy Magistrate, against a person residing in another jurisdiction; the proceeding must take place and be brought to a conclusion before the District Magistrate himself and before no other Magistrate. *Nirbikar Chandra v. Emperor*. 9 Cr. L. J. 148 :

1 I. C. 78 : 13 C. W. N. 580.

S. 107—Jurisdiction—Powers of District Magistrate and other Magistrates.

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The object of S. 107 is to restrict the initiation only of proceedings against persons residing out of the jurisdiction of a District Magistrate, and not to restrict his power to transfer such proceedings, after initiation, to a Subordinate Magistrate. *Surjya Kanta Roy Chaudhry v. Emperor*. 1 Cr. L. J. 344 :

1 L. R. 31 Cal. 350.

S. 107—Jurisdiction.

Proceedings shall not be taken under this section unless either the person informed against or the place where the breach of the peace of disturbance is apprehended is within the local limits of such Magistrate's jurisdiction. *Mahangu Lal v. Emperor*. 36 Cr. L. J. 580 :

154 I. C. 873 (b) : 16 P. L. T. 347 :
7 R. P. 498 : A. I. R. 1935 Pat. 131 (1).

S. 107—Jurisdiction—Proceedings by Subordinate Magistrate under order of District Magistrate, propriety of.

A District Magistrate should not direct a Subordinate Magistrate to draw up proceedings under S. 107. If he considers it necessary, he should himself draw up such proceedings, and may transfer the case to a Subordinate Magistrate for hearing. Proceedings drawn up by a Subordinate Magistrate merely because the District Magistrate has ordered him to do so are improper and will be set aside by the High Court. *Hanif Sheikh v. Jahani Mandal*. 24 Cr. L. J. 367 :

72 I. C. 367.

S. 107—Jurisdiction—Proceedings under S. 107 transferred from one district to another—Jurisdiction of District Magistrate to cancel bonds.

Proceedings under S. 107 instituted in district N, were transferred by the order of the High Court to district T, and a First Class Magistrate of the latter district ordered the 2nd party to be bound down to keep the peace : *Held*, that as the order for keeping the peace was passed by a Magistrate in district T, not superior to the Court of the District Magistrate, it was the District Magistrate of T, alone who had jurisdiction to pass an order under S. 125 for the cancellation of the bond for keeping the peace. *Guru Prasanna Roy v. Har Kumar*. 20 Cr. L. J. 337 (a) :

50 I. C. 817 : 23 C. W. N. 858 :
A. I. R. 1919 Cal. 81.

S. 107—Jurisdiction—Residence of accused within jurisdiction, necessity of.

It is not necessary that that person should reside within the jurisdiction of the Magistrate. But a person who resides outside the jurisdiction cannot be held to be a person within the jurisdiction merely because he is present in Court in obedience to a summons issued by the Magistrate. *Hamid Hasan v. Emperor*. 33 Cr. L. J. 230 :

136 I. C. 72 : L. R. 13 All. 12 Cr. & 70 Cr. :
1932 A. L. J. 211 : 54 All. 341 :
I. R. 1932 All. 120 : A. I. R. 1932 All. 162.

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————S. 107—*Jurisdiction—Residence in jurisdiction, necessity of.*

The fact that a person is within the territorial limits of the jurisdiction of a Magistrate when an apprehension of a breach of the peace arises, is sufficient to give the Magistrate jurisdiction to bind such person over under S. 107 though the person to be bound over has his place of residence outside the jurisdiction. *Ziaullah Khan v. Emperor.*

22 Cr. L. J. 109 :
59 I. C. 413.

————S. 107—*Jurisdiction.*

The passing of an order under S. 145, does not debar the Magistrate from directing the parties to give security under S. 107, on the same facts. *In re : Mulhia Moopan.*

14 Cr. L. J. 559 :
21 I. C. 159 : 36 Mad. 315.

————S. 107—*Jurisdiction—Transfer by District Magistrate to other Magistrate, legality of.*

Proceedings initiated by the District Magistrate under the special powers conferred upon him by S. 107 (2) need not be continued to the end in his Court but may be transferred by him to the Court of some Subordinate Magistrate otherwise competent to deal with the matter. *Rakhal Mandal v. Emperor.*

19 Cr. L. J. 496 :
45 I. C. 160 : 27 C. L. J. 314 :
A. I. R. 1918 Cal. 892.

————Ss. 107, 145—*Jurisdiction—Proceedings under S. 107—Power to proceed under S. 145.*

There is nothing either in S. 107 or in S. 145 which would warrant the conclusions that proceedings taken under the former section, would preclude a Magistrate from proceeding under the latter. *Faiyaz Ali v. Emperor.*

13 Cr. L. J. 566 :
15 I. C. 982 : 9 A. L. J. 693.

————S. 107—*Lawful acts—Accused doing lawful act—Injury to susceptibility of persons of different faith.*

Where a person does a lawful act in a lawful manner, he cannot be bound down under S. 107 even if by doing so he injures the susceptibility of persons of a different faith. *Nihal Chand v. Emperor.*

31 Cr. L. J. 75 :
120 I. C. 427 : A. I. R. 1929 Lah. 138.

————S. 107—*Lawful acts.*

Acts amounting to an exercise of lawful rights are not to be treated as wrongful acts. *Nisar Husain Khan v. Emperor.*

35 Cr. L. J. 809 :
148 I. C. 899 : 11 O. W. N. 501 : 6 R. O. 462 :
A. I. R. 1934 Oudh 179.

————S. 107—*Lawful acts.*

Any person who wants unlawfully to oppose another in the exercise of a lawful right, ought to be bound down to keep the peace, and not the person who wants to exercise his ordinary right. *Guruswamy Nadan v. Emperor.*

13 Cr. L. J. 143 :
13 I. C. 831 : 1912 M. W. N. 47 :
11 M. L. T. 32 : 22 M. L. J. 251.

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————S. 107—*Lawful acts—Applicability of against wronged persons—Magistrate, whether can take action to prevent lawful acts resulting in breach of peace owing to wrongful acts of others.*

The word “wrongful” in S. 107, must mean some act wrongful according to some law. S. 107 cannot be intended to authorize a Magistrate to take action to prevent lawful acts which may result in a breach of the peace because of the wrongful or unlawful acts of others. S. 107 is intended to be applied against the wrong-doers and not also against the wronged. “The collection or the acquiescing of collection of women” for the purpose of religious instruction, discourse or songs, the meeting together of men and women for a joint *Satsang* or meeting is no offence under the law nor is the education of children, and the Magistrate, therefore, cannot take action to prevent such lawful act even if it would result in a breach of peace owing to the wrongful acts of others. *Jasoda Lekhraj v. Emperor.*

40 Cr. L. J. 703 :
182 I. C. 698 : 12 R. S. 31 : 1939 Kar. 662 :
A. I. R. 1939 Sind 167.

————S. 107—*Lawful acts—Cow-killing in privacy—Security.*

Where some members of Muhammadan community quietly and secretly killed cows in a mosque and in a private house, so that none of the Hindus came to know of it until the matter was somehow reported to the Police : *Held*, that the Mohammadans who killed the cows did not do any such thing as would justify the Magistrate to bind them over under S. 107, Cr. P. C. The Muhammadans were within their rights in killing the cows in the manner in which they did. *Mohammad Yakub v. Emperor.*

11 Cr. L. J. 355 :
6 I. C. 454.

————S. 107—*Lawful acts—Delivery of possession by Civil Court—Proceedings under S. 107 or S. 145, if can be started—Magistrate, when should proceed under either section.*

A Magistrate in spite of delivery of possession by the Civil Court has jurisdiction to start a case under S. 145. A Magistrate has discretion when there is an apprehension of a breach of the peace to choose either S. 145 or S. 107. Generally speaking, if the dispute arises immediately after the delivery of possession by the Civil Court and is between the parties to that delivery of possession, the more appropriate step will be to bind down under S. 107 the party who has been dispossessed by the Court. But if the delivery of possession is an old one or the dispute is between a man who has been given possession and a man who was not dispossessed by the Court, a proceeding under S. 145 will be more suitable. *Rajendra Narayan Bhanja Deo v. Chintaman Mahapatra.*

40 Cr. L. J. 339 :
180 I. C. 322 : 19 P. L. T. 632 :
20 P. L. T. 333 : 5 B. R. 385 : 11 R. P. 493 :
A. I. R. 1939 Pat. 151.

————S. 107—*Lawful acts—Exercise of lawful rights—Joint owner improving property—Likelihood of breach of the peace—Security.*

Where a person is exercising his lawful rights,

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it is not such person but the persons who obstruct him in the exercise of his lawful rights and cause danger to the peace who should be put on security. Inasmuch as a joint owner is entitled to improve the joint property, no security can be demanded from him on the ground that his persistence in improving the joint property is likely to lead to a breach of the peace. *Thaker Singh v. Emperor*.

27 Cr. L. J. 1094 :
97 I. C. 358 : 27 P. L. R. 599 : 8 Lah. 98 :
A. I. R. 1926 Lah. 695.

S. 107—Lawful acts—Exercise of lawful rights—Likelihood of breach of peace—Security.

Where the act which a person intends to commit is lawful, there is no reason for demanding security from him even though his act is likely to induce his opponents to commit breach of the peace. *Khazan Chand v. Emperor*.

27 Cr. L. J. 1063 :
97 I. C. 39 : 7 Lah. 482 : 27 P. L. R. 810 :
A. I. R. 1926 Lah. 683.

S. 107—Lawful Acts.

Holding of *hat* on one's own land—Another previously established *hat* in close proximity held on same day—No wrongful acts—Proceedings under S. 107 are not proper. *Saligram Singh v. Baijnath Singh*.

35 Cr. L. J. 1057 :
150 I. C. 118 : 14 P. L. T. 740 : 6 R. P. 712 :
A. I. R. 1934 Pat. 104.

S. 107—Lawful acts—Lawful possession, protection of, by armed men,—Security.

The protection of lawful possession is in itself lawful, and might properly be done by a body of men able to show that they are prepared not only to resist any unlawful violence to interfere with the possession but to defend themselves if it becomes necessary in the process. Where, therefore, the lawful possession of the accused had more than once been threatened by a show of armed force, and he had collected a body of men armed with *lathis* and posted them on the property to resist any violence or interference with his possession : *Held*, that there was no reason for binding him over in security. *Janki Prasad v. Emperor*.

21 Cr. L. J. 337 :
55 I. C. 673 : 18 A. L. J. 157 :
A. I. R. 1920 All. 28.

S. 107—Lawful acts—Order to keep Mokhasadar—Protest by Mokhasadar—Zamindar's interference with Mokhasadar's possession.

A Zamindar acts illegally in sending people to a Mokhasa village to oust the Mokhasadar from possession and induce the tenants to break their engagements with Mokhasadar, and the Mokhasadar is entitled to object to this trespass and to protest against such improper proceedings. Such protests, on the part of the Mokhasadar or his agent will, not justify a Magistrate in binding him to keep the peace. *Chandarshekhar Dalai v. Emperor*.

1 Cr. L. J. 1076 :
14 M. L. J. 491 : 7 O. C. 191.

S. 107—Lawful acts.

Person believing to be entitled to get possession of immovable property—Attempt to take peaceful possession—Collections from tenant

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without creating disturbance—Proceedings under S. 107 cannot be taken. *Nisar Husain Khan v. Emperor*.
35 Cr. L. J. 809 :
148 I. C. 899 : 11 O. W. N. 501 : 6 R. O. 462 :
A. I. R. 1934 Oudh 179.

S. 107—Lawful acts.

Person doing lawful act in lawful manner—Injury to susceptibilities of person of different faith—Proceedings under S. 107 are not warranted. *Babu Ram v. Emperor*.

34 Cr. L. J. 478 :
142 I. C. 796 : 33 P. L. R. 370 :
I. R. 1933 Lah. 301 : A. I. R. 1932 Lah. 101.

S. 107—Lawful acts—Religious acts when likely to provoke breach of the peace—Blowing of conch in a place not set apart for the purpose with intention to wound feelings of neighbours.

The blowing of a conch in a public place for one's personal amusement, or with any other lawful and innocent motive and without any intention of thereby annoying or hurting the religious feelings of any other person, is not a wrongful act. The blowing of a conch in connection with ceremonial acts of worship, in accordance with established usage in a place fixed for the ceremonial or periodical performance of such ceremonies or worship, will not, as a rule, be a wrongful act, even though there may be persons, within hearing of the sound, who find their religious feelings hurt in consequence. But if certain Hindus commence to perform ceremonies involving the blowing of a conch in a place in no way set apart for the purpose and where no such ceremonies had hitherto been performed with the deliberate intention of triumphing over, insulting and wounding the religious feelings of their Muhammadan neighbours, their act is a wrongful act, which is likely to provoke a breach of the peace and disturb the public tranquillity. *Emperor v. Murli Singh*.

13 Cr. L. J. 170.
13 I. C. 922 : 33 All. 775.

S. 107—Lawful acts—Rioting—Proceedings indicating one party invariably lawful and other party wrongful—Both parties, not to bound over.

Where a dispute between two parties as to succession to a big estate resulted in rioting, but the judicial proceedings showed that all the acts of the one party were lawful and provoked by the unlawful acts of the other party : *Held*, that there was no justification for taking security proceedings against both the parties. *In re : Rangswami Moopnar*.

30 Cr. L. J. 931 :
118 I. C. 504 : I. R. 1920 Mad. 824 :
A. I. R. 1929 Mad. 842.

S. 107—Lawful acts.

Section 107 has no application to the case of a person exercising a civil right in a lawful manner. *Bepin Behari Mukerji v. Emperor*.

21 Cr. L. J. 651 :
57 I. C. 667 : 2 U. P. L. R. Pat. 161 :
A. I. R. 1920 Pat. 667.

S. 107—Lawful acts.

The fact that the members of the Ahl-i-Hadis sect worship with other Muhammadans in the

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same mosque and utter the *Amen* aloud is not sufficient to justify their being bound over. *Abdul Rahman v. Emperor*. 22 Cr. L. J. 590 : 62 I. C. 830 : 8 O. L. J. 282 : A. I. R. 1921 Oudh 26.

———S. 107—*Lawful acts—Taking Dasehra procession with sanction—Security.*

The Hindu residents of a town whose object was to take the Dasehra procession, or to cause it to be taken down a particular route, not forcibly and in defiance of any prohibition which might be issued by the authorities, but with the sanction and under the protection of the authorities, cannot be rightly bound over to keep the peace. *Brijnandan Prasad v. Emperor*. 16 Cr. L. J. 46 : 26 I. C. 638 : 12 A. L. J. 1246 : 37 All. 33. A. I. R. 1914 All. 268.

———S. 107—*Lawful acts.*

The mere fact that the doing of lawful act may lead to a breach of the peace, while it may authorise the Magistrate to take action against the person expected to commit that breach, does not authorise action against the persons intending to do the lawful act, unless they are themselves likely to commit a breach of the peace or to disturb the public tranquillity. *U. B. Nga Ti v. Moung Kyaw Yan*. 18 Cr. L. J. 512 : 39 I. C. 480 : 2 U. B. R. 1916 157 : A. I. R. 1918 U. B. 53.

———S. 107—*Lawful acts.*

The preventive jurisdiction of a Magistrate under S. 107, must be exercised with caution, where an obligation which the law of the country imposes becomes incapable of being enforced owing to the exercise of such a jurisdiction and where the breach of the peace apprehended by the Magistrate is a likely result of the enforcement of his legal right by a party in a legal way and the illegal denial of the corresponding obligation of the other party, the Magistrate should not bind down the party who has the legal right in him. *Din Dayal v. Emperor*. 6 Cr. L. J. 230 : 11 C. W. N. 1002 : I. L. R. 1934 Cal. 935.

———Ss. 107, 144—*Lawful acts—Apprehension of breach of peace, procedure.*

The right of public discussion is a right which every subject possesses, and person convening a meeting to discuss religious matters are not doing anything unlawful. If owing to the prevalence of ill-felling between certain persons likely to attend the meeting or any other cause, a breach of the peace is expected, the Magistrate should proceed under S. 144 to secure that the peace is not broken. *U. B. Nga Ti v. Moung Kyaw Yan*. 18 Cr. L. J. 512 : 39 I. C. 480 : 2 U. B. R. 1916 157 : A. I. R. 1918 U. B. 53.

———S. 107—*Nature of proceedings.*

A case under S. 107 should not be treated as a warrant case. *Uttam Chand v. Emperor*. 26 Cr. L. J. 430 : 85 I. C. 46 : L. R. 5 All. 24 Cr. : A. I. R. 1924 All. 695.

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———S. 107—*Nature of proceedings—Compensation for false or frivolous application.*

An order for payment of compensation cannot be made against a man who has petitioned a Magistrate to take action under S. 107. *Bindhachal Prasad Rai v. Lal Bihari Rai*. 15 Cr. L. J. 578 (a) : 25 I. C. 330 : 12 A. L. J. 506 : 36 All. 382 : A. I. R. 1914 All. 370.

———S. 107—*Nature of proceedings.*

The proceedings under S. 107 are intended to be precautionary and not punitive. *Surjya Kanta Roy Chowdhry v. Emperor*. 1 Cr. L. J. 344 : I. L. R. 31 Cal. 350.

———S. 107—*Nature of proceedings—Proceedings initiated before the District Magistrate—Transfer to a Subordinate Magistrate.*

A District Magistrate has power to transfer to a Subordinate Magistrate the proceedings initiated before him under S. 107. *Surjya Kanta Roy Chowdhry v. Emperor*. 1 Cr. L. J. 344 : I. L. R. 31 Cal. 350.

———S. 107—*Nature of proceedings.*

The proceedings, under S. 107, are proceedings for the preservation of the peace and not for the preservation of morals. *Om Radhe v. Emperor*. 40 Cr. L. J. 803 : 183 I. C. 460 : 12 R. S. 55 : A. I. R. 1939 Sind 238.

———S. 107—*Nature of proceedings—Transfer.*

The provisions of S. 107 do not fall within the scope of S. 528, so as to enable a District Magistrate to transfer proceedings under that section to a Magistrate who has no jurisdiction over the matter. S. 177 has no application to such proceedings. *In re : Nagireddy Kondureddy*. 18 Cr. L. J. 878 : 41 I. C. 990 : 41 Mad. 246 : A. I. R. 1918 Mad. 555.

———Ss. 107, 4—*Nature of proceedings—Application for security, whether complaint.*

An application under S. 107 does not amount to a "complaint" within the meaning of S. 4 of the Code nor can the person, against whom it is made, be called an accused person. *Ram Lal v. Bankateshar Rawan Bahadur Pal Singh*. 25 Cr. L. J. 1149 : 81 I. C. 973 : 11 O. L. J. 732 : 1 O. W. N. 359 : A. I. R. 1925 Oudh 138.

———Ss. 107, 4, 202, 203—*Nature of proceedings—Application for security for breach of peace—Magistrate's power to send it for report—'Complaint', meaning of.*

An application under S. 107, is not a complaint within the meaning of S. 4 (1) (b). Therefore, such an application is not governed by the provisions of Ss. 202 and 203, and it is not open to the Magistrate to send it to a *Zaildar* or some one else for report. *Hari Singh v. Jagta*. 29 Cr. L. J. 866 : 111 I. C. 450 : 29 P. L. R. 666 : A. I. R. 1928 Lah. 694.

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—Ss. 107, 4, 202, 203—*Nature of proceedings—Complaint—Preliminary enquiry.*

Petition that certain persons be bound down under S. 107 is not a complaint, and the procedure of Ss. 202 and 203 has no application—Magistrate does not act judicially until an order under S. 112 is passed. *Laxmi Narain v. Emperor.*

34 Cr. L. J. 42 :
140 I. C. 536 : L. R. 13 All. 125 Cr. :
1932 A. L. J. 880 : 54 All. 1036 :
I. R. 1932 All. 668 : A. I. R. 1932 All. 670.

—Ss. 107, 119, 437—*Nature of proceedings—Person ordered to furnish security whether accused—Revision—Further inquiry.*

A person from whom security has been demanded under S. 107, is not an accused person so as to permit a District Magistrate or Sessions Judge, as the case may be, to take action under S. 437 and order further inquiry, should that person have been released or discharged under S. 119. *Narain Das v. Durga Devi.*

12 Cr. L. J. 232 :
10 I. C. 178 : 6 P. R. 1911 Cr. :
30 P. W. R. 1911 Cr. : 153 P. L. R. 1911.

—Ss. 107, 495—*Application of—Nature of proceedings.*

S. 495 applies only where the proceedings can end in an acquittal or discharge of the accused. A proceeding, under S. 107, does not terminate in either of the two ways. *In re : Muthia Moopan.*

14 Cr. L. J. 559 :
21 I. C. 159 : 36 Mad. 315.

—S. 107.

No likelihood of breach of peace—Security proceedings are uncalled for—In such proceedings, only one party should not be bound down. *Din Muhammad v. Emperor.*

35 Cr. L. J. 963 :
148 I. C. 1078 : A. I. R. 1934 Pesh. 21.

—S. 107—*Order for security for offence not in charge-sheet—Alibi, defence of—Order, illegal.*

When the accused is convicted for committing an offence on a day different from that entered in the charge-sheet, and the defence is that of alibi, a material irregularity is committed and the conviction cannot stand. *Partap Singh v. Emperor.*

153 I. C. 27 (1) : 35 P. L. R. 341.

—S. 107—*Procedure.*

A Court is bound to bear arguments, if offered, in a case under S. 107, Cr. P. C. *Baij Nath Sah v. Emperor.*

25 Cr. L. J. 1380 :
83 I. C. 340 :
27 O. C. 323 : A. I. R. 1925 Oudh 288.

—S. 107—*Procedure.*

A preliminary charge-sheet was laid by the Police under S. 107, against certain persons. Before any process was issued, the Police wished to withdraw it in order that they might present a fresh charge-sheet against some only of those included in it. The Magistrate permitted the withdrawal and endorsed on the charge-sheet that the accused were acquitted. A second charge-sheet was subsequently laid

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by the Police against some persons: *Held*, (1) that the order passed by the Magistrate on the first charge-sheet was no bar to proceedings under the second charge-sheet: (2) that the order of acquittal must be treated as unmeaning and could not be availed of by persons against whom no process had been issued. *In re : Muthia Moopan.*

14 Cr. L. J. 559 :
21 I. C. 159 : 36 Mad. 315.

—S. 107—*Procedure.*

A proceeding under S. 107 must be conducted in the manner prescribed for conducting trials and recording evidence in summons cases. *Sheo Prasad Singh v. Mahangoo Nonia.*

25 Cr. L. J. 476 :
77 I. C. 828 : L. R. 5 All. 12 Cr. :
A. I. R. 1924 All. 694.

—S. 107—*Procedure.*

A proceeding under S. 107 should contain definite particulars and not mere vague recitals borrowed from the words of the section. *Raghunath Puri v. Prem Narain Puri.*

32 Cr. L. J. 1014 :
133 I. C. 161 : 12 P. L. T. 535 :
I. R. 1931 Pat. 321 :
A. I. R. 1931 Pat. 347.

—S. 107—*Procedure.*

Accused under S. 107 cannot be ordered to pay costs. *Shie Prasad Singh v. Mahangoo Nonia.*

25 Cr. L. J. 476 :
77 I. C. 828 : L. R. 5 All. 12 Cr. :
A. I. R. 1924 All. 694.

—S. 107 — *Procedure — Application for security—Magistrate's consultation with Police, legality of.*

If the Magistrate before issuing a notice under S. 112, thinks fit to consult the Police in order to form an opinion as to whether or not the matter is one in which such a notice should be issued, there is nothing illegal in his action. *Ismail v. Jagat Singh.*

40 Cr. L. J. 193 :
179 I. C. 353 : 40 P. L. R. 579 :
I. L. R. 1938 Lah. 640 : 11 R. L. 561 :
A. I. R. 1938 Lah. 861.

—S. 107—*Procedure—Attachment.*

No order of attachment of property can be passed in a proceeding under S. 107. *Ram Sarup v. Emperor.*

25 Cr. L. J. 350 :
77 I. C. 238 :
A. I. R. 1924 Oudh 345.

—S. 107—*Procedure—Change of Magistrate—Re-hearing of evidence.*

A person, against whom proceedings are taken under S. 107, has a right to demand that the witnesses or any of them may be summoned or re-heard when the second Magistrate commences the proceedings on the first ceasing to have jurisdiction. *25 Cr. L. J. 1380 :*

83 I. C. 340 :
27 O. C. 323 : A. I. R. 1925 Oudh 288.

—S. 107—*Procedure—Complainant and his witnesses absent on date fixed for inquiry of truth of information—Proper order, whether discharge or acquittal.*

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In proceedings under S. 107, where on the date fixed for inquiry into the truth of the information under S. 117 (1), the complainant and his witnesses are absent, the proper order of the Magistrate to pass is one of discharge of the persons proceeded against, under S. 119, and not of acquittal under S. 247. S. 247 is not applicable to proceedings under S. 107. *Asrafali Saiyal v. Nasu Sarkar*. 28 Cr. L. J. 479 : 101 I. C. 607 : 31 C. W. N. 388 : 45 C. L. J. 211 : A. I. R. 1927 Cal. 343.

S. 107—Procedure.

Complainant should not be directed to accompany process-server and an order awarding costs should not be passed against complainant for failure to accompany process-server. *Khazam Khan v. Emperor*. 35 Cr. L. J. 457 : 147 I. C. 675 : 35 P. L. R. 183 : 6 R. L. 426 (1) : A. I. R. 1933 Lah. 720.

S. 107—Procedure—Complaint under Ss. 107-145—Court's omission to draw up original order under S. 145 (1) and affix its copy under S. 145 (3).

In a case under Ss. 107-145, the Magistrate's omission to draw up the necessary original order under S. 145 (1), and affix its copy at the spot under S. 145 (3), vitiates all the proceedings and the final order passed in such a case can be set aside. *Chanan Singh v. Emperor*. 39 Cr. L. J. 702 : 176 I. C. 124 : 40 P. L. R. 20 : 11 R. L. 165 : A. I. R. 1938 Lah. 345.

S. 107—Procedure—Determination of rights of parties.

An attempt to ascertain legal rights of the parties should always be made by the Magistrate before he binds down one or the other party under S. 107. Where in a proceeding under S. 107, one party under a claim of proprietorship of a certain place, wanted to levy certain cesses upon the other party for their use of the place, which the latter refused to pay, and the Magistrate without attempting to ascertain the respective rights and obligations of the two parties, bound down the former : *Held*, that the Magistrate's order was bad in law. *Din Dayal v. Emperor*. 6 Cr. L. J. 230 : 11 C. W. N. 1002 : I. L. R. 34 Cal. 935.

S. 107—Preventive, not punitive—Nature of Intention of S. 107 in demanding security.

The intention of S. 107, Cr. P. C., in demanding security in case of apprehended violence by accused is preventive and not penal. *Mahabir Gope v. Samrathi Singh*. 41 Cr. L. J. 746 : 184 I. C. 457 : 21 P. L. T. 652 : 6 B. R. 837 : 13 R. P. 124 : A. I. R. 1940 Pat. 252.

S. 107—Party insisting on his rights—Security.

A party insisting upon their right to take a procession along a certain road to which another party objected, cannot be bound down under S. 107, unless there is a finding that the taking of the procession along the particular path is a wrongful act or that the processionists are themselves likely to commit a breach of the peace or disturb the public tranquillity. Per

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Woodroffe, J.—When a party have the right to take a procession along a particular road, they cannot be properly bound down because some one else proposes to interfere with that right. The proper course, in such a case is to bind down the other party. *Feroze Ali Mullick v. Emperor*. 7 Cr. L. J. 504 : 12 C. W. N. 703.

S. 107—Procedure—Dismissal of application for security—Further enquiry.

Where an application under S. 107 is dismissed by a Magistrate on the ground that there is no apprehension of breach of peace, the District Magistrate has no power to order a further enquiry. *Kirpa Ram v. Durga Das*. 32 Cr. L. J. 21 : 127 I. C. 716 : 31 P. L. R. 350 : I. R. 1930 Lah. 876 : A. I. R. 1931 Lah. 185.

S. 107—Procedure—Drawing up of proceedings—Necessary requisites.

In drawing up a proceeding under S. 107, the Magistrate should specify in what way and with reference to what matter the person proceeded against is likely to commit a breach of the peace or a wrongful act likely to occasion a breach of the peace. *Amanat Ali v. Emperor*. 30 Cr. L. J. 492 : 115 I. C. 545 : I. R. 1929 Pat. 209 : 10 P. L. T. 639 : A. I. R. 1929 Pat. 67.

S. 107—Procedure—Information, necessity of, before initiation of proceedings.

Prior to the initiation of proceedings under S. 107, information must be given against a person from whom it is sought to take security. *Abdul Karim v. Emperor*. 21 Cr. L. J. 511 (b) : 56 I. C. 671 : 103 P. L. J. 1920 : A. I. R. 1920 Lah. 114.

S. 107—Procedure—Drawing up proceedings on vague allegations.

It is not open to a Magistrate to draw up or direct against particular persons proceedings under S. 107 merely on the basis of general or vague statements which do not contain any direct allegation or accusation against the individuals proceeded against. *Grant v. Emperor*. 22 Cr. L. J. 745 : 64 I. C. 137 : 2 P. L. T. 669 : A. I. R. 1921 Pat. 440.

S. 107—Procedure—Jurisdiction of Magistrate to drop proceedings under S. 107 and to start proceedings under S. 145.

It is competent for a Magistrate taking cognizance of a case under S. 107 or holding an enquiry under that section to drop the proceedings under that section and to proceed under S. 145. *Himmat Mian v. Emperor*. 19 Cr. L. J. 712 : 46 I. C. 296 : A. I. R. 1918 Pat. 500.

S. 107—Procedure—Keeping proceedings pending.

It is not open to a Magistrate to keep proceedings under S. 107 pending against certain persons merely because the pendency

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of such proceedings tends to preserve the peace. *Grant v. Emperor*.

22 Cr. L. J. 745 :
64 I. C. 137 : 2 P. L. T. 669 :
A. I. R. 1921 Pat. 440.

————S. 107—*Procedure—Magistrate, when can detain person in custody—Proper procedure.*

It is only in the special circumstances referred to in sub-sections (3) and (4) of the section that the law empowers a Magistrate to detain a person in custody till the completion of the enquiry. *Wahari Mander v. Emperor*.

24 Cr. L. J. 825 :
74 I. C. 857 : 5 P. L. T. 109 :
2 P. L. R. 77 Cr. : A. I. R. 1923 Pat. 527.

————S. 107—*Procedure—Magistrate, whether can issue process on his own knowledge—Procedure.*

Where the petitioner made an application under S. 107 against one A and the Magistrate, on taking his statement, recorded an order that the petitioner was a quarrelsome fellow and called upon him to show cause why he should not be bound down, and eventually did place him on security under S. 107 : *Held*, (1) that it was quite illegal for the Magistrate to issue notice to the petitioner merely because he considered, from his own statement, that he was a quarrelsome person : (2) that no information, such as is required by S. 107 having been given to the Magistrate, the initiation of the proceedings was *ultra vires*. *Abdul Karim v. Emperor*.

21 Cr. L. J. 511 (b) :
56 I. C. 671 : 103 P. L. J. 1920 :
A. I. R. 1920 Lah. 114.

————S. 107—*Procedure—Notice to accused under S. 110 with a view to proceeding under S. 112 (c)—Proceeding—Absence of fresh notice—Procedure, legality of.*

Where a Magistrate issued the preliminary notice to the petitioners as specified in S. 112 with a view to their being proceeded with under S. 110 (c) but afterwards having come to the conclusion that S. 110 was inapplicable, proceeded to deal with the case as one under S. 107, and passed orders against the petitioners under that section : *Held*, that the Magistrate ought not to have proceeded to deal with the case as one under S. 107 without issuing a fresh notice to the petitioners under S. 112 with reference to the altered view of the circumstances, that the omission was a non-compliance with an express provision of the law, that subsequent proceedings were, therefore, invalid. *Krishnaswami v. Vanamalai*.

5 Cr. L. J. 397 :
2 M. L. T. 183 : 30 Mad. 282.

————S. 107—*Procedure—Omission to serve preliminary orders.*

If in a case under S. 107, a preliminary order is not served on an absent accused, but on his appearance the order is read out to him in Court, the requirements of the law are substantially complied with. *Bajirao v. Emperor*.

25 Cr. L. J. 132 :
76 I. C. 228 : A. I. R. 1924 Nag. 166.

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————S. 107—*Procedure.*

Obiter.—The procedure of taking accused persons after an order under S. 107 has been passed against them in handcuffs to a place where they are to execute their bonds, is wrong, but being a subsequent incident, it does not vitiate the order. *Bajirao v. Emperor*.

25 Cr. L. J. 132 :
76 I. C. 228 :

A. I. R. 1924 Nag. 166.

————S. 107—*Procedure—Omission to give list of witnesses or allow accused to reserve cross-examination—Validity of proceedings.*

Per *Suhravardy* and *C. C. Ghose, JJ.*—Proceedings under Chap. VIII, Cr. P. C., should not, however, be carried on in such a way as to hamper the offender in his defence and place him in a worse position than if he were accused of a substantive offence. When the accused appears and prays for information about the evidence which the Crown proposes to adduce against him, it should be supplied or so much of it as is practicable. He may be given sufficient information of the evidence to be called or he may be allowed to reserve cross-examination till he has full information about the case against him. *Bhut Nath Ghose v. Emperor*.

31 Cr. L. J. 614 :
124 I. C. 71 : 33 C. W. N. 852 :
57 Cal. 903 : A. I. R. 1929 Cal. 739.

————S. 107—*Procedure—Order containing substance of information received—Irregularity—Prejudice—Notice.*

The mere fact that an order under S. 112 requiring the accused to show cause why they should not be proceeded with under S. 107 does not set forth the substance of the information received by the Magistrate, will not vitiate the proceedings, if in fact it did not, in any degree, prejudice the accused. *Jai Singh v. Emperor*.

23 Cr. L. J. 42 :
64 I. C. 666.

————S. 107—*Procedure—Order to execute bond to keep the peace—Non-compliance with procedure in Chapter VIII of the Code.*

Where a Magistrate, while acting under S. 107, does not comply with the procedure prescribed in Chapter VIII of the Code, inasmuch as the summonses issued were not in accord with the form set out in Schedule V, No. 12, nor were they accompanied by a copy of the order under S. 112, his order requiring bonds to keep the peace is illegal. *In re : Nand Prasad*.

9 Cr. L. J. 179 :
1 I. C. 211.

————S. 107—*Procedure—Order under S. 107—District Magistrate setting aside his order and directing proceedings under S. 141—Legality.*

Upon a Police Report, a Magistrate recorded an order under S. 141, and issued notice to the parties to show cause. On the date fixed for hearing, proceedings were drawn against one party under S. 107 and a date was fixed for showing cause why they should not be bound over. This party applied to the District Magistrate to set aside this order. Without issuing any notice to the other party, the District Magistrate set aside the preliminary order under

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S. 107 and directed that proceedings be taken under S. 145 of the Code. Proceedings were taken up accordingly and the party applied to the High Court in revision: *Held*, that the District Magistrate had no power to set aside the order under S. 107 nor had he any jurisdiction to direct the Sub-Divisional Magistrate to initiate proceedings under S. 145. *Bansidhar Marwari v. Indar Narain Singh*.

24 Cr. L. J. 865 :
75 I. C. 65.

—S. 107—Procedure—Order under S. 144 restraining party from entering upon land—Breach of peace, apprehension of—Procedure, proper.

Where a party who has once been restrained under S. 144 from entering upon certain land insists upon the entry, and there is an apprehension of a breach of the peace, the proper course is to act under S. 107 and not under S. 144. *Rashbehari Singh v. Jagnarain Rai*.

19 Cr. L. J. 365 :
44 I. C. 589 : 3 P. L. J. 130 :
A. I. R. 1917 Pat. 154.

—S. 107—Procedure—Proceeding under S. 107 converted into one under S. 145—Procedure—Evidence, recording of.

Where a proceeding is started under S. 107 and evidence is taken under that section, but the Magistrate subsequently converts the proceeding into one under S. 145, he must call for the written statements of the parties and record evidence under the latter section. If he omits to do so, any order passed by him under S. 145 would be illegal. *Sahdeb v. Jumon Jolaha*.

19 Cr. L. J. 320 :
44 I. C. 336 : 4 P. L. W. 195 :
A. I. R. 1918 Pat. 625.

—S. 107—Procedure—Proceedings under Ss. 107 and 145, not to be combined.

It is very undesirable to combine proceedings under S. 107 with proceeding under S. 145, and to act against both opposing parties in the same proceeding under S. 107. *Farid v. Piru*.

16 Cr. L. J. 235 :
27 I. C. 907 : 8 S. L. R. 207 :
A. I. R. 1914 Sind 8.

—S. 107—Procedure—Right disputed by both parties—Order binding down one party, propriety of.

Where there is a right put forward by both the parties and where the right is in dispute, it is not fair to bind down only one of the parties, the proceedings should be drawn up against both parties so as not to give unfair advantage to one as against the other. *Musaheb Soudagar v. Nidhi Ram Dutt*.

28 Cr. L. J. 605 :
102 I. C. 781 : 8 P. L. T. 645 :
8 A. I. Cr. R. 248 :
A. I. R. 1927 Pat. 314.

—S. 107—Procedure—Security order without any inquiry—Order, whether illegal.

An order under S. 107 is bad in law if it is made without making an inquiry into the truth of the information upon which proceed-

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ings were initiated. *Mul Chand v. Emperor*.

16 Cr. L. J. 61 :
26 I. C. 653 : 12 A. L. J. 1262 :
37 All. 30 : A. I. R. 1914 All. 646.

—S. 107—Procedure—Security proceedings—Opposing factions—One proceeding, legality of.

The two opposing parties to a dispute cannot be proceeded against under S. 107 in one proceeding. *Kishore Ahir v. Emperor*.

26 Cr. L. J. 1248 :
88 I. C. 864 : 6 P. L. T. 768 :
A. I. R. 1926 Pat. 32.

—S. 107—Procedure—Security proceeding—Preliminary enquiry by zaildar—Dismissal of case upon zaildar's report, legality of.

A Magistrate should not dismiss a case under S. 107 upon the report of a zaildar, but must himself decide the case on the merits after hearing the evidence of both the parties. *Musa v. Mam Kaur*.

29 Cr. L. J. 267 :
107 I. C. 603 : 9 Lah. L. J. 548 :
29 P. L. R. 271 : 9 A. I. Cr. R. 453 :
A. I. R. 1928 Lah. 119.

—S. 107—Procedure—Security to keep peace—Initial order, contents of—Omission—Effect.

A Magistrate acting under S. 107 must, under S. 112, make an order in writing setting forth, *inter alia*, the substance of the information received. A failure would deprive a Magistrate of jurisdiction to take proceedings under S. 107. *Maung Tun U v. Emperor*.

27 Cr. L. J. 318 :
92 I. C. 702 : 4 Bur. L. J. 172 :
A. I. R. 1925 Rang. 353.

—S. 107—Procedure—Summons issued under S. 107—Proceedings taken under S. 110—Prejudice to accused—Irregularity.

Where, after issuing summons to parties under S. 107, the Magistrate took proceedings under S. 110, but the evidence was recorded at length, and the parties had opportunity to cross-examine all the prosecution witnesses and were not prejudiced: *Held*, that the irregularity in procedure was cured by S. 537. *Sangamma Naick v. Emperor*.

14 Cr. L. J. 65 :
18 I. C. 401.

—S. 107—Procedure—Transfer of case—Power of District Magistrate to send case to a Second Class Magistrate.

It is not competent to a District Magistrate to transfer a case under S. 107 to a Magistrate of the Second Class, who is incompetent to conduct and complete the proceedings. *Gobind Sahai v. Emperor*.

16 Cr. L. J. 55 :
26 I. C. 647 : 12 A. L. J. 1136 :
37 All. 20 : A. I. R. 1914 All. 546.

—S. 107—Procedure—Transfer of case by District Magistrate to Magistrate within whose jurisdiction parties do not reside, legality of.

The Police reported to the District Magistrate of Nellore that they apprehended breach of the peace from certain parties and requested him to take proceedings under S. 107. The District Magistrate, without recording any opinion, transferred the case to the file of the Head-

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quarters Deputy Magistrate, Nellore, within whose jurisdiction neither of the parties resided. The Headquarters Deputy Magistrate then issued a notice under S. 107 to the petitioners: *Held*, (1) that the order of transfer was bad: (2) that the District Magistrate could not be said to have taken cognizance, under S. 102 of a case falling under S. 107 within the meaning of the Code so as to enable him to transfer it to a Subordinate Magistrate. *In re : Nagireddy Kondareddy*.

18 Cr. L. J. 878 :
41 I. C. 990 : 41 Mad. 246 :
A. I. R. 1918 Mad. 555.

———S. 107—*Procedure—Trial of opposing faction in one proceeding, illegal.*

Two opposing parties to a proceeding under S. 107, cannot be proceeded against and bound over in one proceeding. *Kamal Narain v. Emperor*.

5 Cr. L. J. 197 :
5 C. L. J. 231 : 11 C. W. N. 472.

———S. 107—*Procedure.*

When a proceeding under S. 107, pending before a Sub-Divisional Magistrate is transferred to the First Class Magistrate, it is open to him to include in the proceeding names of persons not included by the first Magistrate. *Gulam Rahman Khan v. Kalipada*.

33 Cr. L. J. 858 :
139 I. C. 850 : 36 C. W. N. 796 :
59 Cal. 1484 : I. R. 1932 Cal. 663 :
A. I. R. 1932 Cal. 864.

———Ss. 107, 110, 496—*Procedure—Detention in custody pending inquiry.*

The law does not empower a Magistrate to detain in custody, until the completion of the enquiry, the person proceeded against under S. 107 or S. 110; S. 496 of the Code is imperative, and a Magistrate is bound to comply with its provisions. *Raghunandan Pershad v. Emperor*.

1 Cr. L. J. 775 :
8 C. W. N. 779 : I. L. R. 32 Cal. 80.

———Ss. 107, 145—*Procedure—Proceedings taken under S. 145—Order under S. 107, whether proper.*

In a proceeding taken under S. 145, an order cannot be made under S. 107 inasmuch as such an order can only be made after compliance with the provisions of the sections which follow upon S. 107. *Sri Deo v. Emperor*.

17 Cr. L. J. 527 :
36 I. C. 495 : 14 A. L. J. 794 :
A. I. R. 1916 All. 237.

———Ss. 107, 250—*Procedure—Compensation, award of.*

S. 250 does not cover the proceedings under Ch. 8, as an institution of proceedings under S. 107 is not an accusation of offence and S. 450 does not apply if the accusation proves to be false. *Robel v. Kama*.

A. I. R. 1935 Lah. 29.

———Ss. 107, 350—*Procedure—Proceedings under S. 107—Right of person proceeded against to re-call witnesses.*

A person proceeded against under S. 107 has the same right, under S. 350 (1), proviso (a), as

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an accused person in a summons or warrant case, to have the witnesses re-called and re-heard. *Yeluchuri Venkatachennaya v. Emperor*.

21 Cr. L. J. 402 :
56 I. C. 50 : 11 L. W. 435 :
1920 M. W. N. 280 : 38 M. L. J. 370 :
43 Mad. 511 : 27 M. L. T. 178 :
A. I. R. 1920 Mad. 337.

———Ss. 107, 360—*Procedure—Inquiry—Deposition of witness, whether must be read in presence of accused.*

S. 360 is not applicable to an inquiry under S. 107 and it is not, therefore, necessary in such an inquiry to read over to a witness his deposition in the presence of the accused. *Emperor v. Ja'ar Raki*.

26 Cr. L. J. 1456 :
89 I. C. 976 : 52 Cal. 668 :
A. I. R. 1925 Cal. 940.

———S. 107, 436—*Procedure—Security proceedings—Further enquiry—District Magistrate, power of.*

Proceedings under S. 107 are not included within the provisions of S. 436 and a District Magistrate has, therefore, no jurisdiction to direct further enquiry in such a case. The proper procedure is for the District Magistrate to report the result of his examination of the record to the High Court, which can pass appropriate orders in the case. *Roshan Singh v. Emperor*.

25 Cr. L. J. 467 :
77 I. C. 819 : 22 A. L. J. 129 :
46 All. 235 : L. R. 5 All. 64 Cr. :
A. I. R. 1924 All. 592.

———Ss. 107, 436, 438—*Procedure—Discharge under S. 107—Further enquiry—Proper procedure.*

Where a Magistrate discharges a person against whom an application has been made under S. 107, the Sessions Judge has no jurisdiction to set aside the order of discharge and direct further enquiry under S. 436, inasmuch as S. 436 only contemplates further inquiry into any complaint which has been dismissed under S. 203 or sub-s. (3) of S. 204 or into the case of any person accused of an offence who has been discharged. The only section under which the Sessions Judge might take action in such a case is under S. 438 by making a report to the High Court. *Mohammad Yusuf v. Abdul Majid*.

32 Cr. L. J. 570 :
130 I. C. 630 : L. R. 11 All. 117 Cr. :
53 All. 143 : 1930 A. L. J. 1475 :
I. R. 1931 All. 294 : A. I. R. 1931 All. 53.

———Ss. 107, 526—*Procedure—Transfer of case from one District to another—Ends of justice—High Court's power.*

Proceedings, under S. 107 were instituted against the petitioner on the information of the District Magistrate who was more or less convinced of the accused's guilt, and who was taking keen personal interest in the matters: *Held*, that the case was a fit one for transfer to another district: *In the matter of the Petition of Amar Singh*, 16 All. 9, not followed. *Wahid Ali v. Emperor*.

11 Cr. L. J. 412 :
6 I. C. 874.

———S. 107—*Reference—District Magistrate's powers.*

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It is only in the District Magistrate's power to examine the record and, if he finds that an improper order has been passed, to submit the case to the High Court for the exercise of its revisional powers. *Banarsi Das v. Partap Singh*.

14 Cr. L. J. 63 (a) :
18 I. C. 351 : 11 A. L. J. 16 :
35 All. 103.

———S. 107—Reference—Joint trial of two factions—Illegality—Reference to High Court—Appeal.

Where a Magistrate, acting under S. 107, held a joint trial of two contending factions, received evidence for and against both, and bound them over to keep the peace : *Held*, that the joint trial of two hostile parties was not justified by S. 117 (4) : *Held*, also, that S. 406 does not give a right of appeal in proceedings under S. 107 read with S. 118. *Har Dutt Panda v. Emperor*.

17 Cr. L. J. 165 :
33 I. C. 645 : 14 A. L. J. 263 :
A. I. R. 1916 All. 338.

———S. 107—Reference—Proceedings under S. 107—District Magistrate, power of, to interfere.

A District Magistrate has no power to set aside an order made under S. 107 by a Magistrate subordinate to him if he finds that an improper order has been made ; all he can do is to submit the case to the High Court for the exercise of its revisional powers. *Bansidhar Marwari v. Indra Narain Singh*.

24 Cr. L. J. 545 :
73 I. C. 161 : 1 P. L. R. 93 Cr. :
A. I. R. 1923 Pat. 438.

———S. 107—Reference—Sessions Judge's power.

A Sessions Judge has jurisdiction to refer a proceeding under S. 107 to the High Court even where no application has first been made to the District Magistrate under S. 125. *Emperor v. Bakwant Singh*.

24 Cr. L. J. 616 :
73 I. C. 504.

———S. 107—Revision.

Illegal order under S. 107—High Court can interfere *suo motu*. *Satindra Nath Sen v. Emperor*.

29 Cr. L. J. 842 :
111 I. C. 394 : 48 C. L. J. 143.

———S. 107—Revision—Notice—Enquiry, want of—Interference by High Court.

The issue of the notice under S. 112 is merely a preliminary step and no order can be passed under S. 107 unless the inquiry which follows the issue of the notice shows that the laying of the information was justified. The High Court can always interfere when the inquiry has not been held in accordance with the law or a wrong conclusion has been arrived at. *In re : Muthuswami Chettiar*.

41 Cr. L. J. 238 :
185 I. C. 824 : 50 L. W. 802 :
1939 M. W. N. 1209 : 1940 1 M. L. J. 11 :
I. L. R. 1940 Mad. 335 : 12 R. W. N. 584 :
A. I. R. 1940 Mad. 23.

———S. 107—Revision—Object—Magistrate's discretion—Interference.

The object of S. 107 like that of the other

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preventive sections in Chapter VIII of the Code, is administrative rather than judicial. Therefore, if a Magistrate, who is responsible for the administration of a sub-division, is not satisfied about the advisability of taking proceeding under Chapter VIII, his discretion in the matter is not open to interference by a superior Court. *Ram Lal v. Bankateshar Rawan Bahadur Pal Singh*.

25 Cr. L. J. 1149 :
81 I. C. 973 : 11 O. L. J. 732 : 1 O. W. N. 359 :
A. I. R. 1925 Oudh 138.

———S. 107—Revision—Order dropping proceedings under S. 145 and directing proceedings under S. 107—Revision—High Court, interference by.

Where by an order of a Magistrate, proceedings under S. 145 are dropped, because proceedings under S. 107 would meet the case, and proceedings under the latter section are actually pending, the High Court will not interfere in revision with the order dropping proceedings under S. 145. *Jharu Khan v. Sarada Charan Sikdar*.

21 Cr. L. J. 134 :
54 I. C. 614 : A. I. R. 1920 Cal. 104.

———S. 107—Revision—Proceedings illegal—Interference.

If in a case in which proceedings have been taken under S. 107, it is found that the information did not justify the Magistrate in issuing a warrant, the High Court will interfere with the order passed. *U. B. Nga Ti v. Maung Kyan Yan*.

18 Cr. L. J. 512 :
39 I. C. 480 : 2 U. B. R. 1916 157 :
A. I. R. 1918 U. B. 53.

———S. 107—Revision—Proceedings under Chapter XII by Magistrate duly authorised—Interference in revision.

Where proceedings are taken under Chapter XII by a Magistrate duly empowered under that chapter, the High Court has no power to interfere in revision and cannot even enter into the question of the legality of the Magistrate's proceedings. *Farid v. Piru*.

16 Cr. L. J. 234 :
27 I. C. 907 : 8 S. L. R. 207 :
A. I. R. 1914 Sind 8.

———S. 107—Revision—Religious sect interfering with worship of another sect—Object of requiring security—Order, form of—High Court, interference by.

Where one sect of persons try to force their views on another sect of a religious congregation, with the result that a disturbance of the public peace is probable, an order binding down the former under S. 107, will not be interfered with. Such an order should merely deter them from creating a breach of the peace and continuing to annoy the others at their worship but should not prevent them from exercising their right of worship. *Gurdeo Singh v. Emperor*.

21 Cr. L. J. 225 :
55 I. C. 97 : 2 U. P. L. R. Pat. 64 :
A. I. R. 1920 Pat. 661.

———S. 107—Revision—Sessions Judge and District Magistrate as Court of Revision.

As a Court of Revision, the Court of District Magistrate is not inferior to that of the Sessions

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Judge. But when a District Magistrate passes an order as a Court of original jurisdiction, that Court is subordinate to the Court of Sessions Judge which can exercise revisional powers. *Emperor v. Balwant Singh*. 24 Cr. L. J. 616 : 73 I. C. 504.

—S. 107—Revision.

The necessity of the statutory control of a High Court and the duty of the subordinate magistracy to submit to such control explained. *Raghubandan Parshad v. Emperor*.

1 Cr. L. J. 775 :
8 C. W. N. 779 : I. L. R. 32 Cal. 80.

—S. 107—Revision—Security order set aside by District Magistrate—Revision by High Court.

Where a District Magistrate, acting under S. 125, Cr. P. C., sets aside a proceeding under S. 107, he acts without jurisdiction, and the High Court has power to interfere and set aside his order. *Durga Singh v. Amar Dayal Singh*.

23 Cr. L. J. 281 :
66 I. C. 425 : 3 P. L. T. 106 :
1922 A. I. R. Pat. 334.

—Ss. 107, 125, 439—Revision—Order requiring security for good behaviour—District Magistrate, power of, to set aside order—Revision—High Court, interference by.

An order requiring security for good behaviour under S. 107 can be cancelled by the District Magistrate under S. 125 on the ground that there is no proof of any likelihood of a breach of the peace, and the High Court will refuse to interfere with the order on this ground in revision, unless the District Magistrate has been moved under S. 125. *Marland Rao v. Emperor*.

19 Cr. L. J. 900 :
47 I. C. 96 : A. I. R. 1918 Nag. 173.

—Ss. 107, 145—Revision—Comparative utility of—Discretion of Magistrate—Interference.

Where it can certainly not be predicated that action under S. 107 is not proper, the Court ought not to quash the proceedings under S. 107 even if it should be possible to predicate later on (as opposed to the date of initiation months ago) that a proceeding under S. 145 might eventually give better results. Convenience is not necessarily a good criterion, still less a general criterion. *Harihar Singh v. Emperor*.

36 Cr. L. J. 257 :
152 I. C. 1050 : 7 R. P. 299 :
A. I. R. 1934 Pat. 463.

—Ss. 107, 439—Revision—Interference in preliminary stage.

The High Court seldom interferes in the preliminary stage with the direction of a Magistrate taking action under the preventive sections of the Code, but it will exercise its powers of interference in a case where the order of the Magistrate is based on materials which are clearly insufficient to support the order. *Nafar Chandra Pal Choudhury v. Emperor*.

25 Cr. L. J. 189 :
76 I. C. 429 : 38 C. L. J. 198 :
28 C. W. N. 23 : A. I. R. 1924 Cal. 114.

—S. 107—Scope.

An order made according to the procedure of

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S. 107 (4) of the Code, cannot be supported under S. 114 of the Code. *In re : Chithambaram Pillay*.

7 Cr. L. J. 360 :
3 M. L. T. 311 : 31 Mad. 315.

—S. 107—Scope.

Object is not to punish for past offences but to prevent future breach of peace. *Shadi Lal v. Emperor*.

32 Cr. L. J. 1207 :
134 I. C. 585 : 32 P. W. R. 138 :
12 Lah. 457 : I. R. 1931 Lah. 969 :
A. I. R. 1931 Lah. 191.

—S. 107—Scope and object—Preventive not permissive.

The object of the provisions contained in S. 107, is prevention and not punishment of offences ; it is intended not to punish persons for anything that they have done in the past, but to prevent them from doing in future something that might occasion a breach of the peace. *R. B. Selh Sukhlal Karanani v. Emperor*.

39 Cr. L. J. 992 :
178 I. C. 52 : 66 C. L. J. 564 :
11 R. C. 319 : A. I. R. 1938 Cal. 583.

—S. 107—Scope—Proceeding under S. 107, if can be transferred by High Court.

A proceeding under S. 107, is a criminal case, and, therefore, subject to the application of Cl. 8 of S. 526. *Wazed Ali Khan v. Emperor*.

15 Cr. L. J. 171 :
22 I. C. 747 : 18 C. W. N. 274 : 41 Cal. 719 :
A. I. R. 1914 Cal. 792.

—S. 107—Scope.

S. 112 should be read along with S. 107. *Jagaji Rai v. Emperor*.

19 Cr. L. J. 876 :
47 I. C. 72 : 16 A. L. J. 567 :
A. I. R. 1918 All. 93.

—S. 107—Scope.

The powers given to the High Court under S. 526 are not limited by the provisions of S. 107 or 110 of the Code. *Wahid Ali v. Emperor*.

11 Cr. L. J. 412 :
6 I. C. 874.

—S. 107—Scope.

The question as to whether or not preventive action is to be taken under S. 107 is to be decided on the facts of each case. *Nisar Hussain v. Emperor*.

35 Cr. L. J. 809 :
148 I. C. 899 : 11 O. W. N. 501 :
6 R. O. 462 :
A. I. R. 1934 Oudh 179.

—S. 107—Scope.

The words "wrongful act" in S. 107 mean an act forbidden by the penal Statutes of India, or declared to be penal or wrongful by such Statutes. *Pir Ali v. Emperor*.

21 Cr. L. J. 453 :
56 I. C. 437 : A. I. R. 1920 Pat. 550.

—S. 107—Scope.

To read the word "residency" into Ss. 107 to 110, would involve a complete alteration of their scope and effect. *Emperor v. Durga Hakeai*.

16 Cr. L. J. 618 :
30 I. C. 442 : 1^o C. W. N. 1022 :
43 Cal. 153 : A. I. R. 1916 Cal. 707.

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———S. 107—Security—Acceptance.

As long as the security offered by a surety is ample, the Court is bound to accept the same, without inquiring into the politics of the person standing surety. *Maung Tun U. v. Emperor*.

27 Cr. L. J. 318 :
92 I. C. 702 : 4 Bur. L. J. 172 :
A. I. R. 1925 Rang. 353.

———S. 107—Security—Amount.

Where orders under S. 107 are made against certain persons who have been acting on behalf of their masters, the amount of security required should not be fixed in such a way as to leave the masters no alternative except on the one hand to lose their servants by refusing to become sureties for them so that the men would have to go to jail or, on the other, to be bound hand and foot by very onerous securities for the conduct of men who might leave their masters the next day and pursue at the instigation of the other side a consistent course of legalized blackmail upon their former masters. *Din Dayal v. Emperor*.

26 Cr. L. J. 981 :
87 I. C. 517 : 23 A. L. J. 300 :
A. I. R. 1925 All. 443.

———S. 107—Security—Bond to keep the peace nature of—Private party, right of, to appeal against refusal to forfeit—Forfeiture of bond, without notice, effect of.

A bond under S. 107 is not given to any particular person but to the Court. A private party, therefore, is not entitled to appeal against an order refusing to forfeit it, though it is open to the District Magistrate to take action in revision. An order directing the forfeiture of a bond without notice to the party whose bond is forfeited amounts to a failure of justice. *Sarju v. Jai Raj Kuar*.

25 Cr. L. J. 445 :
77 I. C. 733 : A. I. R. 1925 Oudh 51.

———S. 107—Security—Condition, precedent.

S. 107 pre-supposes that the person sought to be put under a rule of bail is likely, not was likely, to commit a breach of the peace or disturb the public tranquillity. *In the matter of : the Petition of Basdeo*.

1 Cr. L. J. 360 :
I. L. R. 26 All. 190.

———S. 107—Security—Condition precedent.

S. 107 pre-supposes that the person sought to be put under a rule of bail is likely (not was likely) to commit a breach of the peace and that it cannot be presumed from the fact that a person had done a wrongful act in the past that he is likely to do the same again. *In re : Shivram Parashram*.

1 Cr. L. J. 755 :
6 Bom. L. R. 663.

———S. 107—Security—Conviction for rioting—District Magistrate, power of, in appeal, to order security for good behaviour—Order for particular surety, legality of.

A District Magistrate has no jurisdiction in an appeal from a conviction under S. 147 of the Penal Code, to order an accused person to give security to be of good behaviour although he may order security to keep the peace, nor is his order directing a particular individual to be one

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of the sureties a valid order. *Mahabir v Emperor*.

19 Cr. L. J. 439 (a) :
44 I. C. 957 : 16 A. L. J. 280 :
A. I. R. 1918 All. 95.

———S. 107—Security—Conviction for rioting—No order as to security—Proceeding, separate, for confiscation of security, validity of.

If a Criminal Court, knowing that a person charged before it is under security to keep the peace or to be of good behaviour, while sentencing him takes no steps towards the confiscation, it is not competent to that Court or any other Court in a subsequent proceeding to take such steps. *Munshi v. Emperor*.

25 Cr. L. J. 4 :
75 I. C. 692 : 1924 A. I. R. Lah. 680.

———S. 107—Security—Discretion of Magistrate, finality of.

The question whether it is necessary in the interest of keeping the peace to take security from a person is essentially a question which primarily concerns the District Magistrate and the local Police. The Sessions Judge or the High Court should not ordinarily interfere in such cases. *Mohammad Yusuf v. Abdul Majid*.

32 Cr. L. J. 570 :
130 I. C. 630 : L. R. 11 All. 117 Cr.
53 All. 148 : 1930 A. L. J. 1475 :
I. R. 1931 All. 294 : A. I. R. 1931 All. 53.

———S. 107—Security—Order requiring security in certain sum—Subsequent order requiring security in greater sum, legality of.

Once a Magistrate has directed the furnishing of security in a certain sum in proceedings under S. 107, the proceedings come to an end and he has no jurisdiction to alter his order. Where one month after passing an order, the Magistrate directed the accused to furnish security in a larger sum : *Held*, that the order was *ultra vires*. *Raj Kumar Das v. Emperor*.

20 Cr. L. J. 486 :
51 I. C. 470 : 17 A. L. J. 335 :
A. I. R. 1919 All. 329.

———S. 107—Security—Person bound over to keep the peace—Civil suit by such person relating to subject-matter of security proceedings—Forfeiture of security.

A person bound over under S. 107 to keep the peace is not debarred from instituting a civil suit to enforce his rights in respect of the subject-matter of the dispute, and the institution of such a suit does not involve the forfeiture of the security bond he was required to furnish. *Sital v. Emperor*.

21 Cr. L. J. 702 :
57 I. C. 842 : 1 Lah. 310 :
2 U. P. L. R. Lah. 153 : A. I. R. 1920 Lah. 440.

———S. 107—Security—Person required not to commit breach of peace by killing cow in village, bound down—Cow killed outside village—Bond forfeited.

The proprietors of the village were mostly Sikhs. There were some Muhammadan inhabitants. There had been a great deal of tension between the Sikhs and Muhammadans on the question of cow sacrifice on the occasion of *Id-ul-Zuha*. The leader of the Muhammadans in this village, was bound down under S. 107,

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by the order of Magistrate, First Class. He executed a bond in the sum of Rs. 2,000 binding himself not to commit a breach of the peace or to do any act that may probably occasion a breach of the peace for a period of one year. The District Magistrate also passed an order under the rules framed under S. 43, Punjab Laws Act, prohibiting cow sacrifice on the occasion of *Id-ul-Zuha*. After the *Id* prayers had been recited, the leader who was bound down, sacrificed a cow at a distance of about 100 yards from the *abadi* in the area of an adjoining village in an open place under a *pipal* tree. The place where the cow was sacrificed was visible from the *abadi* of the Sikh village and was near a public thoroughfare. Within a few hundred yards of the place where the cow was sacrificed was an approved slaughter house. The Muhammadans maintained that sacrificing cows at the time of *Id-ul-Zuha* was a religious right of the Muhammadans, and that by sacrificing the cow in the area of another village, they had not done any wrongful act: *Held*, that in the circumstances the leader of the Muhammadans was certainly doing a wrongful act within the purview of S. 298, Penal Code, and was thus provoking a breach of the peace and, therefore, his security bond under S. 107, could be forfeited. *Ibrahim v. Emperor*. 39 Cr. L. J. 23 : 171 I. C. 950 : 39 P. L. R. 179 : 10 R. L. 256 : A. I. R. 1937 Lah. 717.

————S. 107—Security—Personal security, sufficiency of.

In case of landed proprietors required to give security to keep the peace, their personal security could be considered sufficient. *Bindraban v. Emperor*. 22 Cr. L. J. 701 : 63 I. C. 829 : 3 U. P. L. R. 185.

————S. 107—Security—Powers of District Magistrate to cancel bond for insufficiency of evidence.

A District Magistrate is entitled to entertain a petition under S. 125 to cancel a bond to keep the peace, executed in pursuance of an order of a First Class Magistrate under Ss. 107 and 118 on the sole ground that the evidence before the Magistrate did not justify him to pass the order. *Tyabji, J.*—The words “at any time” in the section mean, however early or however late. *Mare Gowd v. Emperor*. (F. B.)

14 Cr. L. J. 546 :
21 I. C. 146 : 1913 M. W. N. 715 :
14 M. L. T. 328 : 25 M. L. J. 459.

————S. 107—Principal and surety executing bond for keeping peace—Surety, when liable.

Where the accused and his surety both have executed bonds, it is the principal bond which is to be forfeited first and it is only if that cannot be realized, that the surety is liable to pay. The same principle would apply to a fractional sum out of the bond. 81 I. C. 955 (1), followed. *Chandra Singh v. Emperor*. 41 Cr. L. J. 359.

————S. 107 Security—Proof.

An order under S. 107 can only be passed when there is a finding that the persons sought to be bound down are guilty of wrongful acts committed or sought to be committed by them.

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This can only be proved by overt acts. *Lachmi Singh v. Emperor*. 22 Cr. L. J. 86 : 59 I. C. 374 : 1 P. L. T. 681.

————S. 107—Security proceedings—European British subject, rights of.

A European British subject is entitled to claim that he should be tried by a Justice of the Peace or a District Magistrate or Presidency Magistrate, provided the Justice of the Peace is a Magistrate of the First Class and a European British subject. *R. T. Hoperoff v. Emperor*. 9 Cr. L. J. 359 : 1 I. C. 737 : 13 C. W. N. 151 : 36 Cal. 163.

————S. 107—Security—Rigorous imprisonment in default of security, legality of.

An order directing that in default of furnishing the required security, the accused should undergo rigorous imprisonment, is altogether illegal. *Uttam Chand Singh v. Emperor*.

26 Cr. L. J. 430 :
85 I. C. 46 : L. R. 5 All. 24 Cr. :
A. I. R. 1924 All. 695.

————S. 107—Security—Security proceedings—Use of threats—Likelihood of a breach of the peace—Use bombastic and exaggerated language—Security.

In proceedings under S. 107 and 110, the Court is entitled to take into consideration the utterance of threats by a party on different occasions as well as the previous relations of the parties and the antecedent and existing circumstances. But the use of language of mere bombast does not render the persons using it liable to be dealt with under the provisions of the sections. Where the accused were alleged to have said “if the suit went on we would plant a flag on the Nasir Kotta and build a mosque”: *Held*, that this did not justify the Court in calling on them to furnish security. *In re : Chinnaihambi Roethan*.

12 Cr. L. J. 104 :
9 I. C. 594 : 9 M. L. T. 271 :
1911 2 M. W. N. 235.

————S. 107—Procedure.

A Magistrate in ordering a person to furnish security to keep the peace, must follow the directions laid down in Chapter VIII and give the person bound over an opportunity to show cause. *Jagdamba Prasad v. Emperor*.

13 Cr. L. J. 844 :
17 I. C. 716.

————S. 107—Security—Time for furnishing security—Duty of Magistrate.

A person against whom an order is passed under S. 107, must be given sufficient time to furnish security. *Maung Tun U. v. Emperor*.

27 Cr. L. J. 318 :
92 I. C. 702 : 4 Bom. L. J. 172 :
A. I. R. 1925 Nag. 353.

————Ss. 107, 125—Security—Cancellation of bonds by District Magistrate—Grounds.

Under S. 125, the District Magistrate can cancel the bonds only on the ground that they are no longer necessary. *Banarsi Das v. Partap Singh*. 14 Cr. L. J. 63 (a) : 18 I. C. 351 : 11 A. L. J. 16 : 35 All. 103.

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———Ss. 107, 250—*Penal Code (Act XLV of 1860), S. 506—Security proceedings—Admission of liability to furnish security—Dismissal of application—Compensation, whether can be awarded.*

S. 250, Cr. P. C., does not apply to proceedings under S. 107. Where a complaint is filed under S. 107 but the Court chooses to regard it as a complaint under S. 506 of the Penal Code and eventually dismisses the complaint, it has no jurisdiction to pass an order for compensation under S. 250 particularly where the accused person has expressed his willingness to furnish security. *Baij Nath v. Kali Charan.*

28 Cr. L. J. 604 :
102 I. C. 780 : 25 A. L. J. 493 :
L. R. 8 All. 87 Cr. : 7 A. I. Cr. R. 543 :
49 All. 750 : A. I. R. 1927 All. 531.

———Ss. 107, 250—*Security proceedings—Compensation.*

An order for payment of compensation cannot be made against person who has petitioned a Magistrate to take action under S. 107. *Bindhuchal Parsad Rai v. Lal Bihari Rai.*

15 Cr. L. J. 578 (a) :
25 I. C. 330 : 12 A. L. J. 506 : 36 All. 382 :
A. I. R. 1914 All. 370.

———S. 107—*Sub-Divisional Magistrate if can take proceedings under S. 107 against person residing outside his sub-section.*

The jurisdiction of a Sub-Divisional Magistrate is confined to his own division and he cannot take proceedings under S. 107 against a person residing outside his sub-division. *Syed Ali v. Emperor.*

39 Cr. L. J. 810 :
176 I. C. 784 : 11 R. N. 79 :
A. I. R. 1938 Nag. 448.

———S. 107—*Sureties, rejection of—Duty of Court.*

If the Magistrate is not satisfied with the sureties tendered, he should reject them within a reasonable time, so as to give the accused an opportunity of offering fresh sureties. *Maung Tun U. v. Emperor.*

27 Cr. L. J. 318 :
92 I. C. 702 : 4 Bur. L. J. 172 :
A. I. R. 1925 Rang. 353.

———S. 107 (4)—*Application of—Detention of accused by District Magistrate, legality of.*

Where the accused were not sent before the District Magistrate by any other Magistrate under S. 107 (3), the case did not come under S. 107 (4) and the order by the District Magistrate detaining the accused in custody was made without jurisdiction. *In re : Chithambaram Pillay.*

7 Cr. L. J. 360 :
3 M. L. J. 311 : 31 Mad. 315.

———Ss. 107, 4 (h)—*Application under, if complaint.*

An application under S. 107 does not fall within the definition of a 'complaint' under S. 4 (h) and S. 203 has, therefore, no applicability to such an application. *Shams-ud-Din v. Ram Dayal Singh.*

25 Cr. L. J. 89 :
76 I. C. 25 : 1924 A. I. R. Lah. 630.

———Ss. 107, 257—*Defence witnesses—Refusal to summon—Reasons.*

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In a case under S. 107 the Magistrate must issue summonses for the attendance of the witnesses for the defence, unless he takes the responsibility of recording his ground for refusing the application for any of the reasons specified in S. 257. *Emperor v. Nand Lal.*

32 Cr. L. J. 320 :
130 I. C. 816 : A. I. R. 1931 Lah. 56 (2).

———Ss. 107, 526—*Action at time of moving High Court—Transfer.*

Where some of the party against whom proceeding under S. 107 was instituted at the time they moved the High Court: *Held*, that in consequence of the order the Petitioners might have a reasonable apprehension that they would not have a fair and impartial trial. The High Court, therefore, transferred the case from the Magistrate's file. *Bibee Kalsum v. Umatul Mehdi.*

4 Cr. L. J. 556 :
11 C. W. N. 121.

———S. 108.

See Cr. P. C., 1898, S. 112.

———S. 108.

Accused engaged in continuous seditious propaganda—Mere fact that forum of their activities is closed, is not a ground for invalidating order under S. 108. *Rampal Singh v. Emperor.*

35 Cr. L. J. 408 :
147 I. C. 266 : 35 P. L. R. 157 :
6 R. L. 375 : A. I. R. 1933 Lah. 236.

———S. 108.

Accused making isolated speech on special occasion at a meeting for special purpose—Absence of evidence as to his having made objectionable speeches in the past or of intention to do so in future—Action under S. 108 is not legal. *Chandra Bhan Gupta v. Emperor.*

35 Cr. L. J. 562 :
147 I. C. 1082 : 11 O. W. N. 26 : 6 R. O. 363 :
A. I. R. 1934 Oudh 70.

———S. 108—*Accused required to furnish security—Subsequent conviction of substantive offence—Security withdrawn—Committal to Jail—Date from which substantive sentence to commence.*

Accused was, on 23rd May 1921, ordered to furnish security under S. 108, for one year, or undergo imprisonment for that period. On 31st July, 1921, he was convicted of a substantive offence under S. 500, Penal Code, and sentenced to undergo three months' simple imprisonment, but he remained on bail till 23rd November 1921, when the bail bond was cancelled. In the meanwhile, on the 16th October 1921, he withdrew his security and on 23rd November 1921, was committed to jail under S. 108: *Held*, that the sentence of imprisonment under S. 500, Penal Code, took effect on 23rd November 1921 when accused's bail-bond was cancelled as on the date on which that sentence was imposed, he was not undergoing a sentence of imprisonment. *Ganesh Shankar Vidyarthi v. Emperor.*

24 Cr. L. J. 577 :
173 I. C. 321 : 25 O. C. 249 : 10 O. L. J. 593 :
A. I. R. 1923 Oudh 56.

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———S. 108—*Application of—Explanation of conduct—Undertaking to desist in future.*

Where before the commencement of the trial, the petitioner put in an application, protesting that he had never made any speech for the purpose of disseminating seditious matter but to remove all room for misunderstanding, expressing his readiness to give an undertaking that he would deliver no speeches on political subjects from public platforms for a period of one year; but the District Magistrate declined to accept any such undertaking: *Held*, that the Magistrate was right in doing so. The case before the Magistrate was Criminal and he had to conform to the provisions of the law strictly before passing an order restricting the ordinary rights of a subject of the Crown. The undertaking offered was not one of penitence as no offence was admitted. *Vaman Sakhararam Khare v. Emperor*.

10 Cr. L. J. 379 :

3 I. C. 776 : 11 Bom. L. R. 743.

———S. 108—*Application of.*

The rule laid down in *Sital Prasad v. Emperor*, 34 Ind. Cas. 974, that in order to justify an order under S. 108 (b), one has only got to find that there are words used in the matter complained of which are likely to promote feelings of enmity or hatred, is wholly unsupportable. The utmost that is warranted on any view of the section is that a person comes within its scope if he disseminates matter which reveals an intention to promote feelings of enmity. Matter which has in fact a tendency to do so may be published *alio intuitu* or even with an honest view to stop class hatred. *P. K. Chakravarty v. Emperor*.

27 Cr. L. J. 1154 :

97 I. C. 738 : 30 C. W. N. 953 : 44 C. L. J. 172 :

54 Cal. 59 : A. I. R. 1926 Cal. 1133.

———S. 108—*Application of—Test.*

The test under S. 108 is whether the person proceeded against has been disseminating seditious matter and whether there is any fear of the repetition of the offence. In each case, that is a question of fact. *Vaman Sakhararam Khare v. Emperor*.

10 Cr. L. J. 379 :

3 I. C. 776 : 16 Bom. L. R. 743.

———S. 108—*Application of.*

Where all that was proved against the accused was that he had joined the processions and meetings arranged by the Congress Committee: *Held*, that S. 108 had no application, *Jagan Nath Luthra v. Emperor*.

32 Cr. L. J. 1172 :

134 I. C. 486 : I. R. 1931 Lah. 934 :

A. I. R. 1932 Lah. 7.

———S. 108—*Commission of one offence proved—Proceedings, illegal.*

It is illegal to initiate proceedings under S. 108, against a person where all that is proved against him is the commission of one particular offence at one particular time, and there is no evidence of his having done so before or of his having an intention of doing so in the immediate future. *Chiranjil Lal v. Emperor*.

30 Cr. L. J. 216 :

114 I. C. 48 : 26 A. L. J. 813 : 50 All. 854 :

I. R. 1919 All. 940 : A. I. R. 1928 All. 344.

———S. 108—*Evidence of repute—Duty of Magistrates to scrutinise general charges.*

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The Courts have got, in all cases coming up either under Ss. 108, 109 or 110, to pay strict regard to the question whether the evidence produced is legal evidence in the case on the question of repute. Where a mere general charge is put forward against a certain person that he is a burglar or thief, this statement must be tested in the light of tangible facts and particulars: if there are any such facts to support the story, and if there are no such facts, the evidence loses its value. *Emperor v. Kudua Bari*.

31 Cr. L. J. 301 :

121 I. C. 559 : A. I. R. 1930 All. 37.

———S. 108—*Magistrate acting on previous information having jurisdiction to do so—Discretion should not be interfered with—Even if he had no jurisdiction, S. 531 covers case when no prejudice is caused.*

Where it is clear from the order that the Magistrate has believed the information and acted on it, it is in the last degree undesirable that the High Court should go behind the information and substitute a conclusion reached after elaborate enquiry and arguments, for a discretion which the Magistrate was expected to exercise on the spot as soon as he conveniently could: *Held*, that after transfer of the case, the Magistrate enquiring into the matter on the basis of previous information, has jurisdiction to proceed with the case and that even if he does not have it, S. 531, Cr. P. C. would cover the case when no failure of justice is caused. *Narsingh Prasad Agarwala v. Emperor*.

38 Cr. L. J. 447 :

167 I. C. 739 : 19 N. L. J. 183 :

I. L. R. 1936 Nag. 200 : 9 R. N. 209 :

A. I. R. 1937 Nag. 70.

———S. 108—*Object of.*

The provisions of Ch. VIII are preventive in their scope and object, and are aimed at persons who are a danger to the public by reason of the commission by them of certain offences. *Vaman Sakhararam Khare v. Emperor*.

10 Cr. L. J. 379 :

3 I. C. 776 : 11 Bom. L. R. 743.

———S. 108—*Printing of book—Abetment of dissemination.*

By printing a book, the printer abets the dissemination of the book within the meaning of S. 108 but must be shown to have had knowledge of the matter published. *Pitre v. Emperor*.

25 Cr. L. J. 150 :

76 I. C. 294 : 25 Bom. L. R. 97 :

47 Bom. 438 : A. I. R. 1923 Bom. 255.

———S. 108—*Proceedings under S. 108 for speeches offending against S. 153-A, Penal Code (Act XLV of 1860)—Previous speeches made by speaker, if admissible under S. 14, Evidence Act (I of 1872).*

Where proceedings are started against a person under S. 108, in respect of certain speeches made by him offending against S. 153-A, I. P. C., the previous speeches made by such person are admissible in evidence under S. 14, Evidence Act, as his state of mind reflected in the previous speeches would be highly material in determining the speaker's intention in delivering the

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questioned speeches. *Jagannath Prasad v. Emperor.* 41 Cr. L. J. 713 :

189 I. C. 74 : 1940 M. L. J. 31 :
13 R. N. 39 : A. I. R. 1940 Nag. 134.

—S. 108—Proof of authority.

The fact of authorship of book must be proved as any other fact. Statement of Manager of Press under S. 18, Press and Registration of Books Act is no evidence.

25 Cr. L. J. 150 :
76 I. C. 294 : 25 Bom. L. R. 97 :
47 Bom. 438 : A. I. R. 1923 Bom. 255.

—S. 108—Proof of conviction of single offence—Proceeding un-warranted.

Where proceedings under S. 108 were taken against a person who had committed only a single offence under S. 153-A of the Penal Code, to avoid trouble and possible refusal of Government to prosecute under S. 153-A : *Held*, that the proceedings were illegal and unjustifiable. *Chiranjil Lal v. Emperor.* 30 Cr. L. J. 216 :

114 I. C. 48 : 26 A. L. J. 813 : 50 All. 854 :
I. R. 1929 All. 940 : A. I. R. 1928 All. 344.

—S. 108—Proof.

It must be shown that there is danger of the accused's continuing his seditious activities unless he is prevented from doing so under this section. *Jagan Nath Luthra v. Emperor.*

32 Cr. L. J. 1172 :
134 I. C. 486 : I. R. 1931 Lah. 934 :
A. I. R. 1932 Lah. 7.

—S. 108—Publication of book—Dissemination.

In the case of the publisher of a book, it may be presumed that he has disseminated or abetted the dissemination of the book within the meaning of S. 108 and that he has knowledge of its contents. *Pitre v. Emperor.* 25 Cr. L. J. 150 :

76 I. C. 294 : 25 Bom. L. R. 97 :
47 Bur. 438 : A. I. R. 1923 Bur. 255.

—S. 108—Requirements of.

Per Shah, A. C. J.—For the purposes of S. 108 it is not sufficient to prove that the person proceeded against is the author of a seditious pamphlet; the prosecution must give some evidence as to his connection with its actual publication or subsequent dissemination. *Pitre v. Emperor.* 25 Cr. L. J. 150 :

76 I. C. 294 : 25 Bom. L. R. 97 :
47 Bur. 438 : A. I. R. 1923 Bom. 255.

—S. 108—S. 110, whether applies where S. 108 is applicable.

The mere fact that S. 108 may have been applicable to a case, does not necessarily make S. 110, inapplicable. *Monindra Mohan Sanyal v. Emperor.* 19 Cr. L. J. 696 :

46 I. C. 152 : 28 C. L. J. 25 :
23 C. W. N. 193 : A. I. R. 1919 Cal. 702.

—S. 108—Security, amount of.

It is improper to demand an excessive amount as security which leaves the accused no option even if he wanted to furnish a security, and practically amounts to sending him to Jail without being tried and convicted for any

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offence. *Secretary, High Court Bar Association, Lahore v. Emperor.* 33 Cr. L. J. 831 :

139 I. C. 696 : 33 P. L. R. 911 :
I. R. 1932 Lah. 606 : A. I. R. 1932 Lah. 559.

—S. 108.

Where the petitioner in the course of a speech asked the audience to secure *swaraj* : *Held*, that the word *swaraj* does not necessarily mean government of the country to the exclusion of the present Government. Its literal meaning is "self-government" and its ordinary acceptance is "home rule" under the Government. Looking at the substance and not the exact words, there was nothing that would bring Petitioner under S. 124-A of the I. P. C. or of S. 108, cl. (a) of the Cr. P. C. and, therefore, the petitioner could not be bound down under S. 118 read with S. 108 of the Code. *Veni Bhusan Roy v. Emperor.*

6 Cr. L. J. 297 :
11 C. W. N. 1050 : I. L. R. 34 Cal. 991 :
6 C. L. J. 699.

—S. 108 (b)—Intention to promote or attempt to promote feelings of enmity or hatred, if necessary.

To justify an order under S. 108 (b), it is not necessary to find that there was actual intention to promote or attempt to promote feelings of enmity or hatred between different classes of His Majesty's subjects, it will be sufficient when it is found that there are words in the leaflet or matter complained of which were likely to promote feelings of enmity or hatred. *Sital Prasad v. Emperor.*

17 Cr. L. J. 254 :
20 C. W. N. 199 : 23 C. L. J. 105 :
43 Cal. 591 : A. I. R. 1916 Cal. 921.

—S. 138 (b)—Proceedings not trial—Accused European British subject—Competent Court.

S. 451 applies only to trials, and an inquiry under S. 108 (b) is not a trial. A Magistrate, who is a European British Subject and a Justice of the Peace, is competent to hold an inquiry under S. 108 against a European British subject. *Dharmaloka v. Emperor.*

12 Cr. L. J. 248 :
10 I. C. 789 : 4 Bur. L. T. 84.

—S. 108 (b)—Requirements of—Intention to provoke bad feelings.

In order to sustain an order under S. 108 (b), it is not sufficient to prove that the language used was highly offensive to a community but it must be shown that the applicant intended to provoke feelings of enmity or hatred between two communities. It is not necessary that he should have succeeded in exciting such feelings. *Dharmaloka v. Emperor.*

12 Cr. L. J. 248 :
10 I. C. 789 : 4 Bur. L. T. 84.

—S. 109—Action under, when justified.

It is only when the ordinary means for detection and prevention of crime and for ensuring good behaviour have been adopted and have failed, that resort to the special means provided by Ss. 109 and 110 is justifiable. *Nga Po Aung v. Emperor.*

5 Cr. L. J. 377 :
13 Bur. L. R. 291.

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———S. 109—*Bond under Sections 109 and 110 cannot be taken.*

A Magistrate cannot take a bond from an accused person under the two Ss. 109 and 110 together. *Manikkam v. Emperor.*

10 Cr. L. J. 243 :
3 I. C. 77.

———S. 109—*Bond under Ss. 109 and 110, whether void.*

A security bond given in pursuance of an order binding over a person both under Ss. 109 and 110 is not void. *Geomal v. Emperor.*

27 Cr. L. J. 326 :
92 I. C. 742 : 20 S. L. R. 95 :
A. I. R. 1926 Sind 180.

———S. 109—*Breach of bond—Liability of Principal and Surety.*

When a bond for good behaviour is broken, the principal and sureties are jointly and severally liable for the sum named in the bond and no more. *Emperor v. Nga Kaung.*

2 Cr. L. J. 463 :
U B. R. 1905 Cr. P. C. 31.

———S. 109—*Concealing, what is.*

Where the accused does not give a satisfactory account of himself, the proper clause applicable is (b) and not (a) of S. 109. Where the accused was not actually hiding, but was walking along the road, and on observing the watchman, he stood still and waited until his attention should be diverted before proceeding on his way, standing there apparently in the hope that he might be mistaken for an inanimate object, this cannot be considered as concealing his presence.

39 Cr. L. J. 747 :
176 I. C. 465 : 11 R. N. 54 :
I. L. R. 1938 Nag. 595 :
A. I. R. 1938 Nag. 303.

———S. 109—*'Concealment' meaning of—Failure to give satisfactory account, what is.*

S. 109 (a) refers to the case of a continuous act and not the case of an isolated effort at concealment. A person cannot be said to have failed to give a satisfactory account of himself within the meaning of S. 109 (b), merely because he did not give a satisfactory account of what he was doing at the time of his arrest. *Gobra Badia v. Emperor.*

31 Cr. L. J. 408 :
122 I. C. 295 : 50 C. L. J. 181 :
A. I. R. 1929 Cal. 729.

———S. 109—*Concealment, nature of.*

Concealment, in order to avoid observation, is no offence. The object of the concealment must be with a view to committing some offence. *Satish Chandra Sarkar v. Emperor.*

13 Cr. L. J. 161 :
13 I. C. 913 : 16 C. W. N. 499 :
15 C. L. J. 396 : 39 Cal. 456.

———S. 109—*Concealment, nature of.*

S. 109, sub-cl. (a), cannot be so read as to apply to a person who takes steps to conceal himself, in the sense of concealing his presence in the way in which a criminal conceals his presence when he goes in the dark, or by a deserted road, or by some other secret means,

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to commit a crime in his own neighbourhood. *Emperor v. Bhairon.*

27 Cr. L. J. 1116 :
97 I. C. 428 : L. R. 7 All. 183 Cr. :
25 A. L. J. 94 : A. I. R. 1927 All. 50.

———S. 109—*Concealment, what is.*

No definite rule whether the concealment should be continuous or not, should be laid down and it is a question of fact in each case. *Ganpati v. Emperor.*

39 Cr. L. J. 807 :
176 I. C. 820 : 11 R. N. 78 :
A. I. R. 1938 Nag. 465.

———S. 109—*Concealment, what is.*

There may be concealment even if residence within the local limits is well-known. *Ganpati v. Emperor.*

39 Cr. L. J. 807 :
176 I. C. 820 : 11 R. N. 78 :
A. I. R. 1938 Nag. 465.

———S. 109—*Conditions necessary for application of cl. (a).*

To bring a case within the purview of S. 109, Cl. (a), there must be some definite attempt at concealment by taking precautions with that object in view, whether it be by disguise or otherwise indicating a desire to hide the fact that the person is present within the local limits of the Magistrate's jurisdiction. The clause should be used with proper discretion. *Rambirich Ahir v. Emperor.*

27 Cr. L. J. 1128 :
97 I. C. 648 : 1926 Pat. 290 :
8 P. L. T. 95 : 6 Pat. 177 :
A. I. R. 1926 Pat. 569.

———S. 109—*Conspiracy—Correspondence with criminal outside jurisdiction—Ostensible means of subsistence—Man residing with father, capable of supporting him.*

The fact that a person had been previously connected with any criminal conspiracy or might still be connected with anarchist agitation or be in correspondence with any criminal outside the jurisdiction of the Magistrate, would not be relevant in a case under S. 109. It would have to form the basis of a substantive proceeding under S. 110. Therefore, a person cannot be called upon to furnish any security under S. 109 in respect of an alleged temporary concealment in his father's house unconnected with any intention to commit an offence, nor with any previous concealment which admittedly must have been outside the jurisdiction. *Satish Chandra Sarkar v. Emperor.*

13 Cr. L. J. 161 :
13 I. C. 913 : 16 C. W. N. 499 :
15 C. L. J. 396 : 39 Cal. 456.

———S. 109—*Construction—Magistrate, when can act under S. 109 (a).*

The words "within the local limits of such Magistrate's jurisdiction" must be read along with "to conceal his presence" and the offence contemplated is that of a person, probably, though not necessarily, coming from outside the jurisdiction into the Magistrate's jurisdiction for some nefarious purpose and taking precautions to conceal the fact that he is present in that jurisdiction. *Emperor v. Bhairon.*

27 Cr. L. J. 1116 :
97 I. C. 428 : L. R. 7 All. 183 Cr. :
25 A. L. J. 94 : A. I. R. 1927 All. 50.

Cr. P. CODE (1898), S. 109**—S. 109—Evidence, quantum of.**

The only evidence against a person was that he was seen coming out of a sugar-cane field at 10 p.m. and being challenged ran away and was caught: *Held*, that he could not be bound over under S. 109. *Emperor v. Bishambhar*.

29 Cr. L. J. 864 :
111 I. C. 448 : 26 A. L. J. 896 :
10 A. I. Cr. R. 353 : A. I. R. 1928 All. 476.

—S. 109.

Fact of accused again found in suspicious circumstances without any means of livelihood or unable to give satisfactory explanation of himself, does not result in forfeiture of the bond. *Emperor v. Bahadur Singh*.

33 Cr. L. J. 281 :
136 I. C. 373 : L. R. 12 All. 160 Cr. :
1932 A. L. J. 112 : 54 All. 335 :
I. R. 1932 All. 197 :
A. I. R. 1932 All. 58 (1).

—S. 109—"Give satisfactory account of himself", meaning of.

The phrase "give satisfactory account of himself" in S. 109 does not mean that the person should satisfy the Magistrate that he spends his time, or at least his leisure hours, in a satisfactory manner. A municipal peon, whose residence and occupation are well-known but who is said to prowl about at night, to be a companion of scoundrels, to bolt from the Police and to be armed with, and using a *lathi*, cannot be said to be a person who is unable to give a satisfactory account of himself, and cannot be bound down under S. 109. *Sharif Ahmad v. Emperor*.

12 Cr. L. J. 536 :
12 I. C. 304 : 8 A. L. J. 1097.

—S. 109—Giving satisfactory account of oneself, what is not.

Under S. 55, Cr. P. C., an officer in charge of a Police Station is empowered to arrest or cause to be arrested *inter alia* anyone who cannot give a satisfactory account of himself, and the satisfactory account which is to be given cannot, at the moment when an arrest is impending, be considered to have reference to anything except the circumstances in which he is about to be apprehended. The wording of S. 109 is not otherwise, and it cannot be apprehended that a person can be considered to have given a satisfactory account of himself, if being found with unmistakable burgling instruments in his possession, in the middle of the night, he says that he is a respected house-holder, following an honourable profession in the day time still less can he be said to have given a satisfactory account of himself when, on being accosted, he flings away a bundle of house-breaking implements and runs to his own house by a devious route, and when forced to open his door to the Police, denies that he had left his house that night. *Ahesanali v. Emperor*.

39 Cr. L. J. 747 :
176 I. C. 465 : 11 R. N. 54 :
I. L. R. 1938 Nag. 595 : A. I. R. 1938 Nag. 303.

—S. 109.

Imprisonment for default in furnishing security under S. 109—Subsequent conviction

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under Opium Act for offence committed prior to order under S. 109—Order that sentence under Opium Act should commence after expiry of sentence under S. 109 is illegal.

34 Cr. L. J. 1152 :
145 I. C. 1007 : 10 O. W. N. 786 :
6 R. O. 75 :
A. I. R. 1933 Oudh 381.

—S. 109—Magistrate by order under S. 112 taking security under S. 109 (b)—Sessions Judge on appeal considering that facts come under cl. (a) and not (b) and so changing S. 109 (b) to S. 109 (a)—Action, if without jurisdiction.

Where Sessions Judge in appeal has considered that what is set out in the body of the order by the Magistrate under S. 112 brings the matter within the terms of cl. (a) of S. 109 and not under cl. (b), as the trying Magistrate did and he has in effect corrected what he considers either to be a misconception of the trying Magistrate or a clerical error and the substance of the accusation which the applicant had to meet, has not been altered in any way, the action of the Sessions Judge is not without jurisdiction. *Ahesanali v. Emperor*.

39 Cr. L. J. 747 :
176 I. C. 465 : 11 R. N. 54 :
I. L. R. 1938 Nag. 595 : A. I. R. 1938 Nag. 303.

—S. 109—Man of position and substance foolishly choosing not to give his correct name and trying to run away from Police—Inference.

In the case of a man of position and substance, the mere fact that he foolishly chose not to give his correct name and very foolishly tried to run away from the Police at the time he was arrested, and declined to explain how he happened to be there, are no reasons for holding that he could not give a satisfactory explanation of himself or for saying that he is a man of no ostensible means of subsistence. *Din Mohammad v. Emperor*.

37 Cr. L. J. 888 :
164 I. C. 105 : 1936 O. L. R. 426(2) : 9 R. O. 36 :
1936 O. W. N. 752 : A. I. R. 1936 Oudh 383.

—S. 109—Order for furnishing security for good behaviour—Imprisonment, in default.

Where a Magistrate ordered that the accused should furnish security for good behaviour and at the same time directed that he should suffer imprisonment in the event of his failure: *Held*, that the order as to imprisonment was illegal, and that a Magistrate could not award imprisonment in anticipation of non-compliance with his order, and that he should give the accused an opportunity to obey his order by fixing a time within which to furnish security. *In the matter of : Ganga*.

9 Cr. L. J. 350 :
12 M. C. C. R. 143.

—S. 109—Order under either section during continuance of order under other section.

Ss. 109 and 110 having the same object, an order under the latter section, during the continuance of an order under the former section is invalid in law. *Ghulam Ali v. Emperor*.

1 Cr. L. J. 457 :
8 C. W. N. 543.

—S. 109—Penal Code (Act XLV of 1860), S. 379—Sentence for rigorous imprisonment in

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default of security—Subsequent sentence for theft—Concurrent sentences.

The accused against whom proceedings were taken under S. 109, was under S. 123, sentenced to rigorous imprisonment in default of security for good behaviour. Subsequently before the expiry of that term, he was convicted of the offence of theft committed before the passing of the first sentence. For this offence, he was sentenced to suffer rigorous imprisonment for another term with a direction that the sentence should take effect on the expiry of the first sentence : *Held*, that both sentences must run concurrently and could not be directed to run consecutively. *Queen-Empress v. Tulshya Bahiru*, (1898) Unrep. Cr. C. 970 : *Emperor v. Mulkahomaran*, 27 M. 525 : *Joghi Kannigan v. Emperor*, 31 M. 515 : 4 M. L. T. 223 : 8 Cr. L. J. 402, followed. *Emperor v. Arjun Ambo*. 11 Cr. L. J. 271.

5 I. C. 861 : 12 Bom. L. R. 129.

———S. 109—*Person not concealing fact of his presence within jurisdiction but concealing himself for committing offence—Security proceedings, legality of—‘Is taking,’ cannot give a satisfactory account of himself,’ meanings of—‘Within the local limits of jurisdiction’, whether qualifies ‘presence’ or ‘conceal’—Concealment, whether should be continuous.*

Certain persons were found on a dark night at about midnight in a mango grove outside the *abadi* of a village with house-breaking implements, and when challenged by the constables tried to run away, and on being caught, they first gave incorrect names and false addresses in order to hide their identities. They were residents of the sub-division in which they were found : *Held*, Per *Sulaiman, Actg. C. J.*, and *Kendall and Weir, JJ.*, (*Boys and Banerji, JJ.*, dissenting), that the case fell within sub-cl. (a) of S. 109 and justified the initiation of proceedings for taking security from the suspected persons. Per *Boys and Kendall, JJ.*, (*Sulaiman, Actg. C. J.*, contra and *Weir, J.*, dubitante).—The facts fell within the purview of sub-cl. (b) of S. 109. Per *Sulaiman, Actg. C. J.* and *Kendall and Weir, JJ.*—The expression “within the local limits of such Magistrate’s jurisdiction” in S. 109 (a), is an adverbial clause modifying the word ‘conceal’ and not an adjectival clause qualifying the noun ‘presence’, and on a correct interpretation of the section if a man is taking precautions anywhere in order to conceal his presence, and that concealing is to be effected within the jurisdiction of a Magistrate who receives the information, such Magistrate has power to demand security even though the residence of the person informed against within the jurisdiction is well-known. Per *Sulaiman, Actg. C. J.*—The expression ‘cannot give a satisfactory account of himself’ in S. 109 (b) of the Code, does not include mere inability to account for one’s presence at a particular place at a particular time. If a man proves that he is a resident of the neighbourhood, and is a man of substance, he must be said to be able to give a satisfactory account of himself, although he is not able to, or does not, give

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any convincing explanation why on a particular dark night he was found prowling about in a lonely place. Per *Boys and Kendall, JJ.* (*Sulaiman, Actg. C. J.* contra).—The expression “cannot give a satisfactory account of himself” in S. 109 (b), includes inability to explain his presence at a particular time and place where his presence at such time and place is suspicious. Per *Weir, J.*—It is not the length of time during which the concealment lasts, but the object which prompts the concealment, that determines whether the concealment is, or is not, such as to come within the purview of S. 109 (a). *Emperor v. Phuchai*.

30 Cr. L. J. 145 :

113 I. C. 417 : I. R. 1929 All. 129 :

10 A. I. Cr. R. 53 : 50 All. 909 : 26 A. L. J. 1257 :
L. R. 9 All. 149 Cr. : A. I. R. 1929 All. 33.

———S. 109—*Person residing openly within jurisdiction of Magistrate.*

Petitioner by profession a *kaviraj*, was found at about midnight in a lane in a town in association with two others who had in their possession house-breaking implements, that on being discovered he fled, that when arrested, he remained silent and that the explanation subsequently offered to the Magistrate of his presence at the time and place in question was false : *Held*, that the facts found did not bring the petitioner within either clause (a) or (b) of S. 109. Per *Huda, J.*—Clause (a) of S. 109 refers to a continuous act and does not, therefore, apply to a case where there is a momentary effort at concealment to avoid detection or arrest. *Reshu Kabiraj v. Emperor*. 18 Cr. L. J. 825 :

41 I. C. 649 : 22 C. W. N. 163 :
A. I. R. 1918 Cal. 887.

———S. 109—*Person sentenced under S. 109, if can be proceeded against under S. 110—Sentences, if can be concurrent—Duration and commencement of second sentence.*

The passing of a sentence of imprisonment against a person for failure to give security in proceedings initiated against him under S. 109, is no bar to action being taken against him under S. 110 while such sentence is running and to his being sentenced to imprisonment a second time for failure to give security under the latter proceedings, but the period for giving security in respect of the second proceedings can commence only when the sentence under the first proceedings expires. *Fateh v. Emperor*.

30 Cr. L. J. 849 :

117 I. C. 777 : I. R. 1929 Sind 153 :
A. I. R. 1929 Sind 166.

———S. 109—*Persons under arrest, if exempted—Continuous course of conduct, whether should be proved.*

The operation of S. 109, cl. (a) cannot be limited to cases where a person has not been brought under arrest. Nor is it necessary that a continuous course of conduct in taking precautions to conceal should be proved before the clause can be applied. *Rambirich Ahir v. Emperor*.

27 Cr. L. J. 1128 :

97 I. C. 648 : 1926 Pat. 290 :
8 P. L. T. 95 : 6 Pat. 177 :
A. I. R. 1926 Pat. 569.

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—S. 109—Scope of—Inability to give satisfactory account of himself—Living in different district at house of dangerous political conspirator—Desperate and dangerous character.

Where a person was found in a district other than that in which he resided and in the house of a man who was suspected of being a dangerous political conspirator and to have collected a large amount of seditious literature: *Held*, that an order under S. 109, clause (b) was justified: *Held*, also, S. 109 (a) applies not only to vagrants, but it covers suspected persons and persons of any class who cannot give a satisfactory account of themselves. *Narendra Mohan Ghose Chowdhury v. Emperor*.

13 Cr. L. J. 239 :
14 I. C. 431.

—S. 109—Scope of—Person preparing to commit burglary.

A man who is deliberately preparing to commit a burglary, and when caught by the Police, admits his intention, cannot be dealt with under S. 109. *Emperor v. Himayatullah*.

28 Cr. L. J. 567 :
102 I. C. 503 : L. R. 8 All. 106 Cr. :
25 A. L. J. 679 : 8 A. I. Cr. R. 102 :
49 All. 844 : A. I. R. 1927 All. 592.

—S. 109—Scope of.

The section penalises the taking of precaution to conceal whether these precautions are successful or not. *Ganpati v. Emperor*.

39 Cr. L. J. 807 :
176 I. C. 820 : 11 R. N. 78 :
A. I. R. 1938 Nag. 465.

—S. 109—Security furnished—Detention.

No person committed to prison under S. 120 (1) can be detained there if he furnishes the security required of him after his commitment. Consequently, an order stating that he should suffer a period of imprisonment in default, is illegal. *Rangi v. Emperor*.

38 Cr. L. J. 388 :
167 I. C. 403 : 9 R. N. 185 :
I. L. R. 1937 Nag. 173 :
A. I. R. 1936 Nag. 265.

—S. 109—Ostensible means of subsistence—Dependence upon father.

A person who has no means of his own but is maintained by his father, who earns an honest living, is not "a person who has no ostensible means of subsistence." *Abdul Rashid v. Emperor*.

22 Cr. L. J. 749 :
64 I. C. 141.

—S. 109—Satisfactory account, meaning.

The words 'satisfactory account' as used in S. 109 means satisfactory in accordance with the known facts that are consistent with the surrounding circumstances. *Emperor v. Himayatullah*.

28 Cr. L. J. 567 :
102 I. C. 503 : 8 L. R. A. 106 Cr. :
25 A. L. J. 679 : 8 A. I. Cr. R. 102 :
49 All. 844 : A. I. R. 1927 All. 592.

—S. 109—Scope of—Accused tried and convicted—Security on strength of same incident.

Where a person has been tried and convicted for an offence, he should not later on be

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bound down under S. 109, in respect of the same incident where there is no other evidence against him. *Lal v. Emperor*.

29 Cr. L. J. 1043 :
112 I. C. 467 : A. I. R. 1928 Lah. 928.

—S. 109—Security demanded under both sections, whether legal.

A Magistrate should not hold a single enquiry under Ss. 109 and 110, in the case of two persons, unless he is satisfied that the two men were acting in concert, i. e., were associated in the acts charged. *Kakal Reddi v. Emperor*.

11 Cr. L. J. 50 :
5 I. C. 156.

—S. 109—Security for good behaviour—Accused giving satisfactory account of themselves, what amounts to.

Accused were called upon, under S. 109, to show cause why they should not furnish security for good behaviour on the ground that they had no ostensible means of subsistence and that they could not give a satisfactory account of themselves. It was proved that the accused where residents of another district where they had their houses, that they were dealers in cattle and that they had money of their own. The Magistrate held the first part of the charge not proved, but directed them to furnish security because they had not been able to give a satisfactory account of themselves; *Held*, that the accused had given a reasonable account of themselves and that the order directing them to furnish security was illegal. *Nanka urf Natha v. Emperor*.

21 Cr. L. J. 366 :
55 I. C. 734 : 18 A. L. J. 321 :
2 U. P. L. R. All. 87 : A. I. R. 1920 All. 138.

—S. 109—Security for good behaviour.

Certain persons belonging to a gang, which frequented *melas* and carried on a game played with rings, were ordered by a Magistrate to furnish security for good behaviour under S. 109: *Held*, that the order was bad under clause (a) of S. 109, inasmuch as the legality or illegality of the game played with rings depended much upon the manner in which it was played, but clause (b) of the section was very wide and the Magistrate's order was good under that clause. *Mahadeo v. Emperor*.

9 Cr. L. J. 527 :
2 I. C. 219 : 6 A. L. J. 253.

—S. 109—Security for good behaviour—Conviction—Order of forfeiture, whether can be made subsequently.

Where a person who has been put on security for good behaviour is convicted of an offence involving a forfeiture of the surety bond, it is not incumbent upon the Magistrate who convicts him to pass an order of forfeiture of the bond there and then. Such an order may be passed at any subsequent time. *Jeomal v. Emperor*.

27 Cr. L. J. 326 :
92 I. C. 742 : 20 S. L. R. 95 :
A. I. R. 1926 Sind 180.

—S. 109—Security for good behaviour—Offence against person of individual—Forfeiture of bond.

A bond for good behaviour is liable to forfei-

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ture even if the obligor is convicted of an offence against the person of an individual and not against his property. *Inder Singh v. Emperor*. 31 Cr. L. J. 130 :

120 I. C. 605 : A. I. R. 1930 Lah. 227.

—S. 109—*Security for good behaviour from vagrants and suspected persons—Suspicion, whether enough—Order based on suspicion, legality of.*

The only persons to whom the provisions of S. 109 apply, are those who take precautions to conceal their presence within the local limits of a Magistrate's jurisdiction, or persons who have no ostensible means of subsistence and who cannot give a satisfactory account of themselves. To justify an order under that section, mere suspicion is not enough.

Three respectable citizens of Delhi were met at night by the Police between Meerut City and Meerut Railway Station and a burglar's jemmy was also found somewhere near on the ground : *Held*, that these facts did not justify the passing of an order under S. 109. *Ghulam Jilani v. Emperor*. 29 Cr. L. J. 401 :

51 I. C. 161 : 17 A. L. J. 432 :
A. I. R. 1919 All. 260.

—S. 109.

Simply avoiding the Police by a bad character or taking an unfrequented route is by itself no ground for action under S. 109. *Emperor v. Bishu Sahara*. 36 Cr. L. J. 846 :

155 I. C. 729 : 15 P. L. T. 856 : 7 R. P. 611 :
A. I. R. 1935 Pat. 69.

—S. 109—*Single enquiry in the case of two persons—Proof of association or concert.*

Security should not be demanded of a person under both Ss. 109 and 110. *Kakal Reddi v. Emperor* 11 Cr. L. J. 59 :

5 I. C. 156.

—S. 109—*Sureties, fitness of.*

In a bad livelihood case, when several sureties are required, it is not necessary that each one of them should live in the immediate neighbourhood of the accused. *Romesh Chandra v. Emperor*. 17 Cr. L. J. 95 :

32 I. C. 687 : A. I. R. 1916 Cal. 360.

—S. 109—*Surety, fitness of considerations.*

In deciding as to the stability of sureties for a person bound down under S. 109, their immovable properties should be taken into consideration. *Purana Chandra v. Emperor*. 17 Cr. L. J. 91 :

32 I. C. 683 : A. I. R. 1916 Cal. 348.

—S. 109—*Surety, fitness of—Considerations.*

The sufficiency of a surety should be considered from a general view of his stability and the property which he holds; it should not be regarded simply from the point of view of the movable property which he possesses. *Semle*.—In a bad livelihood case, the question of relationship of the surety with the accused, has some relevancy in considering the fitness of the surety. *Nasuruddi Karikar v. Emperor*. 17 Cr. L. J. 97 :

32 I. C. 833 : A. I. R. 1916 Cal. 908.

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—S. 109—*Taking precaution to conceal presence to commit crime—Failure to give satisfactory account of himself.*

A person who secretly delivers letters arranging for the commission of dacoities is a person, who, in the interests of public peace, should be called upon to give security of good behaviour. The accused, when charged by A with endeavouring to secretly deliver letters to A's brother, asking him to assist in some nocturnal enterprise in which revolvers and guns were to be used, was unable to give any satisfactory account of himself : *Held*, that this was sufficient to bring him within the meaning of S. 110. *Prco Nath Dalla v. Emperor*. 15 Cr. L. J. 255 :

23 I. C. 207 : A. I. R. 1914 Cal. 585.

—S. 109.

When a Magistrate is satisfied that security need not be provided, it must be rarely, if ever, that a High Court will feel called upon to reverse the order. *Emperor v. Gayan Singh*. 35 Cr. L. J. 445 :

147 I. C. 433 : 1933 A. L. J. 1201 :
L. R. 14 All. 453 Cr. : 6 R. All. 536 :
A. I. R. 1934 All. 24.

—S. 109—*Within the local limits of such Magistrate's jurisdiction, whether part of 'to conceal his presence.'*

The words 'within the local limits of such Magistrate's jurisdiction' are not words defining the Tribunal which has jurisdiction to try the case, but are part of the predicate to 'conceal his presence.' *Emperor v. Himayatullah*. 28 Cr. L. J. 557 :

102 I. C. 503 : L. R. 8 All. 106 Cr. :
25 A. L. J. 679 : 8 A. I. Cr. R. 102 :
49 All. 844 : A. I. R. 1927 All. 592.

—S. 109—*"Without ostensible means of subsistence," meaning of.*

So long as a young man out of employment is staying in his father's house, and the father is a man of substance, able, if necessary, to support him, he cannot be said to be without ostensible means of subsistence within S. 109, cl. (b). *Satish Chandra Sarkar v. Emperor*. 13 Cr. L. J. 161 :

13 I. C. 913 : 16 C. W. N. 499 :
15 C. L. J. 396 : 39 Cal. 456.

—S. 109 (a).

Accused proved to be habitual offender—Precaution at concealment of his whereabouts—Order under S. 109, cl. (a); is proper. *Manik v. Emperor*. 35 Cr. L. J. 1292 :

151 I. C. 286 : 1934 O. L. R. 705 :
11 O. W. N. 935 : 7 R. O. 103 :
A. I. R. 1934 Oudh 367.

—S. 109 (a)—*'Concealing himself within jurisdiction', meaning of—Continuous course of conduct,—Intention to commit offence, inference of, from facts.*

S. 109 (a), applies to any person taking precautions to conceal his presence within the local limits of the Magistrate's jurisdiction, and it is not necessary, in order to bring a person within the operation of that clause, to show that he had followed a continuous course of conduct in tak-

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ing precautions to conceal his presence. Where the accused with his companions took precautions to conceal the fact that he was still within the Magistrate's jurisdiction by hiding in the *mathia*, avoiding the use of a light, and by running away as soon as the Police came up to the place: *Held*, that the conduct of the accused warranted an inference that he was taking precautions with a view to commit an offence. *Sukhan Ahir v. Emperor*.

31 Cr. L. J. 1125 :
126 I. C. 855 : A. I. R. 1930 Pat. 497.

—S. 109 (a)—*Concealment of presence—Concealment of object of presence—Giving out wrong name.*

Where a person who is out to cheat unwary people by confidence tricks, asks an intended victim not to disclose the dealings between them to any one, it does not amount to concealment of presence under S. 109 (a). *Scmble*—Where a person on being accosted by a Police Officer gives out a false name, it is a concealment of his identity, but not necessarily a concealment of his presence. *Sheo Prasad v. Emperor*.

25 Cr. L. J. 950 :
81 I. C. 598 : 21 A. L. J. 847 :
A. I. R. 1924 All 202.

—S. 109 (a)—*Giving false name and secretly delivering letters containing incitement to commit crime.*

A person who gives a false name and delivers letters secretly, containing incitement to commit crime or demanding money for the means of committing crime, falls within S. 109, cl. (a). *Preo Nath Datta v. Emperor*.

15 Cr. L. J. 255 :
23 I. C. 207 : A. I. R. 1914 Cal. 585.

—S. 109 (a)—

In S. 109, cl. (a), the words 'is taking' mean 'has taken' or 'has been taking'. *Emperor v. Bishi Sahara*.

36 Cr. L. J. 846 :
155 I. C. 729 : I. S. P. L. T. 836 :
7 R. P. 611 : A. I. R. 1935 Pat. 69.

—S. 109 (a).

It is not necessary, in order to bring a person within the operation of S. 109, cl. (a) to show that the accused has followed a continuous course of conduct in taking precautions to conceal his presence. *Manik v. Emperor*.

35 Cr. L. J. 1272 :
151 I. C. 286 : 1934 O. L. R. 705 :
11 O. W. N. 935 : 7 R. O. 103 :
A. I. R. 1934 Oudh 367.

—S. 109 (a).

Person found with house-breaking implements near wealthy man's house—Admission of object of being there—Person can be dealt with under cls. (a) and (b). *Emperor v. Bishi Sahara*.

36 Cr. L. J. 846 :
155 I. C. 729 : 15 P. L. T. 836 : 7 R. P. 611 :
A. I. R. 1935 Pat. 69.

—S. 109 (a).

S. 109, cl. (a) means that he is taking precautions to conceal his presence and that the con-

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cealment is to be within the local limits of such Magistrate. *Emperor v. Bishi Sahara*.

36 Cr. L. J. 846 :
155 I. C. 729 : 15 P. L. T. 836 : 7 R. P. 611 :
A. I. R. 1935 Pat. 69.

—S. 109 (a).

To attract cl. (a), the act which is to help the person to commit the offence must be the concealment of his own presence or identity and not the impersonation of another. *Kanshi Nath Singh v. Emperor*.

35 Cr. L. J. 442 :
147 I. C. 368 : 56 All. 314 : 1933 A. L. J. 1601 :
6 R. A. 462 : A. I. R. 1934 All. 45.

—S. 109, cl. (1) (a) (b)—*'Conceals within jurisdiction', meaning of.*

S. 109, cl. (1), applies to a person who takes precaution to conceal the fact of his infesting the Magistrate's jurisdiction, and in that class of case, if there is reason to believe that this is a precaution taken with a view to commit an offence, the Magistrate can require him to give security. *Gagan Chandra De v. Emperor*.

31 Cr. L. J. 569 :
123 I. C. 747 : 34 C. W. N. 194 :
57 Cal. 949 : A. I. R. 1929 Cal. 775.

—S. 109 (a) (b)—*Isolated acts of concealment—Has failed to give satisfactory accounts of himself' meaning of in cl. (b)—Person concealing in deserted hut running out at approach of some person—Person caught—Being questioned giving out identity and place of residence but admitting that he along with others had come to commit theft—Sindh cutter and gunny bag found in hut.*

Persons arrested under S. 55, do not necessarily come under S. 109 (a) but may come under the provisions of S. 109 (b). In interpreting S. 109 (a), the ordinary meaning of the words should be followed. S. 109 (a), therefore, refers to a continuous concealment and not to an isolated act of concealment. The expression "has failed to give a satisfactory account of himself" in cl. (b) means a satisfactory account of himself generally, and not a satisfactory account of his presence at the place and in the circumstances in which he was found. A person was hiding in a deserted hut in an orchard, and at the approach of some persons, ran out of the hut but was caught. When questioned, he gave out his identity and was living openly at the address given by him. He further admitted that he had come there with two other persons for the purpose of committing theft and that his two companions had gone away to select a house for the purpose, leaving him in the hut. When the hut was searched, a Sindh cutter and a gunny bag were found there: *Held*, that S. 109 (a) did not apply but cl. (b) applied as he must be held to have failed to give a satisfactory account of himself. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Ishali*.

39 Cr. L. J. 647 :
175 I. C. 722 : 42 C. W. N. 588 :
11 R. C. 1 : I. L. R. 1938 2 Cal. 221 :
A. I. R. 1938 Cal. 409.

—S. 109 (b)—*Duty of Magistrate to proceed with case—How accused came before Magistrate is immaterial.*

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A Magistrate is empowered to put in force the provisions of S. 108 whenever he has credible information that the accused has no ostensible means of livelihood or is unable to give a satisfactory account of himself and is within the limits of his jurisdiction. It is immaterial how he (accused) came before him (Magistrate). *Emperor v. Madho Dhobi*. 1 Cr. L. J. 535 : I. L. R. 31 Cal. 557.

—S. 109 (b)—Object of.

The whole object of the last part of cl. (b) of S. 109 is to enable Magistrate to take action against suspicious strangers lurking within their jurisdiction. *Satish Chandra Sarkar v. Emperor*. 13 Cr. L. J. 161 : 13 I. C. 913 : 16 C. W. N. 499 : 15 C. L. J. 396 : 39 Cal. 456.

—S. 109 (b)—Object of—"Give satisfactory account of himself", meaning of.

The whole object of the latter part of cl. (b) of S. 109 is to enable Magistrates to take action against suspicious strangers lurking within their jurisdiction, for the greatest criminal in the world is not liable to be questioned as to his presence in his own home unless there is some specific charge against him. The expression "gave a satisfactory account of himself" does not mean that the person should satisfy the Magistrate how he spends his time but that he has to satisfactorily account for his presence within the limits of the Magistrate's jurisdiction. It means that if a person is present within such limits or is present at a place within such limits to which place he does not belong, and there are circumstances justifying a suspicion that he is there not for an innocent purpose, he has got to explain his presence. *Sheikh Piru v. Emperor*. 26 Cr. L. J. 842 : 86 I. C. 666 : 41 C. L. J. 142 : A. I. R. 1925 Cal. 616.

—S. 109 (b)—Prosecution under S. 109 (b)—Evidence showing accused to be thief by habit—Proper order is one under S. 110 and not under S. 109 (b).

A proceeding against a man because he has no ostensible means of subsistence is a totally different proceeding from one for being by habit a thief. An order was framed against a person under S. 109 (b), as having no ostensible means of subsistence, but the evidence led was all about his being by habit a thief. The Magistrate still passed an order under S. 109 (b), to furnish security. No appeal was filed against the order : *Held*, that the proper order to be passed in such a case was one under S. 110, but as no appeal was preferred from the order, it was not right to set it aside. *The King v. Nga Ba Hein*. 39 Cr. L. J. 285 : 173 I. C. 213 (2) : 10 R. Rang. 321 : A. I. R. 1937 Rang. 544.

—S. 109 (b)—Scope of—"Cannot give a satisfactory account of himself", meaning of.

The section may be made an engine of oppression unless care is taken by Magistrates to prevent its abuse. Merely to be penniless or out of work, is not an offence. If it were the law that persons are exposed to proceedings under S. 109 (b) merely because they cannot

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give a satisfactory account of the manner in which they are eking out a precarious existence, the Magistrate's hands would be full, and much injustice might be done to innocent persons. *Victor v. Emperor*. 27 Cr. L. J. 497 :

93 I. C. 961 : 43 C. L. J. 202 : 20 C. W. N. 380 : 53 Cal. 345 : A. I. R. 1926 Cal. 648.

—S. 109—Security for good behaviour under Ss. 109 and 110, if legal.

A person cannot be bound over to be of good behaviour under both the Ss. 109 and 110. *In re: Kosa Kumaran*. 16 Cr. L. J. 626 :

30 I. C. 450 : 38 Mad. 556 : A. I. R. 1916 Mad. 657.

—Ss. 109, 110, 112—Recording evidence before framing order under S. 112.

A Magistrate acting under S. 109 or 110, need not confine himself to the information contained in the Police papers. He can, if he thinks fit, take information on oath in the presence of the accused before framing the order under S. 112. *Emperor v. Nga Pa Thaung*. 2 Cr. L. J. 462 : U. B. R. 1905 I. P. C. 1905.

—Ss. 109, 112—Scope of.

Under S. 118, which in its turn, is dependent upon the order passed under S. 112, all that the final order can contain is a direction to furnish security to be of good behaviour for a period which cannot, in any case, exceed one year, and which must not be beyond that specified in the order under S. 112. Any order which specifies a period of imprisonment in default is, to that extent, illegal. *Rangi v. Emperor*. 38 Cr. L. J. 388 :

167 I. C. 403 : 9 R. N. 185 : I. L. R. 1937 Nag. 173 : A. I. R. 1936 Nag. 265.

—Ss. 109, 117—Enquiry—Court's power of—Confiscation of property.

Proceedings under the preventive sections of the Code, fall within meaning of the expressions 'enquiry' or 'trial' in S. 517. A Court dealing with an accused person under Ss. 109 and 110 can confiscate property produced before it or in its custody, even in the absence of proof that any offence was committed with respect to that property or that it was used for the commission of an offence. *In re: Pydi Ramanna*. 20 Cr. L. J. 135 :

49 I. C. 167 : 8 L. W. 350 : 24 M. L. T. 256 : 42 Mad. 9 : A. I. R. 1919 Mad. 20.

—Ss. 109, 118—Scope and application by—Dishonest living, necessity of—Poor, outcast and old offences.

The meaning of Ss. 109 and 118, is that if a person is unable to prove the source of his livelihood, he ought not to be ordered to execute a bond under Ss. 109 and 118 unless there is reasonable ground for suspecting that he is sustaining himself by some dishonest means ; for such an order can only be made where it is necessary for keeping the peace or maintaining good behaviour. In such a case, the prosecution must satisfy the Magistrate that suspicion that he is living dishonestly attaches to the accused because of his failure to give a satisfactory

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explanation when called upon to account for his presence in the place where he is found, e. g., if he fails to account for being discovered in the company of persons living a dishonest or criminal life, or detected in some place where he has no legal right to be. But the poor and the outcast and the old offender must somewhere live and move and have their being. *Victor v. Emperor*.

27 Cr. L. J. 497 :
93 I. C. 961 : 43 C. L. J. 202 :
30 C. W. N. 380 : 53 Cal. 345 :
A. I. R. 1926 Cal. 648.

—Ss. 109, 145—*Revision—Magistrate, discretion of—Revision—Interference by High Court.*

Where in exercise of his discretion a Magistrate elects to proceed under S. 107, and not under S. 145, the High Court is not entitled to interfere in revision with the exercise of his discretion. *Amulya Charan Sarkar v. Amrit Lal Mukherjee*.

22 Cr. L. J. 224 :
60 I. C. 336 : 24 C. W. N. 1075.

—Ss. 109, 517—*'Enquiry' if includes proceedings under the security sections—S. 517 is not limited to cases where it is found that some offence has been committed.*

The definition of "enquiry" in the Code is wide enough to include proceedings under the security sections, and there is nothing in S. 517 of Code to limit the applicability of an order of confiscation to cases where it is found that some offence has been committed. *Emperor v. Beni Madho*.

38 Cr. L. J. 175 :
166 I. C. 271 : I. L. R. 1936 Nag. 150 :
9 R. N. 118 : A. I. R. 1936 Nag. 143.

—S. 110.

- Admissibility of Evidence.
- Appeal.
- Applicability.
- Bail.
- Construction.
- Detention in Jail.
- Evidence.
- Evidence of good character.
- Evidence of Police.
- Exercise of powers.
- Fresh proceedings.
- General Reputation.
- Grounds.
- Habitual offender.
- Insufficient Evidence.
- Intention.
- Joint trial.
- Jurisdiction.
- Notice.
- Onus of proof.
- Procedure.
- Reference.
- Reputation.
- Revision.
- Scope.
- Surety.
- Suspicion.

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See also (i) Cr. P. C., S. 107.
(ii) Cr. P. C., S. 108.
(iii) Cr. P. C., S. 109.
(iv) Cr. P. C., S. 109 (b).
(v) Cr. P. C., S. 117.

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- (vi) Cr. P. C., S. 118.
- (vii) Cr. P. C., S. 125.
- (viii) Cr. P. C., S. 130.
- (ix) Cr. P. C., S. 514.
- (x) Penal Code, S. 75.
- (xi) Restriction of Habitual Offenders Act, S. 7.
- (xii) Security Proceedings.

—S. 110—*Admissibility of evidence—Approver's evidence.*

The uncorroborated testimony of an approver in a dacoity case implicating the accused in the dacoity is useless and ought not to be admitted in evidence against the accused in an enquiry under S. 110. *Emperor v. Nga Po*.

10 Cr. L. J. 355 :
3 I. C. 681 : 5 L. B. R. 72.

—S. 110—*Admissibility of evidence—List of cases in which accused suspected, admissibility of.*

In case under S. 110, a list of cases filed by the Police in which the accused was suspected of having been concerned, is not admissible in evidence. *Chandi v. Emperor*.

19 Cr. L. J. 825 :
46 I. C. 841 : 21 O. C. 132 :
A. I. R. 1918 Oudh 190.

—S. 110—*Admissibility of evidence—Being member of gang of dacoits, whether ground for proceeding.*

Where proceedings are taken against a person under S. 110 on the ground of his being a habitual robber, evidence that bad characters assemble at his house is entirely irrelevant unless it is evidence showing that the bad characters were robbers or that the assembly was for the purpose of robbery and not for instance, merely for the purpose of gambling. *Budhan v. Emperor*.

26 Cr. L. J. 1130 (b) :
88 I. C. 362 : 23 A. L. J. 507 :
L. R. 6 All. 129 Cr. : 47 All. 733 :
A. I. R. 1925 All. 694.

—S. 110—*Admissibility of evidence—Commission of substantive offence, evidence of.*

Evidence going to show that a substantive offence had been committed, or, which might form the basis of a charge of a substantive offence is not inadmissible in proceedings under S. 110. *Lachman v. Emperor*.

28 Cr. L. J. 515 :
102 I. C. 211 : L. R. 8 All. 70 Cr. :
7 A. I. Cr. R. 482 : A. I. R. 1927 All. 473.

—S. 110—*Admissibility of evidence—Confession of co-accused, admissibility of—Evidence Act (I of 1872), S. 30, applicability of.*

A confession made by an accused on a charge of dacoity implicating himself and others is not admissible against the others in a proceeding under S. 110. S. 30 of the Evidence Act is not applicable to such a case. *Amirulla Pramanik v. Emperor*.

20 Cr. L. J. 291 :
49 I. C. 649 : 22 C. W. N. 408 :
A. I. R. 1919 Cal. 69.

—S. 110—*Admissibility of evidence—Evidence needed.*

Evidence Act offers little or no assistance

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for the hearing of cases, which depend on a common sense view of the evidence. It may generally be stated that any evidence which enables a Court to come to a decision that a person is or is not an habitual offender is admissible. *Emperor v. Kumbra*.

31 Cr. L. J. 755 :
125 I. C. 19 : 51 All. 275 :
A. I. R. 1929 All. 659.

————S. 110—*Admissibility of Evidence—Evidence needed.*

In cases under Chap. VIII of the Cr. P. C. and the Burma Habitual Offenders' Restriction Act, the court must act on evidence duly recorded in the presence of the accused person. *San Dun v. Emperor*.

26 Cr. L. J. 395 :
84 I. C. 939 : 2 Rang. 641 :
A. I. R. 1925 Rang. 112.

————S. 110—*Admissibility of evidence—Evidence, required.*

Evidence, which is not admissible under the Evidence Act, cannot be admitted in proceedings under S. 110. *Raj Narayan Pandey v. Emperor*.

28 Cr. L. J. 502 :
101 I. C. 886 : L. R. 8 All. 53 Cr. : 25 A. L. J. 393 :
7 A. I. Cr. R. 353 : A. I. R. 1927 All. 394.

————S. 110—*Admissibility of evidence—Evidence—Suspicion of Sub-Inspector, whether legal evidence.*

The mere suspicion of the Sub-Inspector is no legal evidence. *Yar Gul v. Emperor*.

159 I. C. 97 : 8 R. Pesh. 77 :
A. I. R. 1935 Pesh. 158.

————S. 110—*Admissibility of evidence—Evidence, weight of.*

It is the weight of the evidence and not the number of the witnesses which the Court has and ought to consider. *Gur Din v. Emperor*.

22 Cr. L. J. 647 :
63 I. C. 407 : 24 O. C. 225 :
A. I. R. 1921 Oudh 115.

————S. 110—*Admissibility of evidence—Evidence of approver—Corroboration.*

The relationship of a person with another bound down under S. 118, is in itself no sufficient corroboration of an approver's evidence against the former in a proceeding under S. 110. *Pochai Rai v. Emperor*.

22 Cr. L. J. 436 :
62 I. C. 182.

————S. 110—*Admissibility of evidence—Evidence of substantive offence, whether admissible.*

There is no warrant for the proposition that evidence which might possibly form the basis of a charge of a substantive offence is necessarily to be excluded in proceedings under S. 110 and cannot form the basis of an order under S. 112 and a finding under S. 118. *Budhan v. Emperor*.

26 Cr. L. J. 1130 (b) :
88 I. C. 362 : 23 A. L. J. 507 :
L. R. 6 All. 129 Cr. : 47 All. 733 :
A. I. R. 1925 All. 694.

————S. 110—*Admissibility of evidence—Evidence of suspicion.*

The statement of a witness that he himself suspected the accused person of having commit-

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ted a certain offence is admissible in such proceedings. *Emperor v. Kumera*.

30 Cr. L. J. 755 :
125 I. C. 19 : 51 All. 275 :
A. I. R. 1929 All. 650.

————S. 110—*Admissibility of evidence—Gazetteer, extract from—Admissibility.*

An extract from a volume of the *Bengal District Gazetteer* is admissible in evidence, if the extract itself is relevant for the purpose of the inquiry before the Court. *Rajendar Narayan Singh v. Emperor*.

14 Cr. L. J. 5 :
18 I. C. 149 : 16 C. L. J. 467 : 17 C. W. N. 238.

————S. 110—*Admissibility of evidence—General repute—Evidence required.*

In proceedings under S. 110, a witness should not be allowed to state merely that an accused person is a bad character, but when he follows his statement that the person is a bad character by saying that he habitually commits theft, etc., then there is no ambiguity about his meaning and his evidence is relevant and admissible as evidence of general repute. *Emperor v. Kumera*.

30 Cr. L. J. 755 :
125 I. C. 19 : 51 All. 275 :
A. I. R. 1929 All. 650.

————S. 110—*Admissibility of evidence—General repute—Hearsay evidence.*

Evidence of general repute, though it is 'hearsay' evidence, is also admissible in such proceedings. *Emperor v. Kumera*.

30 Cr. L. J. 755 :
125 I. C. 19 : 51 All. 275 :
A. I. R. 1929 All. 650.

————S. 110—*Admissibility of evidence—General repute of being thief, etc.*

Evidence showing clearly that the person sought to be proceeded against under S. 110 has the general reputation of being a habitual thief and burglar, is admissible under sub-s. 4 of S. 117. *Likha Singh v. Emperor*.

35 Cr. L. J. 403 :
147 I. C. 388 : 6 R. O. 264 : 11 O. W. N. 84 :
A. I. R. 1934 Oudh 49.

————S. 110—*Admissibility of evidence—History-sheet kept by Police, value of.*

The existence of history-sheets kept by the Police of persons proceeded against under S. 110 is a matter which cannot be taken into consideration by the Court. *Jogindra Kumar Nag v. Emperor*.

21 Cr. L. J. 700 (a) :
57 I. C. 940 : A. I. R. 1920 Cal. 556.

————S. 110—*Admissibility of evidence—List of cases prepared by Police Officer, inadmissible.*

A police officer should not be permitted to depose to the result of enquiries made by him for the purpose of case or to put in a list of cases in which the person to whom the enquiry relates is said to have been suspected by others. *Raghuber Dial v. Emperor*.

6 Cr. L. J. 256 :
10 O. C. 168.

————S. 110—*Admissibility of evidence—Local inquiry, whether desirable—Finding based on evidence—Information obtained in local inquiry, use of—Irregularity.*

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Though local inquiry is most appropriate where it is a question whether proceedings under S. 110 should be instituted. Once, however, the accused are before the Court, the case must be decided on the evidence alone. In a proceeding under S. 110 the Magistrate dealt with the evidence at great length, and on that evidence came to the conclusion that it was established that the accused were habitual thieves. In his order the Magistrate stated that camping at the spot he had received information which confirmed the conclusion at which he had arrived on the evidence: *Held*, that the course adopted by the Magistrate in making an inquiry at the spot was irregular but that was not sufficient, in the circumstances of this case, to set aside the whole proceedings. *Ram Pargat v. Emperor*. 26 Cr. L. J. 1149 : 88 I. C. 464 : 2 O. W. N. 350 : 12 O. L. J. 341 : A. I. R. 1925 Oudh 441.

S. 110—Admissibility of evidence—Opinion of Police Officer, whether admissible.

The testimony of a Police Officer that a person is by habit a thief is inadmissible in evidence against him in proceedings under S. 110, as it is only a matter of opinion and hearsay. *Kondia v. Emperor*. 31 Cr. L. J. 165 : 120 I. C. 734 : A. I. R. 1930 Nag. 148.

S. 110—Admissibility of evidence—Police evidence.

Where the evidence of the Police witnesses consists only of opinions, rumours and hearsay which they have recorded in their note books and diaries, it is wholly inadmissible. *In re : Kottamiddu Ranga Reddi*. 21 Cr. L. J. 354 : 55 I. C. 722 : 38 M. L. J. 97 : 11 L. W. 331 : 43 Mad. 450 : 1920 M. W. N. 398 : A. I. R. 1920 Mad. 534.

S. 110—Admissibility of evidence—Police evidence, value of.

Though there is no rule of law which prohibits a Magistrate from admitting Police evidence, it should, if not wholly discarded, influence his judgment as little as possible. *In re : Kottamiddu Ranga Reddi*. 21 Cr. L. J. 354 : 55 I. C. 722 : 38 M. L. J. 97 : 11 L. W. 331 : 43 Mad. 450 : 1920 M. W. N. 398 : A. I. R. 1920 Mad. 534.

S. 110—Admissibility of evidence—Police Officer—Refusal to refer to diary—Inference.

It may be within the right of the Police Officers not to refer to a diary, but the accused is entitled to the benefit of their refusal to refer to the diary and to disclose the source of their information. *Deodhary Pandey v. Emperor*.

26 Cr. L. J. 738 : 86 I. C. 274 : 1925 Pat. 6 : 6 P. L. T. 810 : A. I. R. 1925 Pat. 131.

S. 110—Admissibility of Evidence—Police Officers, evidence of—Weight.

In security proceedings, the evidence of Police Officers should not be discarded altogether as of no value to prove bad character, although it has to be received with caution. *Emperor v. Babu Ram*. 29 Cr. L. J. 92 :

106 I. C. 684 : L. R. 8 All. 163 Cr. : 26 A. L. J. 99 : 8 A. I. Cr. R. 557 : I. L. T. 40 All. 71 : A. I. R. 1928 All. 1.

Cr. P. CODE (1898), S. 110**S. 110—Admissibility of evidence—Prosecution evidence—Weight.**

Where the witnesses for the prosecution were examined in three batches on three different dates and the evidence of the witnesses examined on the first two dates was of little help to the prosecution, the evidence of the witnesses examined on the last date is open to suspicion and should be received with great caution as against the accused. *Gurbakhsh Singh v. Emperor*. 12 Cr. L. J. 542 : 12 I. C. 518.

S. 110—Admissibility of evidence—Previous convictions, evidence of.

Previous convictions are not substantive evidence in a case under S. 110, though they may have an effect in deciding for what length of time the accused was to be bound down. *Emperor v. Nepal Shikary*. 2 I. C. 651 : 9 C. L. J. 439 : 13 C. W. N. 318.

S. 110—Admissibility of evidence—Production of Police report to meet allegation that Proceedings are not bona fide.

The production of the Police Report is not in every case complete answer to the allegation that the proceedings under S. 110 are not bona fide. An allegation of that character has to be established conclusively either by direct evidence or by evidence of surrounding circumstances. *Rajendra Narayan Singh v. Emperor*. 14 Cr. L. J. 5 : 18 I. C. 149 : 16 C. L. J. 467 : 17 C. W. N. 238.

S. 110—Admissibility of evidence—Statements of approvers in dacoity cases, value of—Corroboration.

Statements of approvers in the different dacoity cases implicating the accused in a proceeding under S. 110 ought to be left out of consideration, if there is nothing to corroborate them. *Surendra Nath v. Emperor*.

21 Cr. L. J. 170 : 54 I. C. 778 : A. I. R. 1920 Cal. 301.

S. 118—Admissibility of evidence—Thana Village Crime Note Book, entries in, evidentiary value of.

Entries in the Thana Village Crime Note Book are in themselves no evidence to support an order under S. 118. *Pochai Rai v. Emperor*. 22 Cr. L. J. 486 : 62 I. C. 182.

S. 110—Appeal—Appellate Court powers, of.

In an appeal from an order directing an accused person to furnish security for good behaviour, the Appellate Court has no jurisdiction to enhance the amount of security required by the Trial Court. *Rameshwar Bakhsh Singh v. Emperor*. 22 Cr. L. J. 766 (a) :

64 I. C. 286 : 24 O. C. 286 : 9 O. L. J. 28 : A. I. R. 1921 Pat. 233.

S. 110—Appeal—District Magistrate, duty of.

The District Magistrate should not reject the appeal summarily merely because it does not contain just the particulars he wants, and he is bound by law to examine the facts and see

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man whom the police considers guilty. *Shami Lal v. Emperor*.
9 Cr. L. J. 528 :
2 I. C. 225 : 6 A. L. J. 487.

—S. 110—*Applicability—Magistrate, discretion of—Accused registered under Criminal Tribes Act, effect of.*

In every case under S. 110, there is a question of discretion whether the person proceeded against should or should not be bound down to be of good behaviour. The fact that the persons proceeded against are already registered under the Criminal Tribes Act, may be a factor which the Magistrate should take into consideration. *Ghulam Rasul v. Emperor*.

20 Cr. L. J. 30 (b) :
48 I. C. 510 : A. I. R. 1919 Cal. 872.

—S. 110—*Applicability—Acquittal of offence of receiving stolen property—Placing on security soon after.*

Immediately after his acquittal in a case under S. 411 of the Penal Code, an order was passed against the accused under S. 110: Held, that in the circumstances an order under S. 110, Cr. P. C., should not have been made against the accused unless a very strong case was made out against him. *Abdulla v. Emperor*.

27 Cr. L. J. 190 :
91 I. C. 1006 : 2 Lah. Cas. 184 :
A. I. R. 1926 Lah. 190.

—S. 110—*Applicability—Acquittal for dacoity—Security.*

Where a person has been tried for dacoity and acquitted, he ought not to be proceeded against under S. 110 on the same materials. *In re : Kismat Akanda v. Emperor*.

4 Cr. L. J. 46.

—S. 110—*Applicability—"At large" meaning of—Persons undergoing sentences.*

Persons who have been convicted and whose sentences have not expired are not 'at large' within the meaning of S. 110 and therefore, there is no necessity to pass an order under the section against such persons. *Bhubaneswar Kuer v. Emperor*.

28 Cr. L. J. 359 :
100 I. C. 967 : 6 Pat. 1 : 8 P. L. T. 335 :
A. I. R. 1927 Pat. 126.

—S. 110—*Applicability—Bad livelihood, security for—Proof.*

The following circumstances are not sufficient to place a person on security under S. 110 especially where these circumstances are shown to have occurred about a year after dismissal of that person's complaint of bribe-taking against two Police Sub-Inspectors of the *ilaga* in which he lives : (1) Two successful searches of his house; (2) His having been seen in the company of some suspected persons, none of whom has ever been convicted of theft; (3) Allegations of some *Sufedposhes* and *Lambardars* to the effect that people of their villages know him to be *badmash*, while no one has ever suspected him in a theft case. *Samanda v. Emperor*.

13 Cr. L. J. 550 :
15 I. C. 966 : 20 P. W. R. 1912 Cr.

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—S. 110—*Applicability.*

Bond cannot be taken under two sections, S. 109 and S. 110. *Monikhan v. Emperor*.

10 Cr. L. J. 243 :
3 I. C. 77 : 6 M. L. T. 158.

—S. 110—*Applicability—Construction—Place referred to.*

S. 110 cannot be read as referring to the place where the acts on which an order is to be based were committed. The words of the section do not refer to the place where the person proceeded against became a robber or a receiver of stolen property and so forth, but it refers merely to the place where he was when the information was received. *In re : Hanmantrao Annarao*.

41 Cr. L. J. 186 :
188 I. C. 830 : 42 Bom. L. R. 353 :
I. L. R. 1940 Bom. 397 : 13 R. B. 36 :
A. I. R. 1940 Bom. 204.

—S. 110—*Applicability—Criminal Tribes Act (III of 1911), S. 4—Security for good behaviour—Proceedings against person registered under Criminal Tribes Act, legality.*

Proceedings under S. 110, against persons who have been registered under S. 4 and the following sections of the Criminal Tribes Act, are not illegal. Per *Huda, J.*—Such proceedings, though not illegal, are inexpedient. *Ghulam Rasul v. Emperor*.

20 Cr. L. J. 30 (b) :
48 I. C. 510 : A. I. R. 1919 Cal. 872.

—S. 110—*Applicability—Definition of habitual thief or receiver of stolen property—Evidence needed.*

There must be reliable evidence against a person before he can be called upon to give security under S. 110 of the said Code. A person with only one conviction of theft against him is neither a habitual thief nor he is a receiver of stolen property by habit if no stolen property has ever been found in his possession. *Kasim Shah v. Emperor*.

5 Cr. L. J. 24 :
1 P. W. R. Cr. 44 : 8 P. L. R. 70.

—S. 110—*Applicability—Demanding security from a person trying to reform himself.*

Where it is found that an accused person is trying to reform himself, and has, for a fortnight, led an honest life, security should not be demanded from him under S. 110 on the ground that there is no guarantee that he has mended his ways. *In re : Billa Appayya*.

12 Cr. L. J. 328 : 10 I. C. 624.

—S. 110—*Applicability.*

Dispute between two parties—Satyagraha movement—Defiance of law—Matters compromised—Order under S. 110 cannot be based on events prior to compromise. *Satindra Nath Sen v. Emperor*.

32 Cr. L. J. 593 :
130 I. C. 880 : 52 C. L. J. 405 :
I. R. 1931 Cal. 400 :
A. I. R. 1931 Cal. 18.

—S. 110—*Applicability—Evidence—Vague allegations that person proceeded against was suspected in several cases, of having committed offences against property—Security.*

An order under S. 110 read with S. 118.

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cannot be made on vague allegation, e. g. that the accused had been suspected in several cases of having committed offences against property, otherwise none would be safe. Unless a man is proved by habit a robber, house-breaker, thief, or forger, or by habit a receiver of stolen property, etc., drastic measures cannot be taken against him, and if in all cases in which the person proceeded against was sent up, he was either discharged or acquitted, it cannot be urged that the requirements of S. 110 are satisfied. *Islam ud-Din v. Emperor*, 40 Cr. L. J. 753 :

183 I. C. 269 : 41 P. L. R. 431 :
I. L. R. 1939 Lah. 53 : 12 R. L. 105 (2) :
A. I. R. 1939 Lah. 269.

S. 110—Applicability—Evidence needed.

In order to bind a person down under S. 110 there should be evidence in which the accused is proved to have been concerned in certain criminal cases, or some direct evidence to establish his complicity in such cases. The evidence ought to be of such a nature as to lead to a reasonable and definite ground for coming to the conclusion that the accused is a habitual thief. *Amjad Ali v. Emperor*, 25 Cr. L. J. 35 :

75 I. C. 723 : 5 P. L. T. 129 :
2 Pat. L. R. 79 Cr. :
A. I. R. 1924 Pat. 498.

Ss. 110, 117—Applicability—Exercise of powers under.

Section 110 coupled with S. 117 gives very extensive powers to Magistrate and should be administered with scrupulous care, and materials ought not to be brought on to the record which are not legally admissible in evidence and which are liable, if on the record, to prejudice the accused. *Jabru Din v. Emperor*, 20 Cr. L. J. 689 :

52 I. C. 657 : 1 U. P. L. R. All. 143 :
A. I. R. 1919 All. 136.

S. 110—Applicability—Failure—Dacoity charge—Security proceedings.

The Police having failed to establish the guilt of the accused in regard to three specific charges of dacoity, instituted proceedings against the accused under S. 110: *Held*, that the Magistrate was not wrong in initiating proceedings under S. 110 but, in such circumstances, the evidence against the accused must be very satisfactory before security can be demanded of him under S. 118. *Surindra Nath v. Emperor*, 21 Cr. L. J. 170 :

54 I. C. 778 : A. I. R. 1920 Cal. 301.

S. 110—Applicability—Habitually bringing false cases in Civil Courts—Evidence of general repute, admissibility of.

S. 110 does not apply to a person who has the reputation of habitually bringing false claims in Civil Courts. Such a person may be punishable under S. 209, I. P. C. but he does not, by so doing, commit the offence, either, if he succeeds, of extortion or, if he fails, of attempting to commit extortion. In proceedings against such a person, although evidence of general repute is admissible, it

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cannot be allowed to override the findings arrived at by the Civil Courts after trial. *Bapujee v. Emperor*, 19 Cr. L. J. 885 :

47 I. C. 81 : A. I. R. 1917 Nag. 32.

S. 110—Applicability—Harbouring dacoits—Security.

A man cannot be called upon under S. 110 to give security for harbouring dacoits. Such a person should be dealt with under the substantive provision of the Penal Code, i. e., S. 216-A. *Manni Ram v. Emperor*, 30 Cr. L. J. 694 :

116 I. C. 801 : I. R. 1929 All. 628 :
1929 A. L. J. 93 : 51 All. 459 :
A. I. R. 1928 All. 682.

S. 110—Applicability—Members of 'community,' meaning of.

Persons who form themselves into a society claiming a common right and professing to have common rights and privileges, are members of a 'community.' *Blubaneshear Kuer v. Emperor*, 28 Cr. L. J. 359 :

100 I. C. 967 : 6 Pat. 1 : 8 P. L. T. 335 :
A. I. R. 1927 Pat. 126.

S. 110—Applicability—Non-liability of manager of a shrine freely open to public where thieves resort—Previous convictions of Manager.

The Manager of a Public Shrine, which does not belong to him and which is freely open to the people, cannot be called upon to furnish security under S. 110 (c), although some thieves have been arrested there on several occasions and it is generally used as a gambling resort, and among the people, who come up there, are a number of thieves and bad characters and although the manager himself has nine convictions against him. *Soman v. Emperor*, 11 Cr. L. J. 663 :

8 I. C. 249 : 37 P. W. R. 1910 Cr.

S. 110—Applicability—Offences involving breach of peace, meaning of—Duty of Court.

Offences involving a breach of the peace mean offences of which a breach of the peace is an ingredient. Persons must be found to have habitually committed, attempted to commit, or abetted the commitment of such an offence before they can be bound down under S. 110 (c). Per *D. Chatterjee, J.*—Magistrates cannot be too cautious in making sure that provisions intended for securing the peace of the community are not utilized for wrecking private vengeance under the aegis of a Crown prosecution. *Kali Prasanna Basu Roy v. Emperor*, 12 Cr. L. J. 164 :

9 I. C. 916 : 15 C. W. N. 366 : 38 Cal. 156.

S. 110—Applicability—Person, leader of local factions, responsible for bullying—Security order.

A person who is a leader of local factions responsible for constant threat and bullying, is nonetheless dangerous to the community because he lives in a house and owns lands, and S. 110 (e) and (f) applies to such a type of person. *In re : Mana*, 39 Cr. L. J. 595 :

175 I. C. 491 : 47 L. W. 139 :
1938 M. W. N. 213 : 10 R. M. 783 :
A. I. R. 1938 Mad. 448.

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———S. 110—*Applicability*—*Person proceeded against, if should be ex-convict.*

Obiter : Per Burn, J.—A person against whom proceedings under S. 110 are taken, need not be an ex-convict. *In re : Perne Maila Rai.*

39 Cr. L. J. 898 :
177 I. C. 586 : 1938 M. W. N. 313 :
47 L. W. 428 : 11 R. M. 351 :
A. I. R. 1938 Mad. 591.

———S. 110—*Applicability*—*Preaching violence—Security.*

Where a person, being aware that violence is the inevitable outcome of the doctrine he preaches, conducts a propaganda against the forces of law and order and instigates breaches of the peace, he must be treated as an abettor of such breaches of the peace and may be ordered to give security under S. 118. *Satindra Nath Sen v. Emperor.*

32 Cr. L. J. 593 :
130 I. C. 880 : 52 C. L. J. 405 :
I. R. 1931 Cal. 400 : A. I. R. 1931 Cal. 18.

———S. 110—*Applicability*—*Preparation for future revolution and dacoity, Security.*

Where, in a proceeding under S. 110, it was found by the Court that the accused persons were not only engaged in preparing the young for a future revolution but were also connected with an organisation for the collection of money by dacoity : *Held*, that the facts found were sufficient to bring the accused within S. 110 (f). *Mohindra Mohan Sanyal v. Emperor.*

19 Cr. L. J. 696 :
46 I. C. 152 : 28 C. L. J. 25 : 23 C. W. N. 193 :
A. I. R. 1919 Cal. 702.

———S. 110—*Applicability*—*Proceeding to bind down upon failure of prosecution for substantive offences.*

Proceeding under S. 110, ought not to be instituted with a view to bind down persons on an indefinite charge, after prosecutions against them on definite charges under the Penal Code have failed. *Alop Praminik v. Emperor.*

5 Cr. L. J. 191 :
11 C. W. N. 413.

———S. 110—*Applicability*—*Protecting or harbouring an offender—Meaning of.*

The "protecting or harbouring" of S. 110 (c) seems to contemplate assistance of the former kind, and not of the latter. The clause is designed to meet the case of the professional receiver of stolen property who assists the thief after the theft by relieving him and encouraging him, protecting him from discovery and arrest, and helping him to dispose of his stolen property. It does not apply to a mere associate of suspected thieves. The acts which amount to harbouring must be done with the intention of screening the offender. If a man from mere motives of humanity, and without any intention of enabling the fugitive to escape from justice, were to give food to a man who was starving, or surgical assistance to one who was wounded even with a full knowledge of his character, he commits no criminal act. *Nga Pu Gyi v. Emperor.*

11 Cr. L. J. 490 :
71 I. C. 462 : U. B. R. 1910 : Cr. P. C., p. 4.

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———S. 110—*Applicability*—*Section, if can be used against, undisciplined people.*

S. 110 is obviously not intended for use against merely undisciplined people, such as local bosses and faction leaders, to clip their wings, to deplete their resources by an expensive inquiry, to humble their pride by treating as criminal mad men, to advertise publicly their high-handed behaviour. To apply the section to such as these, is undoubtedly to abuse it. *In re : K. S. Ratainam Pillai.*

39 Cr. L. J. 230 :
172 I. C. 866 : 1937 M. W. N. 1065 :
1937 2 M. L. J. 749 : 46 L. W. 858 :
10 R. M. 498 : A. I. R. 1938 Mad. 35.

———S. 110—*Applicability*—*Scope of.*

S. 110 does apply even when the object of the accused were primarily directed against the security of persons and not against the security of property. *Mohindra Mohan Sanyal v. Emperor.*

19 Cr. L. J. 696 :
46 I. C. 152 : 28 C. L. J. 25 : 23 C. W. N. 193 :
A. I. R. 1919 Cal. 702.

———S. 110—*Applicability*—*Security proceedings—Allegations, involving commission of offence.*

It is not illegal to institute proceedings under S. 110, merely because the facts alleged would, if proved, establish some substantive offences under the Penal Code. *Chandan v. Emperor.*

31 Cr. L. J. 627 :
124 I. C. 40 : 1930 A. L. J. 389 :
A. I. R. 1930 All. 274.

———S. 110—*Applicability*—*Substantive offence, not proved—Proceedings under S. 110, whether proper.*

Where a man has been arrested on a substantive charge (e. g. of dacoity) but released for the reason that that charge cannot be substantiated, the prosecution under S. 110 is not desirable. *Sital Din v. Emperor.*

25 Cr. L. J. 366 :
77 I. C. 302 : A. I. R. 1925 Oudh 49.

———S. 110—*Applicability*—*Suspicion of burglaries—General repule, security.*

Where there is evidence of no less than 14 burglaries in respect of which suspicion has fallen upon the accused and their reputation as thieves is firmly established by the evidence of a number of witnesses including those called for the defence : *Held*, that S. 110 applies. *Emperor v. Durga Halkrai.*

16 Cr. L. J. 618 :
30 I. C. 442 : 19 C. W. N. 1022 :
43 Cal. 153 : A. I. R. 1916 Cal. 707.

———S. 110—*Applicability.*

The mere fact that S. 108 may have been applicable to a case does not necessarily make S. 110 inapplicable. *Mohindra Mohan Sanyal v. Emperor.*

19 Cr. L. J. 696 :
46 I. C. 152 : 28 C. L. J. 25 :
23 C. W. N. 193 : A. I. R. 1919 Cal. 702.

———Ss. 110, 118—*Applicability—Registration under Criminal Tribes Act—Security proceedings, legality of.*

The question whether the person who has been registered as a member of a criminal tribe, can be proceeded against under S. 118, depends on

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the facts and circumstances of each particular case. Each case has to be scrutinised on its merits. The fact that the reputation of such persons continued the same as it was when they were registered as members of a criminal tribe, is no ground for taking further preventive action. The important thing in such cases is to see what they have done after such registration. *Badu Mir v. Emperor*. 28 Cr. L. J. 106 : 99 I. C. 234 : 44 C. L. J. 314 : 31 C. W. N. 165 : 54 Cal. 279 : 7 A. I. Cr. R. 243 : A. I. R. 1927 Cal. 213.

———Ss. 110, 145—*Applicability—Substance of information relating to dispute relating to land—Procedure.*

Where the substance of information received under S. 110, as set out under S. 112, relates to disputes concerning land, special provisions of S. 145 apply excluding the general provisions of S. 110. *Emperor v. Alisher Dost Muhammad*. 40 Cr. L. J. 887 (b) : 184 I. C. 189 (2) : 12 R. S. 94 : A. I. R. 1939 Sind 261.

———S. 110—*Bail.*

See Cr. P. C., S. 110—*Surety.*

———S. 110—*Construction—“Habitually,” meaning of.*

The word “habitually” in S. 110 (c), implies frequent practice or use. It implies a tendency or a capacity resulting from the frequent repetition of the same acts. 100 I. C. 967 (1), relied on. *Maung Po Aung v. The King*. 41 Cr. L. J. 495 : 187 I. C. 609 : 12 R. Rang. 340 : A. I. R. 1940 Rang. 95.

———S. 110—*Construction—“Offences involving breach of the peace,” meaning of.*

The words “offences involving a breach of the peace” in S. 110 (c), mean offences in which a breach of the peace is an ingredient and not offences provoking or likely to lead to a breach of the peace. *Maung Po Aung v. The King*. 41 Cr. L. J. 495 : 187 I. C. 609 : 12 R. Rang. 340 : A. I. R. 1940 Rang. 95.

———S. 110—*Detention in jail—Inquiry in progress—Detaining accused in jail.*

To send a person to jail, while an inquiry under security proceedings is in progress, is an illegality which prejudices his interests in the inquiry. *Bhau Sovalaram Kotasthane v. Emperor*. 16 Cr. L. J. 91 : 26 I. C. 1003 : 16 Bom. L. R. 943 : A. I. R. 1915 Bom. 199.

———S. 110—*Detention in jail—Period.*

A Magistrate has no power to keep a man in jail beyond the period for which security was ordered. *Emperor v. Nga Po Sin*. 13 Cr. L. J. 62 : 13 I. C. 398 : 4 Bur. L. T. 270.

———S. 110—*Detention in jail—Security for good behaviour, period for—Magistrate, duty of.*

Security for good behaviour can, at the longest, be demanded for only one year except

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in very bad cases. Security for two years cannot be demanded, even if the accused is guilty of different offences in different places. In such cases, a Magistrate should direct detention in prison, and not commit the accused to prison until the orders of the High Court are obtained. *In re : A. Shakoor Sail*. 16 Cr. L. J. 614 : 30 I. C. 438 :

———S. 110—*Detention in jail.*

When security is demanded from a person who finds it difficult to get the amount which is too much for his financial status, he should be at large, when there is a chance of moderating influences being brought to bear on him, than that he should be associating with confirmed criminals in jail. *Salgur Dayal v. Emperor*. 35 Cr. L. J. 183 : 146 I. C. 875 (2) : 1933 A. L. J. 927 : L. R. 15 All. 9 Cr. : 6 R. A. 359 : A. I. R. 1933 All. 674 (2).

———S. 110—*Evidence—Defence evidence—Ground for rejection.*

A Court is not justified in rejecting the defence evidence simply because the witnesses are the caste-fellows of the accused or they have come forward voluntarily without being summoned. *Kewal Kishore v. Emperor*. 26 Cr. L. J. 1283 : 89 I. C. 147 : 12 O. L. J. 413 : 29 O. C. 44 : A. I. R. 1925 Oudh 473.

———S. 110—*Evidence—Evidence against accused in connection with substantive offence, of no value—Discharge of accused under S. 169—Evidence whether can be used to support charges under S. 110—Magistrate acting on information obtained from Special Diary, improper.*

Where the evidence against an accused person in connection with a dacoity is considered by the Police to be of so little value as to result in his release under S. 169 of the Code without even being placed before the Court, it is contrary to all accepted principles to make use of this evidence as a ground for binding the accused over on a charge under S. 110. Nor is it open to a Magistrate to act upon information not given in evidence but obtained from a perusal of the Special Diary. *Jhandu Singh v. Emperor*. 25 Cr. L. J. 45 (a) : 75 I. C. 733 : A. I. R. 1924 All. 149.

———S. 110—*Evidence—Evidence meagre and vague—Court's failure to examine evidence critically.*

The petitioners were ordered to furnish security under S. 110 on evidence which was not merely meagre and vague but was accepted by the trying Magistrate without any critical examination. In appeal, the trial Court's order was upheld but in the Appellate Court's judgment, no reference was made to evidence on important points : *Held*, that the order passed by the lower Courts could not be sustained, inasmuch as the procedure adopted by them was not at all satisfactory. *Nizamaddi v. Emperor*. 20 Cr. L. J. 551 : 51 I. C. 839 : 23 C. W. N. 488 : A. I. R. 1919 Cal. 359.

———S. 110—*Evidence—Evidence on both sides, equally balanced.*

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When on a case under S. 110, the evidence is equally balanced, no order requiring security should be made. *Raham Ali v. Emperor*.

14 Cr. L. J. 407 :

20 I. C. 231 : 11 A. L. J. 461.

—S. 110—Evidence needed.

An order under S. 110 should not be passed when the evidence for the defence is at least as good as that for the prosecution. *Ahmad Ali v. Emperor*.

32 Cr. L. J. 271 :

129 I. C. 276 : 32 P. L. R. 92 :

I. R. 1931 Lah. 164 : A. I. R. 1930 Lah. 1051.

—S. 110—Evidence required.

In a case under S. 110, if the evidence for the defence is as good as that for the prosecution, no bonds should be taken from the accused. *Manni Singh v. Emperor*.

20 Cr. L. J. 716 :

52 I. C. 796 : 1 U. P. L. R. All. 140 :

A. I. R. 1919 All. 399.

—S. 110—Evidence—Evidence required.

To maintain an order under S. 110, the evidence must be of such a nature as would lead to reasonable and definite ground for coming to the conclusion that the person proceeded against is an habitual offender. *Ghulam Ali v. Emperor*.

1 Cr. L. J. 457 :

8 C. W. N. 543.

—S. 110—Evidence—Prosecution witnesses as good as defence witnesses, effect of.

In a case under S. 110, if the defence evidence is as good as that of the prosecution, the accused is entitled to an acquittal. *Ganga Singh v. Emperor*.

13 Cr. L. J. 772 :

17 I. C. 404 : 10 A. L. J. 383.

—S. 110—Evidence—Sufficiency of Evidence—Finding definite, necessary—Prosecution, duty of.

In arriving at a decision in a case under S. 110, the question is not whether the evidence for defence outweighs the evidence for the prosecution, but whether the evidence for the prosecution is sufficient to establish the case against the accused, and the Court ought to come to a definite finding on that point. *Sadal Ali v. Emperor*.

21 Cr. L. J. 826.

58 I. C. 826 : A. I. R. 1920 Cal. 412.

—S. 110—Evidence.

Summons issued under S. 107 but proceedings taken under S. 110—Evidence received at length—No prejudice caused—Irregularity held cured by S. 537. *Sanganma Naick v. Emperor*.

14 Cr. L. J. 65 :

18 I. C. 401.

—S. 110, 439—Evidence—Evidence, nature of—Prosecution, what must prove—Failure to furnish security—Order directing imprisonment of accused—Revision—High Court, when will interfere.

It is very difficult for the High Court to interfere in revision in cases under S. 110 but when a person is sentenced to imprisonment for failure to furnish security under that section, the High Court has to be satisfied that the evidence is of a character which will reasonably support the inference that it is necessary in the interests of public security to send the accused

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to prison or to bind him down. *Alimuddin v. Emperor*.

25 Cr. L. J. 1172 :

82 I. C. 36 : 22 A. L. J. 678 :

L. R. 5 All. 97 Cr. : A. I. R. 1924 All. 569.

—S. 110—Evidence of good character—Accused acquitted of substantive offence—Defence evidence reliable—Desire of Police to get rid of accused.

There is no legal bar to a prosecution for bad livelihood of men acquitted of the substantive offence of dacoity, but in weighing the evidence against them, this matter must be taken into consideration as indicating the desire of the Police to get rid of the presence of such men. Where, in proceedings under S. 110, a large number of witnesses who are considered to be respectable and reliable by the Magistrate depose that the accused are men of good character, there is no justification for an order requiring security to be passed against the accused. *Bahadur v. Emperor*.

26 Cr. L. J. 530 :

85 I. C. 370 : 27 O. C. 327 :

A. I. R. 1925 Oudh 501.

—S. 110—Evidence of good character—Acquittal on previous charge—Evidence relating to previous charge, whether can be taken into consideration.

The fact that a person against whom proceedings are being taken under S. 110, was acquitted of a charge brought against him of a substantive offence, does not entitle him to have all evidence excluded of the incident which formed the subject of the previous trial. It is entirely a question of the value to be attached to the acquittal. *Budhan v. Emperor*.

26 Cr. L. J. 1130 (b) :

88 I. C. 362 : 23 A. L. J. 507 :

L. R. 6 All. 129 Cr. : 47 All. 733 :

A. I. R. 1925 All. 694.

—S. 110—Evidence of good character—Acquittal on substantive charges, effect of.

It is not correct to take into account the fact that an accused person has been tried for an offence when he has been acquitted of the charge. The acquittal clears the conduct of the person and he cannot be judicially considered guilty. *Tar Gul v. Emperor*.

159 I. C. 97 :

8 R. Pesh. 77 : A. I. R. 1935 Pesh. 158.

—S. 110—Evidence of good character.

An accused person should not be bound over on evidence of bad repute where there are respectable persons on his side to clear him of the charge. *Tar Gul v. Emperor*.

159 I. C. 97 :

8 R. Pesh. 77 : A. I. R. 1935 Pesh. 158.

—S. 110—Evidence of good character—Defence evidence voluminous—Discharge.

An accused in a *badmashi* case who is able to produce a large number of defence witnesses is not necessarily entitled to a discharge. *Rameshwar Bakhsh Singh v. Emperor*.

22 Cr. L. J. 766 (a) :

64 I. C. 286 : 24 O. C. 286 : 9 O. L. J. 28 :

A. I. R. 1921 Pat. 233.

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———S. 110—*Evidence of good character—Defence evidence of interested witnesses.*

The fact that a large number of the defence witnesses are caste-fellows of the accused, and they have come forward voluntarily is not sufficient to discredit their evidence, notwithstanding that they admit frankly that they have come forward because they regard the accused as head of their brotherhood and look upon it as a slur on the brotherhood that the accused should be treated as a habitual thief or robber. *Rahu v. Emperor.*

22 Cr. L. J. 115 :
58 I. C. 547 : 18 A. L. J. 1114 : 43 All. 185 :
A. I. R. 1921 All. 278.

———S. 110—*Evidence of good character—Defence witnesses caste-fellows of accused—Evidence, value of.*

The mere fact that some of the witnesses produced by a person against whom proceedings have been instituted under S. 110, are his caste-fellows, is not by itself a sufficient reason for discrediting their testimony. *Rohan v. Emperor.*

21 Cr. L. J. 60 :
54 I. C. 412 : 6 O. L. J. 541 :
A. I. R. 1919 Oudh 79.

———S. 110—*Evidence of good character—Evidence of Mukhais and Sarpanchas.*

Mukhais and *Sarpanchas* are respectable persons and they are appointed to these offices because of their respectability. It is totally wrong to describe them as “quasi-Police witnesses.” It is altogether absurd to start with a presumption against them. *Emperor v. Dipu.*

36 Cr. L. J. 1362 :
158 I. C. 424 : 1935 A. W. R. 1089 :
8 R. A. 298 : A. I. R. 1935 All. 850.

———S. 110—*Evidence of good character—Previous convictions, effect of—Evidence of general reputation, what constitutes—Suspicion of Police men, value of—Duty of Magistrate.*

In proceedings under S. 110, the existence of a number of previous convictions of offence, such as theft, is a matter which may and should be taken into consideration as indicating the character and disposition of the accused. But the existence of such convictions is not by itself sufficient to justify ordering the accused to furnish security. Weight must be given to a consideration of the period that has elapsed subsequent to the last of the convictions in order to see, whether during that period, the accused has apparently shown a disposition to conduct himself properly or whether there are indications that he has, during that period, continued in his previous course, though he may not have actually brought himself within the clutches of the law. The suspicions of a witness that a particular man committed, either singly or with others, a theft in his house is wholly inadmissible. In this respect a Police Officer stands in no stronger position than any other witness. The mere production of a string of witnesses who say that an accused person's general reputation is so and so, can carry very little weight unless some attempt has been made to show that he is a person in a position to know the general reputation, and there has been

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some reasonable attempt by the Counsel for the accused or by the Court to check the value of the evidence. *Emperor v. Ram Lal.*

30 Cr. L. J. 562 :
116 I. C. 25 : I. R. 1929 All. 505 :
1929 A. L. J. 361 : 51 All. 663 :
A. I. R. 1929 All. 273.

———S. 110—*Proof required.*

To bring a person within S. 110 (c) regular habit for protecting thieves should be proved. *Firangi Rai v. Emperor.*

34 Cr. L. J. 643 :
143 I. C. 687 :

I. R. 1933 Pat. 209 : A. I. R. 1933 Pat. 189.

———S. 110—*Evidence of good character—Prosecution witnesses inimical to accused—Large number of defence witnesses—Security.*

Proceedings were taken against the accused under S. 110. It was found that he carried on extensive cultivation and a money-lending business. The witnesses who deposed against him were mostly his enemies or were hostile to him. A large number of witnesses deposed to his good conduct : *Held*, that the accused should not be bound over. *Gur Dayal v. Emperor.*

26 Cr. L. J. 99 :
83 I. C. 659 : A. I. R. 1925 Oudh 277.

———S. 110—*Evidence of good character—Security.*

The mere fact that assuming the accused is guilty, it was easy for the accused to get witnesses of fairly good status to give evidence on his behalf, is no ground for disbelieving the witnesses. *Jabruddin v. Emperor.*

20 Cr. L. J. 689 :
52 I. C. 657 : 1 U. P. L. R. All. 143 :
A. I. R. 1919 All. 136.

———S. 110—*Evidence of good character.*

The accused was continuously for a period of 10 or 11 years employed as a servant of the *Tahsildars* of Orai. He was suspected of burglary and prosecuted. He was discharged and proceedings were taken against him under S. 110. He produced evidence to show that his character while he was in the service of his former masters was satisfactory : *Held*, that such evidence was material in the case. *Shiam Lal v. Emperor.*

9 Cr. L. J. 528 :
2 I. C. 225 : 6 A. L. J. 487.

———S. 110—*Evidence of good character.*

When the accused is able to produce witnesses on his behalf to speak of his good character, the Court ought to pay particular attention to such evidence and should find substantial reasons for not believing the evidence before it makes an order. *Amjad Ali v. Emperor.*

25 Cr. L. J. 35 :
75 I. C. 723 : 5 P. L. T. 129 :
2 Pat. L. R. 79 Cr. : A. I. R. 1924 Pat. 498.

———S. 110—*Evidence of good character—Security.*

Where a large body of apparently respectable witnesses of the neighbourhood testify to the good character of the accused as against the evidence of Police Officers, an order demanding security is not justifiable. *Kundan v. Emperor.*

28 Cr. L. J. 813 :
104 I. C. 253 : A. I. R. 1928 Lah. 49.

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—S. 110—*Evidence of good character—Security.*

Where the accused person is able to produce witnesses on his behalf to speak of his good character, the Court ought to pay particular attention to such evidence and to give substantial reasons for not believing such evidence before it makes an order under S. 118 of the Code. *Ramlagan Ahir v. Emperor.* 25 Cr. L. J. 985 :

81 I. C. 633 : 5 P. L. T. 166 :
2 Pat. L. R. 98 Cr. : A. I. R. 1924 Pat. 500.

—S. 110—*Evidence of good character—Witnesses, evidence of, weight of.*

Where a zemindar, who is also a money-lender, is prosecuted under S. 110 and in defence, he produces a number of respectable witnesses besides his castemen and tenants, it is not proper for the Magistrate to disbelieve all the witnesses merely on the ground that the accused could, by the influence of his position, produce any number of them. *Miharban Singh v. Emperor.* 16 Cr. L. J. 805 :

31 I. C. 821 : 13 A. L. J. 1046 :
A. I. R. 1915 All. 464.

—S. 110—*Evidence of good character—Witnesses of good character—Rule to be observed.*

Where proceedings under S. 110 are taken against a person and he is able to produce witnesses on his behalf to speak of his good character, the Court ought to pay particular attention to such evidence. The Court should find substantial reason for not believing the evidence before it makes an order. *Hakim Singh v. Emperor.* 16 Cr. L. J. 810 :

31 I. C. 826 : 13 A. L. J. 1055 :

—S. 110—*Evidence of Police.*

A Police Officer is as good a witness as any other person. *Abdul Karim v. Emperor.*

36 Cr. L. J. 1127 :
156 I. C. 659 : 8 R. Pesh. 3 :
A. I. R. 1935 Pesh. 80 (2).

—S. 110—*Evidence of Police, value of.*

Evidence of a Police Officer in a case under S. 110, when it is based upon hearsay rumour, and above all, on diaries, is of infinitesimal value, more particularly where other evidence is available. *Abdul Khaliq v. Emperor.*

16 Cr. L. J. 281 :
28 I. C. 329 : 13 A. L. J. 412 :
A. I. R. 1914 All. 144.

—S. 110—*Exercise of powers—Consent of accused—Inquiry—Duty of Magistrate.*

In a case under S. 110, it is duty of the Magistrate to hold an independent inquiry and not to bind over an accused person merely because he agrees to furnish security. *Ram Charan v. Emperor.* 27 Cr. L. J. 370 :

92 I. C. 882 : 24 A. L. J. 317 :
L. R. 6 All. 54 Cr. : A. I. R. 1926 All. 614.

—S. 110—*Exercise of powers—Considerations.*

In proceedings under S. 110, it is not for the Magistrate to consider whether the Police and village authorities could not ensure good behaviour on the part of the accused if they ex-

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erted themselves more in executing their duties. *Emperor v. Po Yin.* 26 Cr. L. J. 528 :

85 I. C. 368 : 2 Rang. 686 :
4 Bur. L. J. 6 : A. I. R. 1925 Rang 174.

—S. 110—*Exercise of powers—Discretion of Magistrate.*

Magistrates are left a very wide discretion as to the kind of information upon which they may act in instituting proceedings under Chapter VIII of the Code, and they are not bound to disclose its source. *In the matter of : The petition of Milhu Khan.* 1 Cr. L. J. 807 :

24 A. W. N. 206 : I. L. R. 27 All. 172 :
1 A. L. J. 685.

—S. 110—*Exercise of powers—Information, necessary.*

If a Magistrate empowered receives information of the barest kind to the effect that a certain person is a habitual thief and is within the local limits of his jurisdiction, it is within his powers to take action under the provisions of the eighth Chapter of the Code, and the legality of his action cannot be questioned. *Emperor v. Ram Ghulam.* 28 Cr. L. J. 744 :

103 I. C. 792 : 2 Luck. Cas. 157 :
8 A. I. Cr. R. 394 : A. I. R. 1927 Oudh 306.

—S. 110—*Exercise of powers—Information required for action.*

A Magistrate has no jurisdiction of any kind to act under S. 110 until he has sufficient information before him as will suffice for making an order in writing setting forth its substance and the further particulars required by S. 112 of the Code. *Emperor v. Ganesh.*

15 Cr. L. J. 696 :
26 I. C. 144 : 11 A. L. J. 336 :
A. I. R. 1914 All. 413.

—S. 110—*Exercise of powers—Powers when to be used.*

The powers conferred by S. 110 ought to be exercised very sparingly, and in those cases only where the evidence is very clear and precise. Evidence of general repute, or that the accused has a bad character, without any specific instances, is not sufficient nor would the fact that on three occasions, the last one being sixteen years ago—he had been required to furnish security suffice. *Jagat Singh v. Emperor.*

23 Cr. L. J. 507 :
68 I. C. 43 : 2 L. L. J. 237.

—S. 110—*Exercise of powers—Receipt of information by Magistrate, mode of.*

The law in no way limits the method in which a Magistrate is to receive information under S. 110. Where information addressed to one Magistrate is sent on by him to another, there is nothing in S. 110 to preclude the latter from acting on the information so received. *Hiranand Ojha v. Emperor.* 24 Cr. L. J. 31 :

71 I. C. 79 : 1 Pat. 621 :
4 P. L. T. 44 : A. I. R. 1922 Pat. 586.

—S. 110—*Exercise of powers—Security for good behaviour when charge of dacoity fails.*

Some persons were charged of dacoity. The charge failed for want of sufficient evidence. But the District Magistrate, upon Police information and upon evidence on the record, took

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proceedings against some of the accused under S. 110 and bound them over: *Held*, that the order of the Magistrate under the circumstances was good. *Raj Karan v. Emperor*.

11 Cr. L. J. 36 :
4 I. C. 709 : 6 A. L. J. 961.

———S. 110—*Exercise of powers—Security proceedings—Evidence of commission of substantive offences, whether admissible.*

Though the Courts always look with grave suspicion on cases in which proceedings are started against an accused because the Police have failed to procure evidence against him on a charge of substantive offence, evidence going to show that a substantive offence had been committed or which might form the basis of a charge of a substantive offence is not necessarily to be excluded in such proceedings and can form the basis of an order under S. 112. *Jai Singh v. Emperor*.

31 Cr. L. J. 1020 :
126 I. C. 501 : 7 O. W. N. 493 :
A. I. R. 1930 Oudh 357.

———S. 110—*Exercise of powers—Security, when justified.*

The powers conferred by S. 110 should be exercised only when the information is precise and is supported at the subsequent inquiry by satisfactory evidence. *Khairo v. Emperor*.

25 Cr. L. J. 1377 :
83 I. C. 337 : A. I. R. 1925 Sind 204.

———S. 110—*Exercise of powers.*

The powers given to a Court by S. 110 should be exercised with extreme caution and with very great discretion. *Amjad Ali v. Emperor*.

25 Cr. L. J. 35 :
75 I. C. 723 : 5 P. L. T. 129 :
2 Pat. L. R. 79 Cr. : A. I. R. 1924 Pat. 498.

———S. 110—*Exercise of powers.*

There is nothing in the section laying down any quantum of information as a necessary condition for the Magistrate. *Emperor v. Ram Ghulam*.

28 Cr. L. J. 744 :
103 I. C. 792 : 2 Luck. C. 157 :
8 A. I. Cr. R. 394 : A. I. R. 1927 Oudh 306.

———S. 110—*Fresh proceedings—Enquiry—Discharge—Further inquiry—District Magistrate, power of.*

Under S. 437 a District Magistrate has jurisdiction to direct further inquiry in a case where a person has been discharged in an inquiry under S. 110. *Desraj Singh v. Emperor*.

20 Cr. L. J. 704 :
52 I. C. 672 : A. I. R. 1919 All. 174.

———S. 110—*Fresh proceedings—Discharge of accused—Court, duty of—Definite offence alleged.*

Where proceedings against an accused person under S. 110 result in his discharge, and within a very short time thereafter fresh proceedings are started against him, it is the duty of the Court to see that there is sufficient evidence of his conduct after the conclusion of the previous proceedings to justify the fresh proceedings. *Shukar v. Emperor*.

24 Cr. L. J. 565 :
73 I. C. 261 : 9 O. & A. I. R. 90 :
26 O. C. 242 : A. I. R. 1924 Oudh 84.

———S. 110—*Fresh proceedings after release—Circumstances after release to be considered.*

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Where fresh proceedings under S. 110 are taken against an accused after his release from the last security, they must be confined to facts and circumstances alleged against him after his release. *Ramdeo Panday v. Emperor*.

16 Cr. L. J. 123 :
28 I. C. 648 : 19 C. W. N. 223 :
A. I. R. 1915 Cal. 643.

———S. 110—*Fresh proceedings.*

In cases where there has been a previous order under S. 110, witnesses ought to make it clear in their evidence that their evidence relates to the reputation of the persons proceeded against, subsequent to their release from imprisonment. *Niranjan Singh v. Emperor*.

35 Cr. L. J. 417(1) :
147 I. C. 227(1) : 1933 A. L. J. 263 :
L. R. 14 All. 79 Cr. : 55 All. 404 : 6 R. A. 442 :
A. I. R. 1933 All. 369.

———S. 110—*Fresh proceedings—New material necessity of.*

To take up facts against an accused of dates older than the previous security bond is against law and justice and cannot be made ground for fresh proceedings. *Bahadur Shah v. Emperor*.

10 Cr. L. J. 591 :
4 I. C. 432 : 25 P. W. R. 1909 Cr.

———S. 110—*Fresh proceedings—Security for good behaviour—Order of discharge—Second prosecution without fresh facts, illegal.*

On 24th January 1905, G. was discharged under S. 110. On this occasion, two of the prosecution witnesses (*Lambardars*) deposed that G. was of good character and not given to committing of offences. A year later G. was again prosecuted before another Magistrate who took security from him but without referring to the previous proceedings, etc.: *Held*, that as nothing fresh was alleged against G, the subsequent proceedings and the order thereon were not justifiable and liable to be set aside on revision. *Gohar v. Emperor*.

4 Cr. L. J. 486 :
1 P. W. R. Cr. 37.

———S. 110—*Fresh proceedings—Order for furnishing security—Appeal—District Magistrate's power to order fresh inquiry.*

A District Magistrate, while setting aside on appeal, an order requiring a person to furnish security under S. 110, cannot remand the case for a fresh inquiry. *Chundan v. Emperor*.

30 Cr. L. J. 491 :
115 I. C. 544 : I. R. 1929 Lah. 416 :
30 P. L. R. 416 : A. I. R. 1929 Lah. 28.

———S. 110—*General reputation—Admissibility.*

In proceedings under S. 110, if the witnesses have clearly deposed that the accused has the general repute of being an habitual offender, such evidence is admissible under sub-s. (4) of S. 117. *Emperor v. Bachchu*.

37 Cr. L. J. 390 :
160 I. C. 1039 : 1936 O. W. N. 247 :
1936 O. L. R. 128 : 8 R. O. 297 :
A. I. R. 1936 Oudh 238.

———S. 110—*General repute, admissibility of.*

The admissibility of a witness' answer as to the general repute of the accused depends upon

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the substance of it, not upon its form. *Kawal Kishore v. Emperor*. 26 Cr. L. J. 1283 :

89 I. C. 147 : 12 O. L. J. 413 : 29 O. C. 44 :
A. I. R. 1925 Oudh 473.

———**S. 110—General reputation—Association with bad character.**

An order cannot be based on general evidence of the accused's bad character and of his association with people of bad character, nor is evidence of general ill-repute sufficient to support an order under that section. An order cannot be made upon mere suspicion. *Sohan Singh v. Emperor*. 26 Cr. L. J. 1377 :

89 I. C. 513 : 1 L. C. 80 : A. I. R. 1926 Lah. 45.

———**S. 110—General reputation—Association with bad characters—General repute.**

Evidence that the accused was named as associating with bad characters is evidence of reputation, and such reputation can only be based on association with *proved* bad characters and not with reputed bad characters. *Emperor v. Nepat Shikary*. 10 Cr. L. J. 122 :

2 I. C. 651 : 9 C. L. J. 439 : 13 C. W. N. 318.

———**S. 110—General Reputation—Bad livelihood—General repute, nature of.**

Repute should be proved to be universal, and there should be no doubt about it. Therefore, where the only evidence against an accused is that of general repute, and it is not universal, it is not safe to bind him over on such meagre and doubtful evidence. *Jhandu Ram v. Emperor*. 16 Cr. L. J. 106 :

27 I. C. 154 : 48 P. W. R. 1914 Cr. :
215 P. L. R. 1915 : A. I. R. 1914 Lah. 553.

———**S. 110—General repute—Beliefs and opinions.**

The evidence on which a Magistrate ought to base a conviction under S. 110, clauses (a) to (c), must relate to particular instances which have come to the knowledge of the deponent and must be specific. Evidence relating to mere beliefs and opinions, without reference to acts or instances which have induced the witnesses to form an opinion, cannot be regarded as evidence of repute within the meaning of S. 117 (3). Habitual criminality cannot be regarded as established by the repetition of beliefs and opinions. *In re : Kottamiddu Ranga Reddi*. 21 Cr. L. J. 354 :

55 I. C. 722 : 38 M. L. J. 97 : 11 L. W. 331 :
43 Mad. 450 : 1920 M. W. N. 398 :
A. I. R. 1920 Mad. 534.

———**S. 110—General reputation—Commission of offence—Proof.**

Where it is alleged against a person, even in a proceeding under S. 110, that he, on a certain occasion, committed a particular offence, that fact must be proved by relevant evidence. It is not at all the same thing as proving by evidence of general repute that a man is a habitual offender. *Indar v. Emperor*. 19 Cr. L. J. 351 (b) :

44 I. C. 463 : 16 A. L. J. 208 : 40 All. 372 :
A. I. R. 1918 All. 257.

———**S. 110—General reputation—Competent witnesses.**

When the person against whom proceeding

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under S. 110 is instituted for being a habitual offender, is a well-known resident of a city, his fellow citizens though not living in his immediate neighbourhood are competent witnesses to prove his general repute. *Wahid Ali v. Emperor*. 6 Cr. L. J. 1 :

11 C. W. N. 789.

———**S. 110—General reputation—Conflicting evidence of general reputation—Duty of Court.**

Where a large number of persons come forward and swear that they believe a man to be of a desperate and dangerous character and there is little or no counter-evidence of good character, such evidence will possibly justify a Court in taking action even if the grounds of belief are indefinite. But when an equal or greater number of persons in the same class or classes depose that the same man is of good character, the Court must sift closely the grounds on which the prosecution witnesses have based their belief. *Jai Singh v. Emperor*. 31 Cr. L. J. 1020 :

126 I. C. 501 : 7 O. W. N. 493 :
A. I. R. 1930 Oudh 357.

———**S. 110—General reputation—Consideration of.**

In proceedings under S. 110, the Magistrate should consider evidence regarding the general repute of the persons accused. *Dhaju Mandal v. Emperor*. 34 Cr. L. J. 476 :

146 I. C. 934 : I. R. 1933 Pat. 187 :
A. I. R. 1933 Pat. 112.

———**S. 110—General reputation—Rumours—Value of.**

There is no legal justification for taking rumours into consideration against persons charged under S. 110. *Tar Gul v. Emperor*. 159 I. C. 97 : 8 R. P. 77 :

A. I. R. 1935 Pesh. 158.

———**S. 110—General reputation—Current repute, meaning of.**

Where the evidence recorded by a Magistrate was to the effect that the accused was 'currently reputed' to be a thief and a robber : *Held*, that what the witnesses meant by "current repute" was general repute. *Emperor v. Nga Po*. 10 Cr. L. J. 355 :

3 I. C. 681 : 5 L. B. R. 72.

———**S. 110—General reputation—Desperate and dangerous character, meaning of.**

In S. 110, cl. (f), a man of desperate and dangerous character means a man who has a reckless disregard of the safety of the person or the property of his neighbours, and under that clause, evidence of general repute is not admissible in evidence. *Wahid Ali v. Emperor*. 6 Cr. L. J. 1 :

11 C. W. N. 789.

———**S. 110—General reputation—Desperate and dangerous character—Proof.**

It is not open to a Magistrate to look into evidence of general repute for finding that a person is a desperate and dangerous character within the meaning of S. 110 (f). There should be proof of specific acts to show that

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he is of such a character. *In re : Kottamidddu Ranga Reddi.*

21 Cr. L. J. 354 :
55 I. C. 722 : 38 M. L. J. 97 :
11 L. W. 331 : 43 Mad. 450 :
1920 M. W. N. 398 :
A. I. R. 1920 Mad. 534.

—S. 110—General reputation—Desperate and dangerous character—Proof.

That fact that a person is so desperate and dangerous as to render his being at large without security hazardous to the community is not one which can, under S. 117, be proved by evidence of general repute. *Indar v. Emperor.*

19 Cr. L. J. 351 (b) :
44 I. C. 463 : 16 A. L. J. 208 :
40 All. 372 : A. I. R. 1918 All. 257.

—S. 110—General reputation—Desperate and dangerous character—Proof.

The fact that a man is quarrelsome and ill-tempered and has managed to fall foul of persons in high places, and throws bricks into other people's houses and has been guilty of petty assaults, does not make him a desperate or dangerous character within the meaning of S. 110 (f), and is, therefore, not a ground for binding him over under S. 110. *Rangi Lal v. Emperor.*

32 Cr. L. J. 1070 :
133 I. C. 535 : L. R. 12 All. 928 :
I. R. 1931 All. 695 : A. I. R. 1931 All. 437.

—S. 110—General reputation—Desperate and dangerous character, proof of—Evidence of general repute, whether admissible.

Evidence of general repute is only admissible under S. 117 to prove that a person is a habitual offender under S. 110, but not to prove a charge under clause (f) of that section of being a desperate and dangerous character. *Emperor v. Pyu Zin.*

22 Cr. L. J. 492 :
62 I. C. 138 : 3 Bur. L. T. 157.

—S. 110—General reputation—Duty of Court.

It is the duty of the Court to judge whether a man deserves a particular reputation and, in order to judge this, enumeration of specific cases will serve as a valuable guide. *Firangi Rai v. Emperor.*

34 Cr. L. J. 643 :
143 I. C. 637 : I. R. 1933 Pat. 209 :

—S. 110—General repute, evidence of.

An accused person should not be bound down under S. 110 upon evidence of repute unless such evidence is very strong and almost universal. *Muhammad Khan v. Emperor.*

25 Cr. L. J. 898 :
81 I. C. 344 : A. I. R. 1925 Lah. 166.

—S. 110—General reputation—Evidence of enemies of accused—Weight.

Evidence of prosecution witnesses should not be discarded simply on ground that they are enemies of accused. *Firangi Rai v. Emperor.*

34 Cr. L. J. 643 :
143 I. C. 637 : I. R. 1933 Pat. 209 :
A. I. R. 1933 Pat. 189.

—S. 110—General reputation—Evidence of

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General repute, admissibility of—Desperate and dangerous character, proof of.

Under Ss. 110, cl. (f), 112 and 117, evidence of mere general repute is not sufficient to prove that a person is so desperate and dangerous a character, that he cannot be allowed to remain at large, but that such a finding must be based on evidence of facts. It is not sufficient to do so on vague and general evidence that some one was robbed or beaten and people say that the accused was responsible for it. *Babu Murtaza Husain v. Emperor.*

3 Cr. L. J. 290 :
9 O. C. 69.

—S. 110—General reputation.

Evidence of general repute and character is admissible. Specific instances where reasonable suspicion fall upon accused are good evidence to show the basis of bad reputation. *Firangi Rai v. Emperor.*

34 Cr. L. J. 643 :
143 I. C. 637 : I. R. 1933 Pat. 209 :
A. I. R. 1933 Pat. 189.

—S. 110—General reputation.

Evidence of general repute does not mean hearsay evidence. *Kripa Sindhu Naiko v. Emperor.*

19 Cr. L. J. 905 :
47 I. C. 277 : 8 L. W. 461 :
1918 M. W. N. 751 : A. I. R. 1919 Mad. 633.

—S. 110—General reputation—Evidence of general repute—Evidence of suspicion.

Where the Police or the Magistrate want to make use of S. 117 (t), the witness should be allowed to depose, if he can in fact give evidence, that the accused has a general reputation as a habitual thief (or robber, etc., as the case may be), but he should not be allowed to state that the accused is a bad character or has the reputation of being a bad character. Evidence as to general repute is permitted by law ; but it is obviously a type of evidence which requires to be weighed very carefully ; and the Court should be careful that no improper laxity is permitted. *Emperor v. Kurwa.*

30 Cr. L. J. 122 :
113 I. C. 282 : 26 A. L. J. 519 :
L. R. 9 All. 75 Cr. : I. R. 1929 All. 193 :
9 A. I. Cr. R. 467 : A. I. R. 1928 All. 357.

—S. 110—General reputation—Evidence of general repute, whether hearsay.

Evidence of general repute is not hearsay evidence but direct evidence given on the basis of the witness's own knowledge of a fact. *Emperor v. Babu Ram.*

29 Cr. L. J. 92 :
106 I. C. 684 : L. R. 8 All. 163 Cr. :
26 A. L. J. 99 : 8 A. I. Cr. R. 557 :
I. L. T. 40 All. 71 : A. I. R. 1928 All. 1.

—S. 110—General reputation—Evidence of general repute, whether admissible—Proof.

In order to bring a case within cl. (f) of S. 110, it is necessary to prove by definite evidence that the accused is so desperate and dangerous a person as to render his being at large without security hazardous to the community. Evidence of general repute is not admissible in proceedings taken under that clause. *Nur Muhammad v. Emperor.*

18 Cr. L. J. 119 :
37 I. C. 471 : 8 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 260.

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———S. 110—*General reputation—Evidence of general repute, what is.*

Evidence of general repute, means evidence as to his general character founded on the general opinion of the neighbourhood in which he lives. But the evidence need not show that such general opinion is based on the personal knowledge of the man by his neighbours generally, and it need not show that such general opinion has been publicly expressed by the neighbours. *Kamal Kishore v. Emperor.* 26 Cr. L. J. 1283 : 89 I. C. 147 : 12 O. L. J. 413 : 29 O. C. 44 : A. I. R. 1925 Oudh 473.

———S. 110—*General reputation—Evidence of instances in which accused was suspected, value of—Corroboration.*

Evidence of instances in which the accused has been suspected, is not evidence of general repute, nor evidence on which the Court can bind the accused over under S. 110, but such evidence may be admissible as corroborating independent evidence given of accused's reputation. *Sanku v. Emperor.* 24 Cr. L. J. 608 : 78 I. C. 352 : A. I. R. 1924 Oudh 112.

———S. 110—*General reputation—Evidence of Police.*

A Police Officer is certainly a competent witness to speak to the reputation of a person who resides within his circle or to the reputation of a person with regard to whom he has had special occasion to make observations. *Satgur Dayal v. Emperor.* 35 Cr. L. J. 183 : 146 I. C. 875 (2) : 1933 A. L. J. 927 : L. R. 15 All. 9 Cr. : 6 R. A. 359 : A. I. R. 1933 All. 674 (2).

———S. 110—*General reputation—Evidence of reputation require material corroboration.*

Evidence of reputation is the weakest form of evidence and requires material corroboration by other evidence proving the habits of the persons against whom the Police are proceeding. *In re : Shanmugham Asari.* 39 Cr. L. J. 588 : 175 I. C. 417 : 1938 M. W. N. 93 : 47 L. W. 196 : 1938 1 M. L. J. 178 : 10 R. M. 777 : A. I. R. 1938 Mad. 482.

———S. 110—*General repute—Evidence of relations.*

The evidence of accused's caste-fellows, relatives and neighbours is, from one point of view, the best sort of evidence available in connection with an inquiry into general repute. *Gurbakhsh Singh v. Emperor.*

12 Cr. L. J. 542 : 12 I. C. 518.

———S. 110—*General reputation—Evidence, weight of.*

Evidence of bad character is admissible to prove the general repute of the accused, but its weight must vary according to the particular circumstances. *Dalle Singh v. Emperor.*

30 Cr. L. J. 693 : 116 I. C. 801 : I. R. 1929 All. 625 : 1929 A. L. J. 938 : A. I. R. 1929 All. 599.

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———S. 110—*General reputation—Evidence of witnesses living near accused, admissibility of.*

In proceedings under S. 110, evidence of general repute given by witnesses who live sufficiently near to the accused to be in a position to know his real reputation should not be rejected merely on the ground that they are not his immediate neighbours. *Emperor v. Po Yin.* 26 Cr. L. J. 528 : 85 I. C. 368 : 2 Rang. 686 : 4 Bur. L. J. 6 : A. I. R. 1925 Rang. 174.

———S. 110—*General reputation.*

Evidence that a certain person is a man of bad character is not sufficient to put a man on security under S. 110. *Muhammad Hussain v. Emperor.* 17 Cr. L. J. 142 : 33 I. C. 318 : 30 P. L. R. 1916 : A. I. R. 1916 Lah. 412.

———S. 110—*General reputation—Evidence of general repute—Evidence requisite.*

Cl. (f) of S. 110, is one of highly special character ; evidence of general repute is not sufficient to bring a case within it, but specific acts showing that the accused recklessly disregards the safety of the persons or the property of his neighbours and actually causes danger thereto must be proved. *Ganpati v. Emperor.* 19 Cr. L. J. 871 : 47 I. C. 67 : A. I. R. 1917 Nag. 113.

———S. 110—*General reputation, meaning of—Suspicion by Police—Security.*

The general reputation of a man is that which he bears among his fellow-townsmen and mere suspicion of complicity in this or that offence is not evidence of general reputation. *Ghulam Mohammad v. Emperor.* 30 Cr. L. J. 220 : 113 I. C. 909 : I. R. 1929 Lah. 175.

———S. 110—*General reputation what is—Suspicion of complicity in crimes.*

Mere suspicion of complicity in isolated offences is not evidence of general reputation. A man's general reputation is that which he bears amongst his fellow townsmen or in the neighbourhood in which he lives. *Kundan v. Emperor.* 28 Cr. L. J. 813 : 104 I. C. 253 : A. I. R. 1928 Lah. 49.

———S. 110—*General reputation as basis for security.*

To bind down a man under S. 110, there should be no doubt about his general reputation. *Kundan v. Emperor.* 28 Cr. L. J. 813 : 104 I. C. 253 : A. I. R. 1928 Lah. 49.

———S. 110—*'General reputation,' meaning of.*

General reputation of a man is that which he bears amongst his fellow townsmen or in the neighbourhood in which he lives. *Rahman v. Emperor.* 29 Cr. L. J. 738 : 110 I. C. 674 : 29 P. L. R. 539 : 10 A. I. Cr. R. 529.

———S. 110—*'General reputation,' meaning of—Suspicion, whether sufficient for binding down.*

Mere suspicion of complicity in this or that isolated offence is not evidence of general reputation, and a person cannot be put upon

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security merely on the ground that he was suspected by the Police of having committed various burglaries. *Kehr Singh v. Emperor*.

29 Cr. L. J. 479 :
109 I. C. 127 : 29 P. L. R. 443 :
10 A. I. Cr. R. 214 : 9 Lah. 586 :
A. I. R. 1929 Lah. 41.

—S. 110—General repute, evidence of.

Observations upon the nature of evidence of general repute admissible in proceedings under S. 117, cl. (3). *Gokul v. Emperor*.

6 Cr. L. J. 97 :
10 O. C. 132.

—S. 110—General repute—Evidence of—Police witness, value of—Stranger to place, if can give such evidence.

Per *Burn, J.*—The question what is a person's reputation is a question of fact. It can be spoken to by any one who knows what his general reputation is. The Police Officer who goes to the place where a particular person lives and who makes enquiries to find out what his reputation is, is perfectly competent to speak in the witness-box about the result of his enquiries. His evidence that the reputation of such a person is so and so, is evidence of a fact and it is not to be excluded as mere hearsay evidence. In one sense the evidence of general repute is of course hearsay but it is hearsay of a particular kind which is made admissible in cases under S. 110 by S. 117. Per *Venkataramana Rao, J.*—Reputation of a man's character is the inference or estimate from the sum total of a man's actions and qualities drawn or formed by persons who are acquainted with him or among whom he resides. It is generally understood that the 'place' or 'community' with reference to which reputation evidence is tendered, should relate to the neighbourhood where he dwells or moves, but having regard to modern conditions, it is impossible to define "neighbourhood" or "community" with any degree of accuracy. *In re : Perne Maila Rai*.

39 Cr. L. J. 898 :
177 I. C. 586 : 1938 M. W. N. 313 :
47 L. W. 428 : I. L. R. 1938 Mad. 720 :
11 R. M. 351 : A. I. R. 1938 Mad. 591.

—S. 110—General repute, evidence of—Security.

Where in a case under S. 110, the prosecution witnesses testify merely to the reputation of the accused, and know nothing about him, an order requiring him to furnish security is not justified. *Kallu v. Emperor*.

22 Cr. L. J. 314 :
60 I. C. 1002 : 19 A. L. J. 39 :
A. I. R. 1921 All. 88.

—S. 110—General repute, Police suspicion, whether can be made basis of—Evidence of good character, value of.

Where in a proceeding under S. 110, the prosecution witnesses for general repute say that they believe the accused to be a thief or dacoit, but in cross-examination, they admit that their suspicion is the outcome of house-searches and arrests by the Police, the accused is entitled to the benefit of the admission by

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the prosecution witnesses as to the origin of their suspicion. Where there is positive evidence for the defence that the accused is a good man, it is not a sufficient reason for casting it aside to say that proof of malice against the accused on the part of the prosecution is wanting. *Surendra Nath v. Emperor*.

21 Cr. L. J. 170 :
54 I. C. 778 : A. I. R. 1920 Cal. 301.

—S. 110—General repute—Hearsay evidence, admissibility of.

Statements of the general repute of the accused, though hearsay, are admissible in enquiry regarding the bad livelihood of the accused, especially where these statements are followed by particular instances where suspicion had attached to the accused and by statements that the accused had no work, was a wanderer and associate of bad characters. *Emperor v. Nga Po*.

10 Cr. L. J. 355 :
3 I. C. 681 : 5 L. B. R. 72.

—S. 110—General repute—Instances of suspicion, value of.

Specific instances of crime in which the accused is suspected, are not good evidence and do not fall within the meaning of "general repute" under S. 117. Similarly, history sheets are not evidence, especially where the official who produces them is not himself responsible for all the entries thereon. *Jabruddin v. Emperor*.

20 Cr. L. J. 689 :
52 I. C. 657 : 1 U. P. L. R. All. 143 :
A. I. R. 1919 All. 136.

—S. 110—General reputation—Opinions based on rumours, value of.

In considering oral evidence to prove a charge under S. 110, cl. (a), it is necessary to keep in mind that such evidence must be specific and must relate to particular instances within the knowledge of the witnesses. Mere belief and information without reference to acts and instances which have induced the witnesses to form their opinion cannot be regarded as evidence of repute within the meaning of S. 117 (3). The evidence must be of persons who are acquainted with the accused and live in the neighbourhood and are themselves aware of the accused's reputation. It must be an opinion formed by the witnesses from specific cases coming to their knowledge and not merely from reports or rumours received from others. For instance, where a witness says that to his knowledge a certain person is a thief or a house-breaker by habits, and on being pressed to give the source of his knowledge, he merely says that there is a rumour to such effect or that he heard it from the villagers generally, without being able to name any one of them, such evidence is not admissible in law. *Ram Lagan Ahir v. Emperor*.

25 Cr. L. J. 985 :
81 I. C. 633 : 5 P. L. T. 166 :
2 Pat. L. R. 98 Cr. : A. I. R. 1924 Pat. 500.

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General reputation—Police report that accused are reputed to have been habitually committing theft of electric current—Proceedings

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under S. 110 cannot be started on such information. *Jafar Hussain v. Emperor*.

35 Cr. L. J. 435 :
147 I. C. 551 : 1933 A. L. J. 883 :
L. R. 14 All. 413 Cr. : 6 R. A. 534 :
A. I. R. 1933 All. 859.

———**S. 110—General reputation—Proof—Reputation, nature of, evidence of.**

When it is sought to prove the reputation of a person, the evidence which is required is the evidence of respectable persons who are acquainted with the person on his trial, who live in the same neighbourhood and are aware of his reputation and these persons should ordinarily not be officials. *Nga Heim v. Emperor*.

16 Cr. L. J. 553 :
29 I. C. 825 : 8 Bur. L. T. 53 :
A. I. R. 1915 U. B. 13.

———**S. 110—General repute—Proof.**

The belief of a class of persons that a particular individual has done particular acts or has characteristics of a certain kind because there are rumours to that effect in a particular place, is not admissible as evidence of the repute where no facts are mentioned to indicate that there were sufficient reasons for the impression. *Kripa Sindhu Naiko v. Emperor*.

19 Cr. L. J. 905 :
47 I. C. 277 : 8 L. W. 461 :
1918 M. W. N. 751 : A. I. R. 1919 Mad. 633.

———**S. 110—General repute—Proof.**

The allegations in S. 110 can only be proved by direct evidence of people who have knowledge of facts to which they depose with the exception that in regard to all other clauses except cl. (f) of S. 110, a witness may give evidence of general repute. *Emperor v. Babu Ram*.

29 Cr. L. J. 92 :
106 I. C. 684 : L. R. 8 All. 163 Cr. :
26 A. L. J. 99 : I. A. 8 Cr. R. 557 :
I. L. T. 40 All. 71 : A. I. R. 1928 All. 1.

———**S. 110—General repute—Proof.**

Where in consequence of a series of dacoities having taken place in certain villages, a proceeding under S. 110 is instituted against a person for being a robber by habit, the evidence of general reputation, coming from the people of the villages where dacoities had taken place, is certainly to be treated as evidence of general repute although that person did not live amidst those people. *Chintaman Singh v. Emperor*.

7 Cr. L. J. 146 :
7 C. L. J. 177 : 12 C. W. N. 299 :
I. L. R. 35 Cal. 243.

———**S. 110—General reputation—Proof.**

Where the Chairman of the Managing Committee of a Municipality was proceeded against under S. 110, the proceedings being based on evidence of general repute, and he was detained in jail pending the inquiry : *Held*, (1) that the fact of detaining him in jail while the inquiry was in progress prejudiced his interests and rendered the inquiry unfair : (2) that the evidence of general repute must be evidence of a reputation which the accused had acquired

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since his appointment to the Chairmanship. *Bhau Savalaram Kotasthane v. Emperor*.

16 Cr. L. J. 91 :
26 I. C. 1003 : 16 Bom. L. R. 943 :
A. I. R. 1915 Bom. 199.

———**S. 110—General reputation—Prosecution v. Defence evidence.**

Where a case is sought to be established upon evidence of bad repute, the Court may reasonably be required to take into consideration the value and weight of the evidence as to repute tendered on behalf of the prosecution as compared with the evidence of the defence. *Gurbakh Singh v. Emperor*.

12 Cr. L. J. 542 :
12 I. C. 518.

———**S. 110—General reputation—Rumours.**

There is no legal justification for taking rumours into consideration against persons charged under S. 110. *Tor Gul v. Emperor*.

159 I. C. 97 : 8 R. Pesh. 77 :
A. I. R. 1935 Pesh. 158.

———**S. 110—General reputation—Security and restriction proceedings—General limits of.**

It is not everything that may be proved by evidence of general repute. The ordinary rules of evidence apply with such modification only as is made by S. 117 (4). No extension for evidence of general repute beyond the limits laid down in that section is permissible. For instance, evidence that the person proceeded against is reputed to possess a revolver, is purely hearsay and since it does not relate to a fact which can be proved by evidence of general repute, it is entirely admissible. *San Dun v. Emperor*.

26 Cr. L. J. 395 :
84 I. C. 939 : 2 Rang. 641 :
A. I. R. 1925 Rang. 112.

———**S. 110—General reputation.**

Subject to the enforcement of certain general principles as to what should or should not be regarded as satisfactory evidence of ill-repute, each case under S. 110 must necessarily be treated on its own merits. *Gurbakhsh Singh v. Emperor*.

12 Cr. L. J. 542 :
12 I. C. 518.

———**S. 110—General reputation—Sureties, fitness of—General reputation.**

A Court is not justified in refusing as "unfit" persons who are offered as sureties under S. 110 on mere hearsay evidence of general repute, especially where the sureties offered are men of means and have sufficient influence to exercise control over the persons required to furnish security. *Sheopal v. Emperor*.

23 Cr. L. J. 639 :
68 I. C. 959 : 9 O. L. J. 353 :
4 U. P. L. R. (J. C.) 92 :
A. I. R. 1922 Oudh 227.

———**S. 110—General reputation—What is.**

Evidence of the general repute of a person includes what is generally said of him in the neighbourhood in which he lives. *Raghuber Dial v. Emperor*.

6 Cr. L. J. 256 :
10 O. C. 168.

———**S. 110—General reputation—What is.**

Hearsay evidence does amount to evidence of general repute for the purpose of S. 110 provid-

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ed there is a reasonable foundation for it. *Satgur Dayal v. Emperor*. 35 Cr. L. J. 183 : 146 I. C. 875 (2) : 1933 A. L. J. 927 : L. R. 15 All. 9 Cr. : 6 Rang. 359 : A. I. R. 1933 All. 674 (2).

———S. 110 (f)—General reputation.

A charge under clause (f) of S. 110 cannot be proved by general reputation, but by definite evidence. *Nga Po Aung v. Emperor*.

5 Cr. L. J. 377 :
13 Bur. L. R. 91.

———S. 110—General reputation—Evidence of general repute.

Held, (i) that words "evidence of general repute" in S. 117 have received a very wide interpretation in these Provinces; (ii) that vague and general statements that a man is a habitual offender is not sufficient evidence on which an accused person is liable to be bound down under S. 110; (iii) that evidence of the repute of an accused person must be the evidence of persons who are speaking to matter within their personal knowledge and not from mere hearsay. *Rup Singh v. Emperor*.

1 Cr. L. J. 988 :
1 A. L. J. 616.

———Ss. 110 and 117—General repute—Rumours—Evidence of general repute.

Rumours that a man is a bad character is not evidence of general repute; (ii) that where the evidence for the defence to the effect that the accused is a man of good character is as weighty or as weightier than the evidence for the prosecution, it cannot be held as proved that the accused is, by general repute, a bad character. *Rajendra Prasad v. Emperor*.

1 Cr. L. J. 948 :
1 A. L. J. 611.

———Ss. 110, cl. (f) and 117—General reputation—Security for good behaviour.

The accused were required by an order, passed by the Sub-Divisional Magistrate of Sattur, to show cause why they should not be made to execute bonds for good behaviour under S. 110 (f). There was no evidence against the accused except this that they were habitual offenders by repute; that some of the accused committed an assault for which they were tried and acquitted, and that another assault was committed by them which is disbelieved: *Held*, that evidence of general repute is not admissible though it may be admissible under S. 110, cl. (f) coupled with some other sub-clause, under which it may be admissible: *Held*, also, that exceptions, such as in S. 117, to the general rules of evidence, must only be applied to the cases to which they are confined by the Legislature. *Emperor v. Bidhyapatni*, 25 All. 273; A. W. N. 1903 36, approved. *Kalai Haldar v. Emperor*, 29 Cal. 779, *Wahid Ali Khan v. Emperor*, 11 C. W. N. 789; 6 Cr. L. J. 1, referred to. *Parasulla v. King-Emperor*, 13 C. W. N. 244; 4 Ind. Cas. 10; 10 Cr. L. J. 460, distinguished. *In re : Muthu Pillai*.

11 Cr. L. J. 663 :
8 I. C. 493 : 8 M. L. T. 347.

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———S. 110—Grounds.

A person may be possessed of considerable means, yet his desire to acquire more may lead him to follow the course of conduct which may bring him within the scope of cl. (e) of S. 110. *Kasi Sunder Roy v. Emperor*.

1 Cr. L. J. 438 :
I. L. R. 1931 Cal. 419.

———S. 110—Grounds—Accused associated with revolutionary party.

Persons associated with members of revolutionary party and having sympathy with persons wishing to upset social order with violent revolution: *Held*, that order demanding personal bond for Rs. 2,000 with two sureties, in default, rigorous imprisonment for one year, was proper. *Ajay Kumar Ghosh v. Emperor*.

35 Cr. L. J. 284 (2) :
146 I. C. 1070 : 6 R. A. 396 :
A. I. R. 1933 All. 674 (1).

———S. 110—Grounds—Adultery.

The fact that a man was found committing adultery is not a ground for making an order against him under S. 110. *Ahmed Ali v. Emperor*.

32 Cr. L. J. 271 :
129 I. C. 276 : I. R. 1931 Lah. 164 :
32 P. L. R. 92 : A. I. R. 1930 Lah. 1051.

———S. 110—Grounds—Association with bad characters.

The mere association with men of bad character is not sufficient, unless the association is to commit theft or dacoity, to bring him under S. 110. *Nikamal Das v. Emperor*.

6 Cr. L. J. 403 :
6 C. L. J. 711.

———S. 110—Grounds—Association with bad characters.

The provisions of S. 110 should not be used indiscriminately. There should be reliable evidence against a man, before he ought to be called upon to furnish security; the mere fact that he associates with persons of bad character is not enough to bring him within the purview of the section. *Abdullah v. Emperor*.

25 Cr. L. J. 314 :
76 I. C. 1034 : A. I. R. 1923 Lah. 419.

———S. 110—Grounds—Attempt to commit rape, if involves breach of peace.

S. 106 makes it quite clear that an assault is an offence involving a breach of the peace; and an attempt to rape does involve an assault, force and violence upon the person against whom this offence is committed, and, therefore, involves a breach of the peace within the meaning of S. 110 (e) *In re : Ganti Veera Reddi*.

39 Cr. L. J. 816 :
176 I. C. 815 : 47 L. W. 640 :
1938 M. W. N. 601 : 11 R. M. 177 :
A. I. R. 1938 Mad. 615.

———S. 110—Grounds—Bad character, evidence of.

An accused cannot be bound down under S. 110, on general allegations of bad character based upon suspicion. *Sohna v. Emperor*.

27 Cr. L. J. 1067 :
97 I. C. 43.

Cr. P. CODE (1898), S. 110**—S. 110—Grounds—Bad character.**

Mere proof of bad character does not bring the case within S. 110. *In re: Karuppanan Servai*.

11 Cr. L. J. 638 :
8 I. C. 320 : 8 M. L. T. 246.

—S. 110—Grounds.

Being a member of a common-gang of dacoits is not a ground for proceedings under S. 110. *Budhan v. Emperor*.

26 Cr. L. J. 1130 (b) :
88 I. C. 362 : 23 A. L. J. 507 :
L. R. 6 All. 129 Cr. : 47 All. 733 :
A. I. R. 1925 All. 694.

—S. 110—Grounds—Being dacoit—Belonging to gang of dacoits—Accused, whether can be bound.

S. 110 does not provide for any person being called upon to furnish security on the ground that he is by habit a dacoit and belongs to a gang of dacoits. *Ram Prasad v. Emperor*.

26 Cr. L. J. 746 :
86 I. C. 282 : 23 A. L. J. 18 :
L. R. 6 All. 45 Cr. : A. I. R. 1925 All. 250.

—S. 110—Grounds—Commission of offence in Native State.

The conviction of an accused in a Native State is not sufficient in British India to establish the commission of the offence. *Emperor v. Dawa Singh*.

11 Cr. L. J. 635 :
8 I. C. 383 : 28 P. R. 1910 Cr.

—S. 110—Grounds—Desperate and dangerous character—Promoting litigation.

The mere fact that a man has influence with the Patwaris and promotes litigation without there being anything to show that he habitually takes or attempts to take money from litigants, offering to them threats to support their opponents, would not raise the inference that he is so dangerous or desperate that his being left at large would be hazardous to the community within the meaning of S. 110. *Ishwari Dutt v. Emperor*.

19 Cr. L. J. 781 (a) :
46 I. C. 701 : 16 A. L. J. 776 :
A. I. R. 1918 All. 318.

—S. 110—Grounds—Evidence—Being nuisance to neighbours and making indecent overtures to passers-by.

Where the evidence produced against a person amounts to no more than this that he is a nuisance to his neighbours, refuses to pay his debts, abuses people who sell goods to him and makes indecent overtures to school boys who pass by his shop, it does not justify proceedings against him under S. 110. *Muhammad Asghar Khan v. Emperor*.

16 Cr. L. J. 582 :
30 I. C. 134 : A. I. R. 1915 All. 352.

—S. 110—Grounds—Evidence—Suspicion.

In proceedings for taking security, "suspicion" is worthless and inadmissible unless supported by good reasons and then it is the reasons and the facts on which the suspicion is based, and not the suspicion to which only weight can be given. *Dalle Singh v. Emperor*.

30 Cr. L. J. 693 :
116 I. C. 801 : I. R. 1929 All. 625 :
1929 A. L. J. 938 : A. I. R. 1929 All. 599.

Cr. P. CODE (1898), S. 110**—S. 110—Grounds—Extortion, acts of.**

Evidence of acts of extortion committed by a person, unless those acts were accompanied by acts causing danger to the persons and properties of other persons, is not sufficient to bring his case within cl. (f) of S. 110. *Wahid Ali v. Emperor*.

6 Cr. L. J. 1 :
11 C. W. N. 789.

—S. 110—Landlord—Having tenants of bad character—Lending money and settling dispute—Association.

The facts that a landlord has tenants of bad character, that he lends money or paddy when the latter are in difficulty, and because they are his tenants, and that he settles disputes between two men, one of whom is a thief and the other is not, do not subject him to a proceeding under S. 110. *Nilkamal Das v. Emperor*.

6 Cr. L. J. 403 :
6 C. L. J. 711.

—S. 110—Grounds—Litigious disposition.

The mere fact that a man happens to be of a litigious disposition, does not bring his case within cl. (f), S. 110. *Ahmad Ali v. Emperor*.

32 Cr. L. J. 271 :
129 I. C. 276 : 32 P. L. R. 92 :
I. R. 1931 Lah. 164 :
A. I. R. 1930 Lah. 1051.

—S. 110—Grounds—Unopposition to dacoity.

A zemindar of a village cannot be bound over merely because he did not actively oppose a gang of dacoits. *Miharban Singh v. Emperor*.

16 Cr. L. J. 805 :
31 I. C. 821 : 13 A. L. J. 1046 :
A. I. R. 1915 All. 464.

—S. 110—Grounds—Obtaining decree by forged documents—Security.

The obtaining of decrees by means of forged documents is neither cheating nor extortion as defined in the Penal Code. Therefore, persons habitually committing such acts cannot be proceeded against under S. 110. *Emperor v. Chuni*.

16 Cr. L. J. 136 :
27 I. C. 200 : 28 P. R. 1914 Cr. :
206 P. L. R. 1915 : A. I. R. 1914 Lah. 575.

—S. 110—Grounds—Order without reasonable grounds or to prevent accused from furnishing security, legality of.

An order under S. 110, framed without reasonable grounds, or with the express intention of preventing the accused from furnishing security is *ultra vires*. *Nga Heim v. Emperor*.

16 Cr. L. J. 553 :
29 I. C. 825 : 3 Bur. L. T. 53 :
A. I. R. 1915 U. B. 13.

—S. 110—Grounds.

Person warning assessor that he would be shot is liable to be proceeded with under S. 110. *Tek Chand v. Emperor*.

36 Cr. L. J. 1142 :
157 I. C. 413 : 1935 A. W. R. 795 :
1935 A. L. J. 1069 : 8 R. A. 187 :
A. I. R. 1935 All. 638.

—S. 110—Grounds—Readiness of accused to furnish security.

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The question how far a Magistrate is justified in stopping a case and passing a final order for security on the strength of an expression of readiness on the part of the accused to give security can be determined only upon an examination of the particular facts. In some cases, the expression of readiness to give security may fairly be construed as a plea of guilty; in others, it may not be fair to do so. *Emperor v. Kurwa*.

30 Cr. L. J. 122 :
113 I. C. 282 : 26 A. L. J. 519 :
L. R. 9 All. 75 Cr. : 9 A. I. Cr. R. 467 :
I. R. 1929 All. 193 : A. I. R. 1928 All. 357.

—S. 110—*Grounds—Receiving stolen property in Native State.*

The phrase "offence punishable with imprisonment, wherever it may be committed" covers the dishonest receipt of stolen property in a Native State by a British subject. *Emperor v. Dewa Singh*.

11 Cr. L. J. 635 :
8 I. C. 383 : 28 P. R. 1910 Cr.

—S. 110—*Grounds—Security for good behaviour—Evidence necessary to support an order for security.*

Where a person had been imprisoned for three years in default of finding security to be of good behaviour, a period of under two months from his release from jail is not a sufficient time to give him an opportunity of showing that he is willing to adopt an honest livelihood. Where there is no evidence of any complaint having been made to the police or to a Magistrate against a person called upon to find security to be of good behaviour, or that he had been arrested on a charge of having committed any offence, the facts that certain witnesses state that he bears a bad character and that he is said by the police to have been suspected in several cases, is not sufficient to warrant an order under Ss. 110 and 118 being passed against him. *Emperor v. Hussain Ahmad Khan*.

2 Cr. L. J. 86 :
25 A. W. N. 34.

—S. 110—*Grounds—Stirring up communal hatred and offences involving breach of peace—Security proceedings.*

S. 110 is intended to curb the activities of persons who set the ball of discord in motion and try to create or foment dissensions between man and man or between one community and another in matters which result in or have a tendency to result in breach of the peace. *Alayar Khan v. Emperor*.

31 Cr. L. J. 1 :
120 I. C. 193 : 1930 A. L. J. 254 :
A. I. R. 1930 All. 23.

—S. 110—*Grounds—Willingness of accused to give security, effect of.*

The evidence of a Police Officer to the effect that the accused had a very bad reputation, that he associated with bad characters and was suspected of participation in several cases of house-breaking, burglary and cattle theft, does not satisfy the requirements of law and is not sufficient to place the accused upon security for good behaviour even though the

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accused himself had no objection to give security. *Ujagar Singh v. Emperor*.

30 Cr. L. J. 839 :
117 I. C. 807 : 10 Lah. 155 :
I. R. 1929 Lah. 695 : 30 P. L. R. 694 :
A. I. R. 1929 Lah. 504.

—S. 110—*Habitual offender.*

A man who is by habit a robber, may be bound over under S. 110 so long as he is not charged with any definite act of robbery. But when it is said that he habitually commits robbery, there is a definite allegation of an offence and he cannot be bound over under the preventive sections. *Ram Rup Bhar v. Emperor*.

30 Cr. L. J. 1036 :
109 I. C. 571 : 1923 A. L. J. 981 :
I. R. 1929 All. 1067 : A. I. R. 1929 All. 813.

—S. 110—*Habitual offender—'By habit,' and 'habitually'—Depravity of character, necessity of.*

The words 'by habit' and 'habitually' imply frequent practice or use and are used in S. 110 in the sense of depravity of character as evidenced by the frequent repetition of commission of offences mentioned in the section. *Bhubaneswar Kuer v. Emperor*.

28 Cr. L. J. 359 :
100 I. C. 967 : 6 Pat. 1 : 8 P. L. T. 335 :
A. I. R. 1927 Pat. 126.

—S. 110—*Habitual offender—Commission of offences in diara land dispute, whether ground for proceeding under S. 110.*

Certain lands were thrown out by a river in a *zemindari* tract. The tenants formed themselves into a party to compel the *zemindar* to settle the land with them. They also entered into an agreement among themselves to drive the lands among all of them with whomsoever they were settled and to enforce the agreement themselves. Many loots, assaults and murders were committed by them against the *zemindar* and the recalcitrant members. Apart from this land dispute, there was nothing on the record to show that the tenants bore any despicable character or that they were implicated in theft, extortion, etc., or that they ever provoked a breach of the peace: *Held*, that the tenants could not be said to have acquired the habit of committing offences so as to bring them within the purview of cls. (a) to (e) of S. 110, but that the course of their conduct showed that they had become desperate and dangerous and that, therefore, proceedings could be taken against them under cl. (f) of the said section. *Bhubaneswar Kuer v. Emperor*.

28 Cr. L. J. 359 :
100 I. C. 967 : 6 Pat. 1 : 8 P. L. T. 335 :
A. I. R. 1927 Pat. 126.

—S. 110—*Habitual offender—Dangerous and desperate character—Proof.*

Where evidence is admissible and has been admitted to show that a man is a habitual offender under other clauses of S. 110 and is also being tried under cl. (f), it is a mere inference of fact from the nature of the offences whether he is a dangerous and desperate character or not. *Parasulla v. Emperor*.

10 Cr. L. J. 460 :
4 I. C. 10 : 13 C. W. N. 244.

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—S. 110—*Habitual offender.*

Evidence showing complicity in thefts—Order under S. 110 is proper. *Emperor v. Bachchu*.
37 Cr. L. J. 390.
160 I. C. 1039 : 1936 O. W. N. 247 :
1936 O. L. R. 128 : 8 R. O. 297 :
A. I. R. 1936 Oudh 238.

—S. 110—*Habitual offender—General repute, sufficiency of.*

The finding that an accused person is by general repute a habitual offender committing mischief and that he protects, thieves is sufficient to warrant action under S. 110. It is not necessary for the purposes of the section that specific instances should be given. *Emperor v. Shahukha*.
5 Cr. L. J. 178 :
9 Bom. L. R. 164.

—S. 110—*Habitual offender—No conviction for an offence against property recently committed—Evidence.*

Where the only evidence against a person was that he was found hiding himself in a bush, and when his person was searched, certain articles not claimed by him to be his own, were found upon him, there is no presumption that he was there with a view to commit an offence, so that he may be deemed to be a "habitual offender". *Madira Nagadu v. Emperor*.
12 Cr. L. J. 359 (a) :
20 I. C. 959 : 1911 2 M. W. N. 355.

—S. 110—*Habitual offender—'Habitual thief', definition of—Proof.*

To bind down a person as habitual thief under S. 110, habit has to be proved by an aggregate of acts and it would be straining the provisions of the section to hold that a man being suspected mainly by the Police in four thefts after he had been acquitted on a charge of theft amounts to sufficient evidence of habit. *Rahman v. Emperor*.
29 Cr. L. J. 574 :
109 I. C. 510 : 10 Lah. L. J. 317 :
10 A. I. Cr. R. 355.

—S. 110—*Habitual offender—Habitually bringing false claims in Civil Courts.*

S. 110 (d) does not apply to the case of a person who has the reputation of habitually bringing false claims in the Civil Courts. *Khushal v. Emperor*.
18 Cr. L. J. 651 :
40 I. C. 299 : 4 O. L. J. 143 :
20 O. C. 129 : A. I. R. 1917 Oudh 117.

—S. 110—*Habitual offender.*

Previous conviction 12 years before, is not a justification for binding him over under S. 110. *Raghubar Dayal v. Emperor*.
36 Cr. L. J. 33 :
152 I. C. 120 : 3 A. W. R. 655 :
L. R. 15 All. 79 Cr. : 7 R. A. 261 :
A. I. R. 1934 All. 735.

—S. 110—*Habitual offender—Proof.*

In proceedings under S. 110, the Court is not warranted in basing its finding that the person proceeded against is a habitual criminal on the evidence gathered from the proceedings in those cases in which he was exonerated in respect

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of the charges laid against him in these proceedings. *In re : Perne Maila Rai*.

39 Cr. L. J. 898 :
177 I. C. 586 : 1938 M. W. N. 313 :
47 L. W. 428 : I. L. R. 1938 Mad. 720 :
11 R. M. 351 : A. I. R. 1938 Mad. 591.

—S. 110—*Habitual offender—Proof.*

Isolated cases are not sufficient to prove habit and character. One or two cases may not be sufficient but a number of similar incidents cease to be isolated facts and become evidence of habit and character. *Pirangi Rai v. Emperor*.
34 Cr. L. J. 643 :
143 I. C. 687 : I. R. 1933 Pat. 209 :
A. I. R. 1933 Pat. 189.

—S. 110—*Habitual offender—Proof—Old act of misconduct.*

On an enquiry whether the Defendant is a habitual offender, evidence of acts of misconduct committed by him years ago is admissible in evidence as indicating the formation of the habit, but such evidence unless supplemented by evidence of misconduct committed by the Defendant within a year or so before the institution of the proceedings under S. 110, cannot justify the making of the order under S. 118. *Wahid Ali v. Emperor*.
6 Cr. L. J. 1 :
11 C. W. N. 789.

—S. 110—*Habitual offender—Proof—Previous conviction.*

A previous conviction is not necessary for proceedings under S. 110. On the other hand, S. 117 (4) lays down that the fact that the man is an habitual offender can be proved by evidence of general repute or otherwise. Before passing any order under S. 110, therefore, the Magistrate must consider and weigh the evidence produced by the prosecution to prove that the person against whom the proceedings are instituted was a habitual thief even if there is no evidence that such person had any previous conviction. *Emperor v. Khuda Bakhsh*.
39 Cr. L. J. 599 :
175 I. C. 522 : 40 P. L. R. 222 :
10 R. L. 732 : A. I. R. 1938 Lah. 428.

—S. 110—*Habitual offender—Proof—Previous proceedings.*

The fact that a man has been previously bound over to be of good behaviour as a habitual offender can be proved against him in proceedings under S. 110 as one of the grounds on which the witnesses to general repute believe the accused to be habitual offender. *Emperor v. Kumeru*.
30 Cr. L. J. 755 :
125 I. C. 19 : 51 All. 275 :
A. I. R. 1929 All. 650.

—S. 110—*Scope—Habitual offender—Proof—Previous convictions.*

S. 110 is intended to deal with persons who cannot readily be brought under the ordinary law. There is nothing in the wording of S. 110 that leads to the inference that S. 110 can only be used where the parties are strangers to the locality. Before a person can be bound over under this or similar sections, it is not necessary that a certain number of previous convictions should have been proved, if the evidence that

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a person is a habitual robber or house-breaker or thief can be proved otherwise. If there are no previous convictions, the quantum of proof necessary would naturally be greater. *In re : Shanmugham Asari.*

39 Cr. L. J. 588 :
175 I. C. 417 : 1938 M. W. N. 93 :
47 L. W. 196 : 1938 1 M. L. J. 178 :
10 R. M. 777 : A. I. R. 1938 Mad. 482.

———S. 110—*Habitual offender—Security for good behaviour—“Person within”, Interpretation of.*

In S. 110, the Legislature has advisedly adopted the expression “any person within the local limits” to exclude the necessity of proving anything approaching permanent residence, and to leave it in the power of the Magistracy to deal with what are perhaps the most dangerous habitual criminals who wander from place to place and have no well-known residence where the Police or the Magistracy could be sure at any time of finding them. *Emperor v. Bapoo Yellapa.*

5 Cr. L. J. 249 :
9 Bom. L. R. 244.

———Ss. 110, 117 (4)—*Habitual offender—Security for good behaviour from habitual offenders—Association, proof of.*

Where in a proceeding against the accused under S. 110, the Court observed—“The association of the accused for the commission of crime has been established. They are close neighbours and they are found to be implicated in a good many cases together” : *Held*, that it was doubtful whether that finding was sufficient to comply with the requirements of Paragraph 4 of S. 117. *Jogendra Kumar Nag v. Emperor.*

21 Cr. L. J. 700 (a) :
57 I. C. 940 : A. I. R. 1920 Cal. 556.

———S. 110—*Insufficient evidence—Evidence of suspicion.*

Persons ought not to be bound down under S. 110, upon the mere statements of witnesses that they suspect or are under the impression that the persons proceeded against are thieves or dacoits, when no fact is mentioned to indicate that there was sufficient reason for their suspicion or impression. *Alop Pramanik v. Emperor.*

5 Cr. L. J. 191 :
11 C. W. N. 413.

———S. 110—*Insufficient evidence.*

In a proceeding under S. 110, the evidence of avowed enemy cannot be worth very much. *Wali Muhammad Khan v. Emperor.*

25 Cr. L. J. 808 :
81 I. C. 344 : A. I. R. 1925 Lah. 166.

———S. 110—*Insufficient evidence—Information, private utility of.*

Any private information which a Magistrate already possesses, when he hears a case under S. 110 is not in itself substantive evidence which may be used against the accused, but it is a form of check which the Magistrate may legitimately use in order to test the nature of the evidence with which it has to deal and to negative ; for example, a suggestion that the Police investigation has been unfair. *Darbari Singh v. Emperor.*

25 Cr. L. J. 781 :
81 I. C. 269 : 45 All. 749 : A. I. R. 1924 All. 451.

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———S. 110—*Insufficient evidence—Persons of bad character seen with accused, effect of—Sureties not to be rejected merely on Police report.*

Where the evidence amounted to nothing more than that some person said to be of bad character had been seen on occasions at the *kothar* where the accused did his work : *Held*, (1) that it was not sufficient to hold that the accused was a dangerous dacoit and extortioner and habitual protector and harbourer of thieves ; (2) that Magistrates had no authority to reject sureties merely upon an unfavourable report of the Police. *Jai Govind v. Emperor.*

13 Cr. L. J. 760 :
15 O. C. 263 : 17. I. C. 72.

———S. 110—*Insufficient evidence—Police evidence—Association with bad characters—Evidence, sufficiency of.*

A person was run in on a charge of dacoity and convicted, but was acquitted in appeal. Immediately after his acquittal he was called upon to furnish security for his good behaviour under S. 110 (f), as being a person of desperate and dangerous character. The evidence against him consisted of nothing but what had been put forward in the dacoity case, and the statement of a witness to the effect that the accused was a person who associated with bad characters, and also the statement of a Circle Inspector whose knowledge of the accused was derived from what had transpired in the course of the investigation of the dacoity case : *Held*, that the accused could not be called upon to furnish security for his good behaviour. *Gulab Chand v. Emperor.*

17 Cr. L. J. 184 :
33 I. C. 824 : 3 O. L. J. 43 :
A. I. R. 1916 Oudh. 122.

———S. 110—*Insufficient evidence—Proof.*

An order requiring security for good behaviour cannot be based on the vague evidence of a large number of persons to the effect that the accused is a thief and a dacoit and that the neighbourhood is of that opinion. There is no rule of law or of good sense that every person who appears as a witness on behalf of the prosecution must be believed. *Raghudatt v. Emperor.*

24 Cr. L. J. 791 :
74 I. C. 535.

———S. 110—*Insufficient evidence—Proof.*

Where there is no independent evidence and the evidence given is vague, general and of hearsay character and not legally admissible, the conviction of the accused under the section is bad and cannot be upheld. *Deodhary Pandey v. Emperor.*

26 Cr. L. J. 738 :
86 I. C. 274 : 1925 Pat. 6 : 6 P. L. T. 810 :
A. I. R. 1925 Pat. 131.

———S. 110—*Insufficient evidence—Security for good behaviour—Weight of evidence on both sides—Instances of suspicion—Previous discharge on same materials.*

In a proceeding under S. 110 against two brothers, *A* and *B*, the evidence for the prosecution consisted of the statement of four *Lambardars*, one *Zaildar* two Sub-Inspectors and a few instances of suspicion. Twenty-three witnesses appeared for *A* and 40 for *B* includ-

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ing a *Lambardar*. One year previously, *A* and *B* were discharged on nearly the same materials and by the same Magistrate and no fresh facts were alleged against them: *Held*, that the evidence was insufficient to justify taking of security. *Lala v. Emperor*. 14 Cr. L. J. 603 : 21 I. C. 475 : 33 P. W. R. 1913 Cr. : 316 P. L. R. 1913.

—S. 110—Insufficient evidence.

The accused had contracted a disreputable sort of friendship with certain *Pasis* for the reason that some of the accused had immoral relations with some of the women belonging to the gang of *Pasis*, but there was nothing to show that any of the accused had ever been convicted for any criminal offence, and most of the accused were persons of a advanced age: *Held*, that there was no sufficient ground to bind the accused. *Gurbakhsh Singh v. Emperor*. 12 Cr. L. J. 542 : 12 I. C. 518.

—S. 110—Intention.

Dacoits living with father—Son, is not guilty of harbouring dacoits—Proceedings against son must be quashed. *Ajaib Singh v. Emperor*. 35 Cr. L. J. 653 : 148 I. C. 325 : 6 R. L. 546 : A. I. R. 1934 Lah. 62.

—S. 110—Joint trial—Accused, father and sons—Complicity of each—Case of association—Individual enquiry.

In a bad livelihood case, it was established that the accused, father and sons, were formed into a gang, and the evidence against them all was the same: *Held*, that it was a clear case of association and one in which the evidence could rightly be dealt with together, and no minute enquiry into the complicity of each of the accused individually was necessary. *Parasulla v. Emperor*. 10 Cr. L. J. 460 : 4 I. C. 10 : 13 C. W. N. 244.

—S. 110—Joint trial—Association in same offences.

Two accused cannot be tried together unless their association in the same offence is made out. *Emperor v. Chuni*. 16 Cr. L. J. 136 : 27 I. C. 200 : 28 P. R. 1914 Cr. : 206 P. L. R. 1915 : A. I. R. 1914 Lah. 575.

—S. 110—Joint trial—Basis for joint trial.

The test to be applied in cases where a plea of misjoinder is raised is whether there has been habitual association between the persons charged in respect of the misconduct alleged in the complaint. *Kripa Sindhu Naiko v. Emperor*. 19 Cr. L. J. 905 : 47 I. C. 277 : 8 L. W. 461 : 1918 M. W. N. 751 : A. I. R. 1919 Mad. 633.

—S. 110—Joint trial—Enquiry under S. 110—Joint trial—Association of accused, proof of.

When proceedings are taken against more persons than one for a joint trial under S. 110, proof should be given that they were associated together in the matter under enquiry. *Nizamadai v. Emperor*. 20 Cr. L. J. 551 : 51 I. C. 839 : 23 C. W. N. 488 : A. I. R. 1919 Cal. 359.

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—S. 110—Joint trial—Evidence against each person.

Where a number of persons are tried jointly upon a charge under S. 110, it is incumbent upon the Magistrate to insist that definite evidence be given against each person who is charged. *Jai Govind v. Emperor*. 13 Cr. L. J. 760 : 17 I. C. 72 : 15 O. C. 263.

—S. 110—Joint trial—Habitual offenders—Joint trial.

Proceedings against a man for *badmashi* should be confined to himself alone, unless the case is that he has a confederate or a partner to whom all the evidence is equally applicable. *Angnoo Singh v. Emperor*. 24 Cr. L. J. 257 : 71 I. C. 865 : 20 A. L. J. 881 : 45 All. 109 : A. I. R. 1923 All. 35.

—S. 110—Joint trial.

In the case of persons acting in concert, joint trial is the proper procedure especially when they are alleged to be dangerous. But separate finding of each accused is necessary. *Parbati Charan v. Emperor*. 35 Cr. L. J. 952 : 149 I. C. 408 : 61 Cal. 588 : 6 R. C. 593 : A. I. R. 1934 Cal. 482.

—S. 110—Joint trial—Joint proceedings—Prejudice to accused—Illegality.

Proceedings under S. 110 were instituted jointly against two brothers, who lived together, and against whom, there was evidence of joint acts. There was, however, some evidence which was relevant to the case against one of them but was not relevant to the case against the other. An order was made against them by the Magistrate and was upheld in appeal. In dealing with the appeal, however, the Sessions Judge distinguished the evidence which was relevant to the case of each accused from the rest of the evidence and wrote two separate judgments: *Held*, that as no prejudice had resulted to the accused, the Sessions Judge having excluded from his consideration evidence which did not apply directly to the case of each accused, the joint proceedings were not illegal. *Shamsuddin v. Emperor*. 26 Cr. L. J. 1114 : 88 I. C. 282 : A. I. R. 1925 Nag. 381.

—S. 110—Joint trial—Joint proceedings against several persons, legality of—Evidence of reputation, nature of.

Where proceedings are taken under S. 110 (1), several persons may be dealt with together. The evidence of reputation admitted against them should, of course, not be against each accused separately but against them all together. *In re : Appasamy Mudali*. 32 Cr. L. J. 144 : 128 I. C. 449 : 32 L. W. 743 : 54 Mad. 334 : I. R. 1934 Mad. 33 : 59 M. L. J. 853 : 1930 M. W. N. 1045 : A. I. R. 1930 Mad. 873.

—S. 110—Joint trial—Joint trial of two persons, legality of.

It is not legal to try two persons jointly charged under S. 110 (f). *Kripa Sindhu v. Emperor*. 19 Cr. L. J. 905 : 47 I. C. 277 : 8 L. W. 461 : 1918 M. W. N. 751 : A. I. R. 1919 Mad. 633.

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———S. 110—*Joint trial—Joint trial, when allowed.*

In order to entitle a Magistrate to try several persons jointly for offences under S. 110, the circumstances mentioned in S. 117 (4), must be established. *Jai Rao v. Emperor.*

23 Cr. L. J. 100 :
65 I. C. 484 : 3 P. L. T. 538 : 1923 Pat. 8.

———S. 110—*Joint trial—When permissible.*

Although there is no direct prohibition in the Code against trying a number of persons under S. 110 jointly, such proceedings are improper and should be confined to each person alone unless the case be that each of the accused was a confederate or partner with other persons to whom all the evidence would be equally applicable. If such proceedings are conducted jointly, it is essential that the case of each accused should be considered separately and individually. *Muhammad Ismail v. Emperor.*

25 Cr. L. J. 952 :
81 I. C. 600 : 21 A. L. J. 841 :
A. I. R. 1924 All. 195.

———S. 110 (f)—*Joint trial—Legality.*

In no case can proceedings under S. 110 (f) be taken jointly against several persons, *In re : Kullti Goundan.* 26 Cr. L. J. 673 :
86 I. C. 49 : 47 M. L. J. 689 : 1925 M. W. N. 57 :
A. I. R. 1925 Mad. 189.

———S. 110—*Joint trial—Legality.*

The legality of a joint trial does not depend on what is alleged for the prosecution but on the facts subsequently found to be true. *Jai Rao v. Emperor.*

23 Cr. L. J. 100 :
65 I. C. 484 : 3 P. L. T. 538 :
1923 Pat. 8.

———S. 110—*Joint trial—Legality.*

There is no provision in the Cr. P. C. prohibiting a joint inquiry under S. 110. Cl. (5) of S. 117 of the Code, does not make it a condition of such joint inquiry that the suspects shall be shown to be associated together in the order itself. *Tanwor v. Emperor.*

26 Cr. L. J. 1398.
89 I. C. 710 : A. I. R. 1926 Sind 69.

———S. 110—*Joint trial—Notice to two persons—Evidence taken in one case—Order against both—Legality of order.*

Where two persons, A and B, were given notice under S. 112, to show cause why they should not be bound down and the Magistrate recording the evidence against both in the case against A and then proceeded to consider it as evidence in the case against B and passed orders against both without conducting or intending to conduct any joint trial: Held, that there was no trial of the case against B at all and the order binding over him was illegal. *Lilu v. Emperor.*

32 Cr. L. J. 62 (b) :
127 I. C. 861 : I. R. 1930 Lah. 893 :
A. I. R. 1930 Lah. 345.

———S. 110—*Joint trial—Proceedings, whether can be taken jointly against several persons.*

Proceedings under S. 110 should be confined to the case of one accused alone unless the case of the prosecution is that he has a confederate

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or a partner to whom all the evidence is equally applicable. *In re : Kullti Goundan.*

26 Cr. L. J. 673 :
86 I. C. 49 : 47 M. L. J. 689 : 1925 M. W. N. 57 :
A. I. R. 1925 Mad. 819 :

———S. 110—*Joint trial—Security—Joint trial, legality of.*

The joint trial of persons called upon to show cause under S. 110 (f) is not bad, where there is evidence in the nature of a conspiracy or of acting in concert. But the legality of such a trial must depend upon what is alleged for the prosecution, not on the facts subsequently found to be true. *Jogendra Kumar Nag v. Emperor.*

22 Cr. L. J. 377 :
61 I. C. 233 : 25 C. W. N. 334 :
A. I. R. 1921 Cal. 625.

———S. 110—*Joint trial—Separate trial.*

In case under S. 110, each accused is entitled to an entirely independent examination of his own case. *Bahadur Shah v. Emperor.*

10 Cr. L. J. 591 :
4 I. C. 432 : 25 P. W. R. 1909 Cr.

———S. 110—*Joint trial—Several suspects—Joint inquiry—Separate findings, necessity of.*

Though it is permissible under S. 117, cl. (4), to hold a joint inquiry against several suspects associated together in the matter under inquiry, it is incumbent on the Magistrate to consider the case of each suspect individually and to come to a separate finding. *Khairo v. Emperor.*

25 Cr. L. J. 1377 :
83 I. C. 337 : A. I. R. 1925 Sind 204.

———S. 110—*Joint trial.*

The law as to the joinder of charges against a person accused of definite offences has no application to an inquiry under S. 110, cl. (d). *Wahid Ali v. Emperor.*

6 Cr. L. J. 1 :
11 C. W. N. 789.

———S. 110—*Joint trial.*

Two persons alleged to be members of gang of habitual thieves—Persons always working jointly—True order under S. 112—Joint trial held legal. *Hubdar Ali v. Emperor.*

34 Cr. L. J. 852 :
144 I. C. 944 : 10 O. W. N. 325 : 6 R. O. 20 :
A. I. R. 1933 Oudh 251.

———S. 110—*Joint trial—Undivided members of Hindu family, liability of, for misconduct of particular members.*

The fact that persons are members of an undivided family would not, by itself, render each member liable for the misconduct of any other member, and where they are living separately, there is not even the presumption that one member knew and assented to the misdeeds of the other. *Kripa Sindhu Naiko v. Emperor.*

19 Cr. L. J. 905 :
47 I. C. 277 : 8 L. W. 461 : 1918 M. W. N. 751 :
A. I. R. 1919 Mad. 633.

———S. 110—*Joint trial.*

When there is evidence in the nature of a conspiracy, legality of joint trial depends on what is alleged for the prosecution. *Parbati Charan v. Emperor.*

35 Cr. L. J. 952 :
149 I. C. 408 : 61 Cal. 588 : 6 R. C. 593 :
A. I. R. 1934 Cal. 482.

Cr. P. CODE (1898), S. 110**—S. 110—Joint trial.**

Where the evidence of bad character of the accused persons and of the individual nefarious acts committed by them form the integral parts of the offence, the evidence led against one will prejudice the case of the other accused persons assembled together in the same dock and in such a case, the joint trial of accused persons is illegal. *Jai Rao v. Emperor*.

23 Cr. L. J. 100 :
65 I. C. 484 : 3 P. L. T. 538 : 1933 Pat. 8.

—S. 110 (f)—Joint trial—Joint inquiry.

Where there is an habitual connection between different persons as regards the matters specified in S. 110, their cases may be dealt with in a joint inquiry. *Emperor v. Raoji Fulchand*.

1 Cr. L. J. 3 :
6 Bom. L. R. 34.

—S. 110—Jurisdiction—"Any person within the local limits of his jurisdiction," meaning of.

The words "any person within the local limits of his jurisdiction" in S. 110 apply also to a person undergoing a sentence of imprisonment in a jail within the local limits of the Magistrate's jurisdiction. *Emperor v. Nga Saing*.

17 Cr. L. J. 88 :
32 I. C. 680 : 9 B. L. T. 39 :
8 L. B. R. 353 : A. I. R. 1916 L. B. 1.

—S. 110—Jurisdiction—Applicability of S. 167 to proceedings under S. 110.

S. 167 applies to proceedings under Chapter XIV and not to those under S. 110, and, therefore, a Second Class Magistrate has no power to remand an accused to custody against whom proceedings under S. 110 are instituted. The Police instituted proceedings under S. 110 against accused and producing him before a Second Class Magistrate, obtained an order of remand for his production before a First Class Magistrate. On the day of hearing, the accused, while on his way to Court, escaped from custody, but was subsequently arrested and charged under S. 225-B of the Penal Code : *Held*, that as the Second Class Magistrate had no power to remand accused to custody under S. 167, his subsequent escape was not an offence under S. 225-B of the Penal Code. *In re : Subbaraya Chetti*.

18 Cr. L. J. 403 :
38 I. C. 963 : 39 Mad. 928 :
A. I. R. 1918 Mad. 1186.

—S. 110—Jurisdiction—Arrest outside jurisdiction—Effect.

A person residing within the jurisdiction of a Magistrate can be tried by him under S. 110 though he happens to be outside the jurisdiction when arrested under S. 55 (1) (c). *Emperor v. Nga Po Aung*.

17 Cr. L. J. 319 :
35 I. C. 495 : 8 L. B. R. 378 :
A. I. R. 1917 L. B. 140.

—S. 110—Jurisdiction—Burden.

A Magistrate acts illegally in instituting proceedings under S. 110, against a person when he is outside the local limits of his jurisdiction. But the burden is on the person bound over to show that he was not within the jurisdiction

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of the Magistrate when the proceeding was drawn up. *Sonardi Biswas v. Emperor*.

52 Cr. L. J. 425 :
129 I. C. 688 : 52 C. L. J. 415 :
35 C. W. N. 255 :
A. I. R. 1931 Cal. 65 (1).

—S. 110—Jurisdiction—Competent Magistrates.

S. 110 only permits of the particular Magistrates mentioned in the section dealing with a case under the section. Where, therefore, a Magistrate who, when the investigation of a case under S. 110 commenced, was a Sub-Divisional Magistrate, but at the date when he made the order under the section, had ceased to be so : *Held*, that the order was invalid and made without jurisdiction. *Puran v. Emperor*.

17 Cr. L. J. 141 :
33 I. C. 317 : A. I. R. 1916 All. 222.

—S. 110—Jurisdiction—Enquiry outside local limits of jurisdiction—Legality of.

An enquiry under S. 110 should not be conducted by a Magistrate at a place which is outside the local limits of his jurisdiction and where he has no power to conduct any proceedings. *Sona Ram R. Sangma v. Emperor*.

3 Cr. L. J. 246 :
3 C. L. J. 195.

—S. 110—Jurisdiction—Residence, nature of.

In giving jurisdiction to a Magistrate to try an accused under S. 110, the question is not of permanent residence of the accused, but of where he practises his career as a thief or a house-breaker, or whatever it may be. *Bhola v. Emperor*.

23 Cr. L. J. 86 :
65 I. C. 438 : 20 A. L. J. 49 :
A. I. R. 1922 All. 86.

—S. 110—Jurisdiction—Magistrate's jurisdiction to issue warrant.

In an inquiry under S. 110, a Magistrate derives jurisdiction to issue a warrant against a suspect only after he has passed an order under S. 112 and after he has satisfied himself that there is reason to fear the commission of a breach of the peace and that such breach of the peace cannot be prevented otherwise than by immediate arrest of the suspect. *Jatio v. Emperor*.

27 Cr. L. J. 935 :
96 I. C. 391 : 20 S. L. R. 122 :
A. I. R. 1926 Sind 288.

—S. 110—Jurisdiction—Magistrate, whether can take action against person arrested outside his jurisdiction.

In the course of Police enquiries in connection with a dacoity committed within the District of 24-Pergannahs, the petitioners were arrested in Calcutta and taken into the 24-Pergannahs. Thereafter, when under arrest, proceedings under S. 110 were taken against them by a Magistrate in the 24-Pergannahs : *Held*, (1) that the Magistrate, who had no hand in the arrest of the petitioners or who did not cause them to be arrested for the purpose of giving himself jurisdiction, was competent to take proceedings against them under S. 110; (2) that the Magistrate was competent to take action under S. 110, against a receiver in

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Calcutta, of stolen goods obtained in the 24-Pergannahs, found within the limits of the jurisdiction of the Magistrate at the time when the proceedings were taken. *Lakhi Narain Das v. Emperor*. 20 Cr. L. J. 133 (b) :

49 I. C. 165 : 23 C. W. N. 100 :

30 C. L. J. 173 : A. I. R. 1919 Cal. 460.

—S. 110—*Jurisdiction—Notice, illegality of.*

A defect in the issue of the notice is not a mere irregularity, but the question is one of jurisdiction and falls under S. 530 of the Code. *Kripa Sindhu Naiko v. Emperor*.

19 Cr. L. J. 905 :

47 I. C. 277 : 8 L. W. 461 : 1918 M. W. N. 751 :

A. I. R. 1919 Mad. 633.

—S. 110—*Jurisdiction—Permanent residence of suspect, within jurisdiction, if necessary.*

There is nothing in S. 110 which requires that the accused should be a permanent resident within the jurisdiction of the Court in which proceedings against him are instituted.

Gulam Kadir v. Emperor. 27 Cr. L. J. 1261 :

98 I. C. 109 : A. I. R. 1927 Sind 59.

—S. 110—*Jurisdiction—Person arrested outside jurisdiction.*

A person who has been arrested outside the local limits of the jurisdiction of a Magistrate for an offence committed within the local limits of his jurisdiction can, on the failure of the charge of the substantive offence, be proceeded against under S. 110. *Monindra Mohan Sanyal v. Emperor*.

19 Cr. L. J. 696 :

46 I. C. 152 : 28 C. L. J. 25 : 23 C. W. N. 193 :

A. I. R. 1919 Cal. 702.

—S. 110—*Jurisdiction—Proceedings initiated under section, must be disposed of by the same Magistrate—Case cannot be sent up to another Magistrate—Bombay Regulation XII of 1827, S. 27.*

Proceedings under S. 110 should be disposed of by the Magistrate before or by whom they were initiated. The Code requires that he should pass the final order himself either discharging or taking security from the accused. A Magistrate, before whom proceedings under S. 110 were initiated, recorded evidence in the case and then sent it up to the District Magistrate who, acting under S. 27 of Bombay Regulation XII of 1827, placed certain restrictions upon the personal liberty of the accused: *Held*, that the Magistrate had no jurisdiction to send up the District Magistrate and the latter had no jurisdiction to dispose of it. *Emperor v. Krishan Kevji*.

13 Cr. L. J. 748 :

14 Bom. L. R. 713 : 17 I. C. 60.

—S. 110—*Jurisdiction—Proceedings taken when the person is outside such jurisdiction.*

The person against whom proceedings are taken under S. 110, must be, at the time when such proceedings are taken, within the local limits of the jurisdiction of the Magistrate taking such proceedings. Non-compliance with these provisions, vitiates the proceedings as made without jurisdiction. *Sona Ram R. Sangma v. Emperor*.

3 Cr. L. J. 246 :

3 C. L. J. 195.

—S. 110—*Jurisdiction—Proceedings under*

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—*Transfer to a Magistrate not specially empowered.*

It is competent to a District Magistrate to transfer proceedings which had been properly instituted before a competent Magistrate, to a Magistrate subordinate to himself though such Magistrate was not competent to institute the same (31 C. 350 ; 24 A. 151, foll.). *The Crown v. Allahyar*.

9 Cr. L. J. 246 :

1 S. L. R. 2.

—S. 110—*Jurisdiction—Residential house within jurisdiction of the Magistrate.*

Where a person ordinarily resides outside the jurisdiction of a Magistrate, but possesses a residential house within his jurisdiction, and often goes there for the purpose of business ; and while residing there, does such acts as bring his conduct within the scope of S. 110, the Magistrate has jurisdiction to proceed against him under the section. *Kasi Sundar Roy v. Emperor*.

1 Cr. L. J. 438 :

I. L. R. 31 Cal. 419.

—S. 110—*Jurisdiction—Residence needed.*

S. 110 does not require that the person proceeded against should reside within the local limits of the Magistrate empowered to take action under the section. It is sufficient that the person should be within those limits at the time when proceedings are taken. *Lakhi Narain Das v. Emperor*. 20 Cr. L. J. 133 (b) :

49 I. C. 165 : 23 C. W. N. 100 : 30 C. L. J. 173 :

A. I. R. 1919 Cal. 460.

—S. 110—*Jurisdiction—Residence within jurisdiction, necessity of.*

Where a person who is bound down under S. 110, is within the jurisdiction of the Magistrate, this is sufficient to give the Magistrate jurisdiction over him. The residence of the person is immaterial. *Ghulam Hussain v. Emperor*.

38 Cr. L. J. 144 (b) :

165 I. C. 648 : 17 Lah. 453 : 38 P. L. R. 905 :

9 R. L. 274.

—S. 110—*Jurisdiction—Security demanded from person not "resident" within jurisdiction.*

The object of the section would be defeated if its scope were restricted to persons residing within the jurisdiction of the Magistrate. Consequently, a Magistrate has jurisdiction to take security from a person who resides outside the jurisdiction of the Magistrate but is found within the local limits of his jurisdiction. *In re : Kora Rangan*.

13 Cr. L. J. 781 :

23 M. L. J. 535 : 17 I. C. 413.

—S. 110—*Jurisdiction—Security for good behaviour—Locus paenitentiae.*

The petitioner was released from Jail on the 26th September 1902, after having undergone one year's imprisonment on failure to furnish security for his good behaviour under S. 110. About fifteen months afterwards, fresh proceedings of the same nature were started against him, and in the result, he was again ordered to furnish security to be of good behaviour for a period of one year: *Held*, that the order should be set aside as the petitioner had not had a sufficient locus paenitentiae. *Junab Ali v. Emperor*.

1 Cr. L. J. 801 :

I. L. R. 31 Cal. 783 : 8 C. W. N. 909.

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—S. 110—*Jurisdiction—Security proceedings—Demand of security from person undergoing imprisonment.*

Proceedings under S. 110 were instituted against a person who was at the time undergoing imprisonment, for an offence, and security for good behaviour was demanded from him: *Held*, that under the circumstances, the Magistrate had no jurisdiction to commence the proceedings. The order for security was set aside. *Emperor v. Po Thaw.* 7 Cr. L. J. 447: 4 L. B. R. 148.

—S. 110—*Jurisdiction—Security proceedings against person outside jurisdiction of Court, legality of.*

A Magistrate has no jurisdiction to start an inquiry under S. 110, against a person who is outside the local limits of the jurisdiction of the Magistrate. *Satindra Nath Sen v. Emperor.* 29 Cr. L. J. 842: 111 I. C. 394: 48 C. L. J. 143.

—S. 110—*Jurisdiction—Transfer.*

A case under S. 110, can be transferred by a District Magistrate as he is competent under S. 192, to transfer any case cognizable by a Criminal Court and his power of transfer is not restricted to criminal cases only. *Chintamon Singh v. Emperor.* 7 Cr. L. J. 146: 7 C. L. J. 177: 12 C. W. N. 299: I. L. R. 35 Cal. 243.

—S. 110—*Jurisdiction—Transfer of case, legality of.*

When a Magistrate having no power to transfer a case under S. 110, transfers the case erroneously and in good faith to another Magistrate, the proceeding before the latter Magistrate will not be void, as such transfer would only amount to an irregularity which would be covered by the provisions of S. 529, cl. (f), Cr. P. C. *Chintamon Singh v. Emperor.*

7 Cr. L. J. 146:
7 C. L. J. 177: 12 C. W. N. 299:
I. L. R. 35 Cal. 243.

—S. 110—*Jurisdiction within local limits, meaning of.*

The expression within the local limits of his jurisdiction in S. 110, Cr. P. C. is not used in the sense of 'residing' within the jurisdiction but in the literal and physical sense of being within the territorial limits. *Sovardi Biscas v. Emperor.*

32 Cr. L. J. 425:
129 I. C. 688: 52 C. L. J. 415:
35 C. W. N. 255: A. I. R. 1931 Cal. 65 (1).

—Ss. 110, 190 (c)—*Jurisdiction—Local inspection by Magistrate before instituting proceedings, effect of.*

Although S. 190 (c) in terms applies only to offences, the principle of that section must apply to cases of a miscellaneous character, e.g., to proceedings under S. 110. Where a Magistrate was influenced by his preliminary local investigation in coming to a finding as to the guilt of an accused person under S. 110: *Held*, that the conviction was bad inasmuch as the Magistrate should not, under the circumstances,

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have tried the case himself. *Godhan Ahir v. Emperor.*

19 Cr. L. J. 899:
47 I. C. 95: 4 P. L. J. 7:
A. I. R. 1918 Pat. 98.

—S. 110—*Notice—Charge to be communicated to accused.*

An order under S. 110 should not be made unless the charge which the accused has to meet is communicated to him. *Nga Heim v. Emperor.*

16 Cr. L. T. 553:
29 I. C. 825: 8 Bur. L. J. 53:
A. I. R. 1915 U. B. 13.

—S. 110—*Notice, contents of.*

An order under S. 112, requiring the accused to show cause why he should not execute a bond for his good behaviour must set forth the substance of the information received about him; otherwise it will not be a legal order. *Ujaggar Singh v. Emperor.* 30 Cr. L. J. 839: 117 I. C. 807: 10 Lah. 155: I. R. 1929 Lah. 595: 30 P. L. R. 694: A. I. R. 1929 Lah. 504.

—S. 110—*Notice, failure to give—Effect.*

The issue of a notice under S. 112 is not a formal matter, it is a judicial act to be exercised, after due consideration of the materials placed before him, by the Magistrate. The object of the notice is to enable the accused to prepare his defence and to summon witnesses; this being so, an explanation of the prosecution case by the Prosecuting Inspector at the commencement of the trial will not be sufficient to make up for the vagueness of the notice and will not amount to a compliance with S. 112, Cr. P. C. *In re: Kutli Goundan.*

26 Cr. L. J. 673:
86 I. C. 49: 47 M. L. J. 689:
1925 M. W. N. 57: A. I. R. 1925 Mad. 189.

—S. 110 *Notice—Gist of information, sufficiency of.*

'The substance of the information received' in S. 112 does not mean anything more than the gist of the information. It is not necessary to state more than will show the person against whom proceedings are taken, and the particular sub-section on which it is proposed to proceed against him. *Emperor v. Ram Ghulam.*

28 Cr. L. J. 744:
103 I. C. 792: 2 Luck. Cas. 157:
8 A. I. Cr. R. 394: A. I. R. 1927 Oudh 306.

—S. 110—*Notice—Information to accused, requirements of.*

When a person is sought to be proceeded against under S. 110, it must be made clear as to which sub-section he is charged with coming under. It is not enough merely to assert that he is a person of criminal tendencies or that he is suspected of having committed certain crimes. The prosecution must charge that he habitually commits one of the crimes referred to in sub-ss. (a) to (d) inclusive, or that he habitually commits, or attempts to commit or abets the commission of offences involving a breach of the peace or is so desperate and dangerous as to render his being at large without security, hazardous to the community. It must be specifically stated under which of these categories the accused's case is alleged to

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come. An omission to do so, causes serious hardship to the accused. *Sohan Singh v. Emperor*.

26 Cr. L. J. 1377.
89 I. C. 513 : 1 L. C. 80 :
A. I. R. 1926 Lah. 45.

———S. 110—Notice—Joint notice to several persons, legality of.

Each man against whom proceedings are taken under S. 110, is entitled to a separate notice and not to have the charges which are going to be made against him confused with the charges that are being made against somebody else. *Emperor v. Ram Lal*.

30 Cr. L. J. 562 :
116 I. C. 25 : I. R. 1929 All. 505 :
1929 A. L. J. 361 : 51 All. 663 :
A. I. R. 1929 All. 273.

———S. 110—Notice—Judicial act.

The issue of a notice under S. 110 is a judicial act to be exercised after due consideration of the materials placed before the Magistrate. The issue of a notice by a Magistrate without jurisdiction cannot be justified on the ground that it was drawn up under orders from the District Magistrate. *Kripa Sindhu Naiko v. Emperor*.

19 Cr. L. J. 905 :
47 I. C. 277 : 8 L. W. 461 :
1918 M. W. N. 751 : A. I. R. 1919 Mad. 633.

———S. 110—Notice—List of witnesses.

It is not necessary to give a list of witnesses in support of the proceeding either in the report or in the order under S. 112. *Chintamon Singh v. Emperor*.

7 Cr. L. J. 146 :
7 C. L. J. 177 : 12 C. W. N. 299 :
I. L. R. 35 Cal. 243.

———S. 110—Notice—Nature of.

Under S. 112, the substance of the report made to the Magistrate should be clearly disclosed to the accused, and if the accused is not informed of the charges or of the nature of the evidence which he is to rebut, the proceedings are illegal. *In re : Kottamiddu Ranga Reddi*.

21 Cr. L. J. 354 :
55 I. C. 722 : 38 M. L. J. 97 :
11 L. W. 331 : 43 Mad. 450 :
1920 M. W. N. 398 : A. I. R. 1920 Mad. 534.

———S. 110—Notice before arrest, whether necessary.

No notice is necessary before arresting a person with a view to take proceedings against him under S. 110. *Chandan v. Emperor*.

31 Cr. L. J. 627 :
124 I. C. 40 : 1930 A. L. J. 389 :
A. I. R. 1930 All. 274.

———S. 110—Notice omitting to specify nature of evidence—Accused taken by surprise—Cross-examination of witnesses, opportunity for.

Where in a notice to an accused person under S. 110, it is not possible to give detailed information as to the nature of the evidence which the prosecution intend to adduce at the trial, the omission to give such details is not an irregularity sufficient to vitiate the proceedings. If the evidence takes the accused by surprise, he has a right to ask the Magistrate for sufficient time after the evidence has been disclosed to

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commence his cross-examination. *Doh. v. Emperor*.

20 Cr. L.
51 I. C. 260 : A. I. R. 1919

———S. 110—Notice requisites of.

A notice is bad in law and cannot form basis of a proceeding under S. 110, if it—

- (a) omits to give substance of the information received as required by S. 112 of Code ;
- (b) purports to issue under the Old Criminal Procedure of 1882 ;
- (c) requires more security than what entered in the original order ; and
- (d) is not personally served upon the person to whom it is given. *Bahadar Singh Emperor*.

11 Cr. L. J. 388
6 I. C. 626 : 18 P. W. R. Cr. 191

———S. 110—Notice to accused, form and contents of.

A notice under S. 110 must contain something more than a reproduction of the clauses of the section. There should be sufficient indication of the time and place of the acts charged and sufficient details to enable the accused to know what facts he is to meet, but it is not necessary to give a list of witnesses. Where, however, the defect has not been objected to in the trial Court, the High Court ought not to quash the proceedings in revision in the absence of any proof that the accused was prejudiced by the defect. *Kripa Sindhu Naiko v. Emperor*.

19 Cr. L. J. 905 :
47 I. C. 277 : 8 L. W. 461 :
1918 M. W. N. 751 : A. I. R. 1919 Mad. 633.

———S. 110—Notice to persons outside jurisdiction.

The issue of notice under S. 110 of the Cr. P. C. is not a formal matter, and the section limits the power to issue the notice to the Magistrate in whose jurisdiction the accused is. *Kripa Sindhu Naiko v. Emperor*.

19 Cr. L. J. 905 :
47 I. C. 277 : 8 L. W. 461 :
1918 M. W. N. 751 :
A. I. R. 1919 Mad. 633.

———S. 110—Notice—Preliminary notice, contents of.

A notice under S. 112 must contain something more than a reproduction of the clauses of the section. There should be sufficient indication of the time and place of the acts charged and sufficient details must be given which would enable the accused to know what facts he has to meet, though it is not necessary to give in the notice a list of the witnesses. The accused is entitled to be told the nature or the extent of the information on which the Magistrate intends to have the action. Therefore, if the substance of the report made to the Magistrate is not clearly disclosed, and the accused is not informed of the charges and of the nature of the evidence that he is to rebut, the proceedings cannot be regarded as legal. *In re : Kutti Goundan*.

26 Cr. L. J. 673 :
86 I. C. 49 : 47 M. L. J. 689 :
1925 M. W. N. 57 : A. I. R. 1925 Mad. 189.

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————S. 110—*Notice—Preliminary order, form of.*

A Magistrate who issues an order under S. 112 must be careful to see that the order that he is issuing is in the terms of the section which he proposes to apply. *Budhan v. Emperor.*

26 Cr. L. J. 1130 (b) :
88 I. C. 362 : 23 A. L. J. 507 :
L. R. 6 All. 129 Cr. : 47 All. 733 :
A. I. R. 1925 All. 694.

————S. 110—*Notice—Preliminary order—Substance of information not recorded, effect of—Irregularity.*

Merely setting out in a notice under S. 112 that a man is a habitual thief or robber and having the prosecution witnesses ready there and then to go on with the case is not what the Legislature contemplates. The law requires something in the nature of an indictment or charge containing substantial particulars indicating the grounds upon which the Police have given information to the Magistrate. The failure of the Magistrate to record the substance of the information which he has received, is not a mere irregularity, but is an illegality which vitiates the trial. *Nihal v. Emperor.*

28 Cr. L. J. 91 :
99 I. C. 41 : 6 A. I. Cr. R. 280 :
L. R. 7 All. 165 Cr. : 24 A. L. J. 908 :
49 All. 5 : A. I. R. 1926 All. 759.

————S. 110—*Notice, requirements of—Revision.*

Per *Moore, J.*—The preliminary order under S. 112 should not merely be a reproduction of the language of clauses (a) and (f) of S. 110. A notice under the section should be a sufficient indication of the time and place of the acts charged with sufficient details to enable the accused to know what facts he has to meet; the defect, however, is not a sufficient ground for the High Court quashing the proceedings of the Magistrate, if it is not shown that the accused was prejudiced thereby. *In re : Kottamiddu Ranga Reddi.*

21 Cr. L. J. 354 :
55 I. C. 722 : 38 M. L. J. 97 :
11 L. W. 331 : 43 Mad. 450 :
1920 M. W. N. 398 : A. I. R. 1920 Mad. 534.

————S. 110—*Notice—Requisites of valid notice.*

Before a hearing under S. 110 of the Cr. P. C. can by law take place, it is incumbent on the Magistrate, under S. 112, to make an order setting forth the substance of the information which he has received, the amount of the bond to be executed, the period for which it is to be executed, and the number, character and class of sureties, if any, required. Merely informing an accused person that he is a suspected thief is not sufficient. *Rajbansi v. Emperor.*

22 Cr. L. J. 228 :
60 I. C. 420 : 18 A. L. J. 673 : 42 All. 646.

————S. 110—*Notice—Security proceedings—Notice, preliminary, contents of—Substance of information not entered in notice—Irregularity—Prejudice.*

In a proceeding under S. 110, the mere failure of the Magistrate to incorporate the substance

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of the information which he has received in the notice issued under S. 112, does not render the subsequent proceeding *ab initio* void and an absolute nullity. The object of S. 112 in requiring the substance of the information to be given in the notice is to afford reasonable opportunity to the suspect to come prepared and a mere reproduction of a clause of S. 110 in the notice is not a sufficient compliance. The failure to comply with the directions contained in S. 112 does not, however, divest the Magistrate of his jurisdiction to deal with the suspect. It amounts to a grave and substantial irregularity which renders it necessary for the Courts of Appeal and of revision to scrutinize the subsequent proceedings carefully, and in the absence of prejudice, the subsequent proceedings cannot be treated as *ab initio* void. *Tanwar v. Emperor.*

26 Cr. L. J. 1398 :
89 I. C. 710 : A. I. R. 1926 Sind 69.

————Ss. 110—*Notice—Security proceedings—Notice to show cause, whether necessary—Failure to issue notice, effect of.*

Two persons were arrested under S. 55 of the Cr. P. C. on the ground that they were reputed habitual thieves and house-breakers and were placed before a Magistrate who fixed a date for evidence, with the object of issuing a notice under S. 112 and detained the accused in custody without issuing any notice. On the date fixed, the Magistrate recorded the evidence given by the Police and treated it as given in the hearing under S. 110, and, without giving the accused the slightest warning or opportunity of obtaining legal assistance, called upon them to conduct their case : *Held*, that the procedure of the Magistrate was wholly irregular and vitiated the proceedings. *Rajbansi v. Emperor.*

22 Cr. L. J. 228 :
60 I. C. 420 : 18 A. L. J. 673 :
42 All. 646.

————S. 110—*Notice—Substance of information received, meaning of.*

The provision that in proceedings under S. 110, the accused must be given the substance of the information received against them is sufficiently complied with if that portion of the clause of S. 110 which is applicable to the particular case is specified in the notice that is given. Where the particular clause refers to two or more offences, the particular offence or offences which is appropriate to the particular case should also be mentioned in the notice. *Chandan v. Emperor.*

31 Cr. L. J. 627 :
124 I. C. 40 : 1930 A. L. J. 389 :
A. I. R. 1930 All. 274.

————Ss. 110, 112—*Notice—Sufficiency of notice.—Copy of order not sent with notice—Defective, effect of.*

Where it appears that the person proceeded against under S. 110, was sufficiently informed as to the allegation against him, an order passed against him on such proceedings cannot be set aside on the sole ground that the provisions of Ss. 112 and 115 were not strictly complied with. *Daya Ram v. Emperor.*

27 Cr. L. J. 575 :
94 I. C. 143 : A. I. R. 1926 Lah. 366.

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———Ss. 110, 112, 537—*Notice—Sufficiency of notice—Irregularity curable.*

Failure to give a person against whom proceedings are taken under S. 110, information of the nature of the case against him is a mere irregularity which is cured by S. 537 of the Code. An order under S. 112 ran as follows: "Whereas I have received informationthat..... is a habitual thief and house-breaker.....". *Held*, that the order sufficiently complied with the provisions of S. 112 of the Code. *Emperor v. Ram Ghulam.*

28 Cr. L. J. 744 :
103 I. C. 792 : 2 Luck. Cas. 157 :
8 A. I. Cr. R. 394 : A. I. R. 1927 Oudh 306.

———S. 110—*Notice—Sufficient notice.*

A notice under S. 110, stating that the accused possesses a bad reputation in the vicinity of his village, that he has only a nominal means of livelihood and that he has been suspected of having committed burglaries is not a proper notice inasmuch as the grounds stated are not sufficient grounds for taking action under S. 110. *Ram Rup Bhar v. Emperor.*

30 Cr. L. J. 1086 :
109 I. C. 571 : 1923 A. L. J. 981 :
I. R. 1929 All. 1067 : A. I. R. 1929 All. 813.

———S. 110 — *Notice — Ultimate order for security differing from terms of notice to show cause.*

Where a Magistrate orders any person to furnish security for good behaviour, his final order under S. 118 must correspond with the notice to show cause issued under S. 112. He cannot, in the final order, impose conditions as to the nature of the security required which were not in the notice. *Emperor v. Jangi Singh.*

4 Cr. L. J. 405 :
26 A. W. N. 276.

———Ss. 110, 112—*Notice, contents of.*

There is nothing in the rules of procedure leading to the conclusion that the information under S. 112 should be something in the nature of a charge or indictment. *Emperor v. Ram Ghulam.*

28 Cr. L. J. 744 :
103 I. C. 792 : 2 Luck. Cas. 157 :
8 A. I. Cr. R. 394 : A. I. R. 1927 Oudh 306.

———Ss. 110, 119, 109, 112, 438—*Notice—Notice to show cause cancelled—Reference to High Court—Interference.*

Where in a case under S. 110 evidence was produced before the Magistrate which he disbelieved, and in a reference to High Court under S. 438 against his order cancelling under S. 119 notice to show cause made under Ss. 109, 112, the District Magistrate stated some reasons why this evidence ought to be believed, but these reasons could be explained away: *Held*, that the case was not one in which the High Court should interfere and set aside the order of the Magistrate cancelling, under S. 119, the notice to show cause made under Ss. 109, 112. *Emperor v. Mulbe.*

38 Cr. L. J. 839 :
170 I. C. 482 : 1937 O. L. R. 432 (2) :
10 R. O. 14 : 1937 O. W. N. 816.

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———S. 110—*Onus of proof.*
See S. 110—*Jurisdiction.*

———S. 110—*Procedure—Accused bound down under cl. (f) —Appeal—Finding altered to cl. (e), effect of.*

Accused was bound down in security under clause (f) of S. 110. On appeal, the District Magistrate found that clause (e) of the section was more appropriate, and, applying that clause, reduced the period and amount of the security. In revision it was contended that the procedure of the District Magistrate was *ultra vires*: *Held*, that, inasmuch as clause (f) of the section describes the offence in clause (e) in an aggravated form and the accused was not prejudiced, there was no ground for interference. *Azizul Jabarkhan v. Emperor.*

21 Cr. L. J. 352 :
55 I. C. 688 : A. I. R. 1920 Nag. 67.

———S. 110—*Procedure—Accused's right of defence.*

A person against whom proceedings have been instituted is entitled as a matter of right, as any other accused person accused of a substantive offence; to have a reasonable opportunity afforded to him of defending himself. *Jatoi v. Emperor.*

27 Cr. L. J. 935 :
96 I. C. 391 : 20 S. L. R. 122 :
A. I. R. 1926 Sind 288.

———S. 110—*Procedure—Arrest of accused without warrant.*

A Police officer may arrest a person against whom proceedings under S. 110 are contemplated without a warrant or an order from a Magistrate. *Nepal v. Emperor.*

14 Cr. L. J. 618 :
21 I. C. 666 : 11 A. L. J. 596 : 35 All. 407.

———S. 110—*Procedure—Complaint to District Magistrate by tenants that landlord harassed them—Complaint forwarded to Sub-Divisional Officer—Police report called—Report not favourable—Magistrate still drawing up proceedings—Sessions Judge moved but refusing to interfere—District Magistrate also moved who ordered fresh local enquiry after transferring case—Magistrate discussing matter with District Magistrate, no fresh enquiry—High Court quashed proceedings and transferred case.*

The District Magistrate who received a petition from a number of tenants that the landlord harassed them, forwarded it to the Sub-Divisional Officer. The Sub-Divisional Magistrate ordered the Police to make enquiry before drawing up proceedings under S. 110 against the landlord. The Police reported that the matter was of a civil nature. The Magistrate, however, drew up proceedings under S. 110, when there was no further material except the complaint-petition which did not mention names of persons who were oppressed or the place or date where and when the incidents took place. The landlord moved the Sessions Judge against this order but he refused to interfere. The District Magistrate was also moved and he transferred the case to the other Magistrate and ordered fresh local enquiry before continuing proceedings. This Magistrate noted in order-sheet that he had to discuss with the

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District Magistrate regarding his order to hold enquiry, and further noted after discussing personally that, the Magistrate had agreed with his view that no fresh enquiry was necessary. The landlord moved the High Court to quash the proceedings or to transfer them to another Magistrate: *Held*, quashing the proceedings and transferring the case to other Magistrate, (i) that there was no material for initiating the proceedings; (ii) that the landlord was not debarred from seeking the aid of the High Court even though he did not move the High Court immediately after the order of the Sessions Court; (iii) that the statement noted by the Magistrate regarding the discussion with the District Magistrate ought not to have found a place in the order-sheet. The District Magistrate had passed a judicial order and it was the bounden duty of the Magistrate to carry out that order. *Narendra Nath v. Emperor*.

39 Cr. L. J. 811 :
176 I. C. 849 : 19 P. L. T. 542 : 4 B. R. 757 :
11 R. P. 116 : A. I. R. 1938 Pat. 533.

—S. 110—*Procedure—Defence should be allowed to cross-examine prosecution witnesses.*

Neither the prosecution nor the defence, in proceedings under S. 110, or enquiries of this kind, ought to be hampered in any way. It ought to be open to the defence to cross-examine the prosecution witnesses if they wish to. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Jiban Kumar De*.

37 Cr. L. J. 818 :
163 I. C. 228 (2) : A. I. R. 1936 Cal. 292.

—S. 110—*Procedure—Deposition not read over to witnesses, effect of—Illegality.*

Where in a proceeding under S. 110 the provisions of S. 360 are not complied with, the inquiry is vitiated. *Narab Ali v. Emperor*.

26 Cr. L. J. 1233 :
88 I. C. 849 : 52 Cal. 470 :
A. I. R. 1925 Cal. 816.

—S. 110—*Procedure—Duty of Court.*

A Judge should not delegate his judicial functions to the Police. *Jogendra Kumar Nag v. Emperor*.

21 Cr. L. J. 709 (a) :
57 I. C. 940 : A. I. R. 1920 Cal. 556.

—S. 110—*Procedure—Duty of Court.*

In cases arising out of security proceedings, the Courts ought to approach the consideration of the case in a fair way, having regard to the interests not only of the prosecution but also the accused. *Gur Dayal v. Emperor*.

26 Cr. L. J. 99 :
83 I. C. 659 : A. I. R. 1925 Oudh 277.

—S. 110—*Procedure—Enquiries or trials.*

Proceedings under Chapter VIII are 'inquiries' and not 'trials'. *Bende Behari Nath v. Emperor*.

25 Cr. L. J. 1035 :
81 I. C. 907 : 50 Cal. 985 :
A. I. R. 1924 Cal. 392.

—S. 110—*Procedure—Enquiry and proof required.*

It is the duty of the Magistrate to proceed to enquire into the truth of the information on which he takes action, and it is only if upon

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such enquiry it is proved that it is necessary to take a bond from the person in respect of whom the enquiry has been made, that he can be ordered to execute a bond. *Ujagar Singh v. Emperor*.

30 Cr. L. J. 839 :
117 I. C. 807 : 10 Lah. 155 :
I. R. 1929 Lah. 695 : 30 P. L. R. 694 :
A. I. R. 1929 Lah. 504.

—S. 110—*Procedure—Evidence, consideration of.*

In enquiries under S. 110, the evidence should be kept strictly to the point at issue. *Emperor v. Nga Po*.

10 Cr. L. J. 355 :
3 I. C. 681 : 5 L. B. R. 72.

—S. 110—*Procedure—Examination of witnesses—Accused's right to cross-examine—Proper stage for calling upon accused to cross-examine—Magistrate's duty to give 'reasonable' opportunity.*

In the case of proceedings under S. 110 at any stage of the prosecution the Magistrate, if he is *prima facie* satisfied that there is a case against the accused, may interrupt the proceedings for the purpose of asking the accused whether he pleads guilty or whether he has any defence to make. If he decides to do that and the accused elects to defend, the Magistrate shall then ask the accused whether he wishes to cross-examine any of the prosecution witnesses, and if he says he does so wish, he must be given an opportunity of cross-examining them. If, on the other hand, the Magistrate desires to hear all the prosecution witnesses before asking the accused whether he wishes to plead guilty or to defend himself, he is at liberty to do so. But when the stage is reached of asking the accused whether he wishes to plead guilty or to defend, the accused must be allowed an opportunity of cross-examining any witnesses whom he desires to cross-examine. *Tirlok v. Emperor*.

28 Cr. L. J. 792 :
104 I. C. 232 : L. R. 8 All. 122 Cr. :
8 A. I. Cr. R. 183 :
25 A. L. J. 749 : 50 All. 71 :
A. I. R. 1927 All. 660.

—S. 110—*Procedure—Failure to cross-examine—Effect.*

Where the accused is an ignorant *Pasi* and could not be expected to know the legal presumption that uncross-examined evidence is probably reliable, the fact that the accused in S. 110 Proceedings, did not cross-examine prosecution witnesses, is of no value. *Emperor v. Muleb*.

38 Cr. L. J. 889 :
170 I. C. 482 : 1937 O. L. R. 432 (2) :
10 R. O. 14 : 1937 O. W. N. 816.

—S. 110—*Procedure—Failure to furnish security—Power of Magistrate to order imprisonment for period exceeding one year.*

Where a person accused under S. 110 is ordered by a Magistrate to furnish security for a period exceeding one year and the accused fails to furnish security, the Magistrate can only send the case to the Sessions Judge and detain the accused in prison pending the orders of the Sessions Judge. The Magistrate cannot himself sentence the accused to imprisonment subject

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to confirmation by the Sessions Judge. *Nanku v. Emperor*. 11 Cr. L. J. 637 : 8 I. C. 385 : 29 P. R. 1910 Cr.

———S. 110—*Procedure—Failure to give security—Imprisonment.*

Where by notice under S. 110 a person is called upon to show cause why he should not execute a bond, and the notice is made absolute, the Magistrate cannot sentence him to imprisonment on default. The case should be submitted to the Sessions Judge. *Abdul Karim v. Emperor*. 36 Cr. L. J. 1127 : 156 I. C. 659 : 8 R. Pesh. 3 : A. I. R. 1935 Pesh. 80 (2).

———S. 110—*Procedure—First order to coincide with information—Finding to coincide with first order—Non-compliance—Irregularity.*

The first order calling upon a person under S. 110 to furnish security should contain the substance of the information, no less and no more, and the finding on inquiry should coincide with the order as should the order with the information. If this procedure is not followed, the person charged is likely to be gravely prejudiced by the irregularity and the order of the Magistrate binding him over to furnish security is liable to be set aside. *Sullan Khan v. Emperor*. 26 Cr. L. J. 767 : 86 I. C. 351 : A. I. R. 1925 Sind 236.

———S. 110—*Procedure—Further cross-examination of prosecution witnesses.*

A person against whom proceedings under S. 110 are taken, is not entitled to re-call witnesses, who have given evidence against him, for further cross-examination. *Ahmad Baksh v. Emperor*. 17 Cr. L. J. 84 : 32 I. C. 676 : 1 P. R. 1916 Cr. : A. I. R. 1916 Lah. 295.

———S. 110—*Procedure—Further cross-examination, right of.*

A person proceeded against under S. 110 has no right to further cross-examine the prosecution witnesses under S. 256. *Bija v. Emperor*. 28 Cr. L. J. 239 : 99 I. C. 1039 : 8 Lah. 265 : 28 P. L. R. 438 : A. I. R. 1927 Lah. 470.

———S. 110—*Procedure—Initiation of security proceedings soon after discharge or acquittal—Court's duty to scrutinise evidence—Order for security, legality of.*

In cases where proceedings under S. 110 follow soon after a discharge or an acquittal, the Court must be satisfied that the proceeding was not instituted with a view to get a man punished when the Police had failed to secure his conviction for a substantive offence, and as such, in such cases the Courts are called upon to scrutinize the evidence with the greatest care. But if, notwithstanding such a scrutiny of evidence, the Court comes to the conclusion that there is sufficient evidence to warrant an order demanding security, the Court is bound to pass such an order. *Lachman v. Emperor*. 28 Cr. L. J. 515 : 102 I. C. 211 : L. R. 8 All. 70 Cr. : 7 A. I. Cr. R. 482 : A. I. R. 1927 All. 473.

———S. 110—*Procedure—Insisting on immediate cross-examination, legality of.*

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A Magistrate cannot insist on the prosecution witnesses being cross-examined by the accused immediately, whether they wish to do so or not. *Tirlok v. Emperor*. 28 Cr. L. J. 792 : 104 I. C. 232 : L. R. 8 All. 122 Cr. : 8 A. I. Cr. R. 183 : 25 A. L. J. 749 : 50 All. 71 : A. I. R. 1927 All. 660.

———S. 110—*Procedure—Judgment, contents of.*

In cases of security for good behaviour, a brief and laconic judgment is not sufficient. Evidence for the prosecution, and the evidence for the defence should be discussed. *Muhammad Hussain v. Emperor*. 17 Cr. L. J. 142 : 33 I. C. 318 : 30 P. L. R. 1916 : A. I. R. 1916 Lah. 412.

———S. 110—*Procedure—Judgment, contents of.*

Where the judgment of a District Magistrate was: "It is obvious that if one quarter of the evidence for the prosecution is true, and I see no reason to doubt that it is, the appellant is a most proper person to be bound over under S. 110 :—" Held, that it was no judgment at all and could not stand. *Bansi Dhar v. Emperor*. 18 Cr. L. J. 649 : 40 I. C. 297 : 4 O. L. J. 141 : A. I. R. 1917 Oudh 113.

———S. 110—*Procedure—Magistrate, duty of.*

In dealing with cases under Chap. VIII, Magistrates ought, especially where no previous conviction is proved, to take great care to test the evidence for the prosecution. *Chintamon Singh v. Emperor*. 7 Cr. L. J. 146 : 7 C. L. J. 177 : 12 C. W. N. 299 : I. L. R. 35 Cal. 243.

———S. 110—*Procedure.*

Magistrate has no power to limit number of defence witnesses—Magistrate should not act as Prosecutor. *Raghubar Dayal v. Emperor*. 36 Cr. L. J. 33 : 152 I. C. 120 : 3 A. W. R. 655 : L. R. 15 All. 79 Cr. : 7 R. A. 261 : A. I. R. 1934 All. 735.

———S. 110—*Procedure—Omission to examine accused.*

The omission to examine formally a person called on to furnish security is an irregularity curable by S. 537 of the Code. *Benode Behari Nath v. Emperor*. 25 Cr. L. J. 1085 : 81 I. C. 909 : 50 Cal. 985 : A. I. R. 1924 Cal. 392.

———S. 110—*Procedure—Opportunity to bring defence witnesses.*

In a proceeding under S. 110, the accused person must have time to bring his witnesses and have their evidence recorded. Where the accused had not had this opportunity, the order against him must be set aside. *Keramuddin Sarkar v. Emperor*. 15 Cr. L. J. 353 : 23 I. C. 721 : 41 Cal. 806 : A. I. R. 1914 Cal. 357.

———S. 110—*Procedure—Order binding over, when to be passed—Conclusive proof of charge, necessity of.*

An order binding a person over to be of

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good behaviour cannot be passed unless the record upon which the order is passed, conclusively proves the charge read out to him under S. 110. *Din Dayal v. Emperor*.

28 Cr. L. J. 8 :

99 I. C. 40 : A. I. R. 1927 All. 146.

—S. 110—*Procedure—Order sending the security to the Tahsildar and Sub-Inspector of Police for attestation—Legality.*

Where the accused's security bond was forwarded to the Tahsildar and the Sub-Inspector of Police for attestation: *Held*, that the procedure adopted by the Magistrate was illegal and he was directed to make the inquiry himself. *Mithoo v. Emperor*.

5 Cr. L. J. 181 :

2 P. W. R. Cr. 15 : 57 P. L. R. 1907.

—S. 110—*Procedure.*

Per *Ashworth, J.*—Reference to general observations as to the evidence admissible in cases under S. 110 is to be deprecated. *Emperor v. Kumera*.

30 Cr. L. J. 755 :

125 I. C. 19 : 51 All. 275 :

A. I. R. 1929 All. 650.

—S. 110—*Person proceeded against not accused.*

A person proceeded against under Chapter VIII is not an 'accused' person as the expression is used in the Cr. P. C. *Benode Behari Nath v. Emperor*.

25 Cr. L. J. 1085 :

81 I. C. 909 : 50 Cal. 985 :

A. I. R. 1924 Cal. 392.

—S. 110—*Procedure—Personal knowledge.*

A Magistrate should decide a case only upon the evidence on the record and ought not to import his personal knowledge into a judicial pronouncement. *Muhammad Khan v. Emperor*.

25 Cr. L. J. 808 :

81 I. C. 344 : A. I. R. 1925 Lah. 166.

—S. 110—*Procedure—Previous acquittal—Magistrate, whether can question legality of acquittal.*

Where an accused person is being tried by a Magistrate under S. 110 and it is found that in a previous case of dacoity he was acquitted by the Court of Sessions, it is not for the Magistrate to question in his judgment the decision of the Sessions Judge. *Badlu v. Emperor*.

20 Cr. L. J. 727 (b) :

52 I. C. 887 : A. I. R. 1919 All. 393.

—S. 110—*Procedure—Previous convictions, proof of.*

In proceedings under S. 110, it is not necessary to prove a previous conviction in the same formal manner as that required by the provisions of Ss. 310 and 311. *Emperor v. Bachchu*.

37 Cr. L. J. 390 :

160 I. C. 1039 : 1936 O. W. N. 247 :

1936 O. L. R. 128 : 8 R. O. 297 :

A. I. R. 1936 Oudh 238.

—S. 110—*Procedure—Previous convictions, proof of.*

Presidency Magistrates are not absolved from

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the ordinary rules of evidence in taking proof of previous convictions. Such previous convictions must be proved strictly and in accordance with law. Unless they are so proved, no Court can properly take such previous convictions into consideration against an accused person. *Emperor v. Sheikh Abdul*. 17 Cr. L. J. 185 : 33 I. C. 825 : 20 C. W. N. 725 : 43 Cal. 1128 : A. I. R. 1915 Cal. 344.

—S. 110—*Procedure—Private enquiries by Magistrate.*

Where a Magistrate has made private enquiries, and has allowed actual information *ad hominem* to influence his judgment in a judicial decision against particular individuals brought before him by process of law, his order is liable to be quashed as being vitiated by the admission of such information. *Ashiq Ali v. Emperor*.

24 Cr. L. J. 593 :

73 I. C. 337 : 21 A. L. J. 513 :

A. I. R. 1923 All. 596.

—S. 110—*Procedure—Proceedings under—Magistrate declining to examine all defence witnesses, effect of.*

In a proceeding under S. 110, the Magistrate after recording the evidence of as many witnesses for the defence as had been examined on behalf of the prosecution, declined to examine the rest of the witnesses for the defence: *Held*, that it was not open to the Magistrate to put such an arbitrary limit on the witnesses whose evidence the defence desired to adduce. *Amirulla Pramanik v. Emperor*.

20 Cr. L. J. 201 :

49 I. C. 649 : 22 C. W. N. 408 :

A. I. R. 1919 Cal. 69.

—S. 110—*Procedure—Proceedings under Ss. 190 (c) and 191, if apply.*

The provisions of S. 190 (c) and S. 191 do not apply to proceedings under S. 110. *In the matter of the Petition of: Mithu Khan*.

1 Cr. L. J. 807 :

24 A. W. N. 206 : I. L. R. 27 All. 172 :

1 A. L. J. 685.

—S. 110—*Procedure—Re-committal to jail after forfeiture is illegal.*

A person against whom an order had been made under S. 110, cannot be re-committed to jail upon the forfeiture of his bond, except by fresh proceedings being taken against him. *Emperor v. Ignatio Reis*.

14 Cr. L. J. 430 :

20 I. C. 414 : U. B. R. 1913 1 159.

—S. 110—*Procedure—Right to further cross-examination.*

S. 256, Cr. P. C. has no application to a case under S. 110, and a person called upon to show cause under S. 110, has no right to further cross-examine the prosecution witnesses under S. 256. *Chintamon Singh v. Emperor*.

7 Cr. L. J. 146 :

7 C. L. J. 177 : 12 C. W. N. 299 :

I. L. R. 35 Cal. 243.

—S. 110—*Procedure—Security for good behaviour—Person brought before a Magistrate illegally—Bail—Power to call for bail.*

A. was summoned by the Police and then placed before a Magistrate who called upon A.

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to furnish security under S. 110, Cr. P. C. The Magistrate postponed the hearing of the case and bound over A. in the sum of Rs. 250 for appearance on the next date. A. was not arrested by the Police on a warrant. A. applied to the High Court for the setting aside of the proceedings on the ground that the procedure laid down under S. 110 was not followed: *Held* (1) that, whether A. was brought before the Magistrate legally or illegally, and whether he was under arrest or not, the Magistrate was justified in treating A. as a person present in Court, and the Magistrate must be taken to have acted under S. 113; (2) That, under the circumstances of the case, the Magistrate had the power to require bail from A. *Emperor v. Gulam.*

12 Cr. L. J. 533 :
12 I. C. 301.

———S. 110—*Procedure—Security for good behaviour rejected on the report of the Tahsildar and Sub-Inspector—Illegality of the procedure.*

The Magistrate sent the security to the *Tahsildar* for inquiry as to its sufficiency. On the report of the *Tahsildar* and the Sub-Inspector which was to the effect that the surety was a man of property, but was objectionable on other grounds, the Magistrate rejected the security: *Held*, that order of the Magistrate was illegal and he was directed to accept the security offered unless he was satisfied by personal inquiry that it was inadequate in value. *Jawahira v. Emperor.*

5 Cr. L. J. 179 :
2 P. W. R. Cr. 14.

———S. 110—*Procedure—Security for good behaviour—Subsequent conviction—Forfeiture of bond—Imprisonment for unexpired portion of period of security.*

Where a person has given security for good behaviour and is subsequently convicted (of criminal trespass) the amount of his forfeited bond may be exacted, but he cannot be forthwith committed to prison for the unexpired portion of the term for which security had been taken. *Semble*: the Magistrate's remedy is to take fresh proceedings under Chapter VIII. *Jagdeo Singh v. Emperor.*

3 Cr. L. J. 456 :
26 A. W. N. 142 : 28 All. 629.

———S. 110—*Procedure—Substance of information received, record of—Validity of proceedings.*

Where an order under S. 110 really discloses the substance of the information recorded by the Magistrate, the proceedings are legal and valid. *Fakir Bux v. Emperor.*

27 Cr. L. J. 833 :
95 I. C. 753 : A. I. R. 1926 Sind 244.

———S. 110—*Procedure—Witnesses for prosecution examined after defence witnesses.*

In a proceeding under S. 110 the Sub-Divisional Magistrate examined some of the prosecution witnesses after the case of the defence had been closed, without recording any reason for doing so: *Held*, that the procedure was erroneous and unauthorised. *Ganga Singh v. Emperor.*

13 Cr. L. J. 772 :
17 I. C. 404 : 10 A. L. J. 383.

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———Ss. 110, 109—*Procedure—Order during pendency of order under S. 109.*

An order under S. 110, Cr. P. C., during continuance of an order under S. 109 of the same Code is permissible under law. *Ghulam Ali v. Emperor.*

1 Cr. L. J. 457 :
8 C. W. N. 543.

———S. 110—*Procedure—Scope of S. 117 (2) "The manner hereinafter.....in warrant cases" whether covers special procedure contained in Chaps. XX and XXI and general provisions found in Chaps. XXIV.*

The words "the manner hereinafter prescribed for conducting trials and recording evidence in warrant cases in cl. (2) S. 117 are, wide enough to cover the special procedure laid down for the trial of summons or warrant cases in Chaps. XX and XXI, as well as the general provisions as to inquiries and trials contained in Chaps. XXIV. *Mahtab Singh v. Emperor.*

38 Cr. L. J. 804 :
169 I. C. 833 : 1937 A. L. J. 373 :
10 R. A. 71 : A. I. R. 1937 All. 438.

———S. 110, 118, 123 (2)—*Procedure—Security for good behaviour—Period exceeding one year—Procedure—Determination of imprisonment in default of security—Power to grant bail.*

If the period for which the security is demanded exceeds one year, then the Magistrate is required by S. 123 (2) to submit the record to the Sessions Judge, and it is for the Sessions Judge after examining the record to pass such orders as he thinks fit. In such cases, the order fixing the term of imprisonment which the accused is to undergo on default of furnishing the security is to be fixed by the Sessions Judge and not by the trial Magistrate. After a Magistrate has submitted the record under S. 123 (2), to the Sessions Judge, the seizure of the case is with the latter Court and the petitioner can be released on bail by that Court and not by the trial Magistrate. *Mangal Singh v. Emperor.*

28 Cr. L. J. 657 :
103 I. C. 193 : A. I. R. 1928 Lah. 189.

———S. 110.—*Procedure—Ss. 110, 119—Security for good behaviour—Accused discharged—Fresh proceedings—District Magistrate, power of—Notice.*

An accused under S. 110 was discharged by a Magistrate under S. 119. On a note being put up by a Superintendent of Police, the District Magistrate without himself taking fresh evidence and without issuing a notice to the accused to show cause why the order of discharge should not be set aside, ordered proceedings to be taken up by another Magistrate and directed him to issue notice to the accused: *Held*, that the order of the District Magistrate could not stand and must be set aside, but that it was open to the District Magistrate to issue notice himself to the accused to show cause why the order of discharge should not be set aside and the case re-tried. *Jaswant v. Emperor.*

23 Cr. L. J. 62 :
64 I. C. 846 : 19 A. L. J. 985.

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———Ss. 110, 123 (2)—*Procedure—Case coming before Sessions Judge—His duty.*

When a case submitted under S. 123 (2) comes up before a Sessions Judge, it is his duty to issue notice to the accused and, after hearing him or his counsel and examining the record, to come to an independent finding on the merits as to whether the order furnishing security is or is not justified and, if so, for what period and in what sum the security should be demanded. *Mangal Singh v. Emperor.* 28 Cr. L. J. 657 : 103 I. C. 193 : A. I. R. 1928 Lah. 189.

———Ss. 110, 256—*Procedure — Applicability of, to security proceedings.*

S. 256, Cr. P. C. is applicable to inquiry into case under S. 110. *Chandan v. Emperor.*

31 Cr. L. J. 627 :
124 I. C. 40 : 1930 A. L. J. 389 :
A. I. R. 1930 All. 274.

———S. 110 (e) (f)—*Application of—Accused, a smuggler.*

Allegation that a person is a smuggler does not lead to conclusion that he is a person contemplated by cls. (e) and (f), S. 110—Nature of proof necessary for action under S. 110 stated. *Abdul Karim v. Emperor.* 36 Cr. L. J. 1127 : 156 I. C. 659 : 8 R. Pesh. 3 : A. I. R. 1935 Pesh. 80 (2).

———S. 110—*Reference—Duty of Sessions Judge.*

It is the duty of a Sessions Judge, in the case of a reference under S. 123, to consider the evidence and to pass an order after doing so. He should not, just as a matter of course, and without regard to the evidence, send to prison the person who has failed to give the security ordered. *Nanku v. Emperor.*

11 Cr. L. J. 637 :
8 I. C. 385 : 29 P. R. 1910 Cr.

———S. 110—*Reference.*

S. 362 does not apply to cases under S. 110 where it has become necessary to make a reference to the High Court. *Emperor v. Nepal Shikary.*

10 Cr. L. J. 122 :
2 I. C. 651 : 9 C. L. J. 439 :
13 C. W. N. 318.

———S. 110—*Reference—Security for good behaviour—Jurisdiction of District Magistrate to cancel bonds, nature of—Reference to High Court—Revision.*

S. 125 of the Cr. P.C. does not confer appellate or revisional jurisdiction upon a District Magistrate enabling him to cancel a bond executed in pursuance of an order under S. 110 upon an application made to him in this behalf. The proper course in such a case is for the District Magistrate to submit the case to the High Court with a recommendation that the bond be cancelled, if he is of opinion that this should be done. *Shanker Lal v. Emperor.*

20 Cr. L. J. 489 :
51 I. C. 473 : 17 A. L. J. 830 :
1 U. P. L. R. All. 125 : 41 All. 651 :
A. I. R. 1919 All. 205.

———S. 110—*Reputation—Proof.*

A list of crimes in which the accused was

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suspected by a Police Officer is inadmissible in evidence to establish the reputation of the accused. *Babu Pershad v. Emperor.*

13 Cr. L. J. 9 :
13 I. C. 102.

———S. 110—*Revision.*

Bad livelihood proceedings—Pendency for a long time due to fault of accused—Murder of witnesses in bad livelihood case—Proceedings cannot be stayed by High Court. *Girdhari Ahir v. Emperor.*

34 Cr. L. J. 1145 :
146 I. C. 37 : 6 R. P. 224 :
A. I. R. 1933 Pat. 116.

———S. 110—*Revision.*

Revision—High Court is only to see whether the Court below considered the case in a fair way having regard to the interest not only of the prosecution but also of the accused. *Likh Singh v. Emperor.*

35 Cr. L. J. 403 :
147 I. C. 388 : 6 R. O. 264 :
11 O. W. N. 84 : A. I. R. 1934 Oudh 49.

———S. 110—*Revision—High Court's powers.*

The High Court always maintains a general power of revision in order to ensure that these provisions are not made engines of oppression. *Gurbakhsh Singh v. Emperor.*

12 Cr. L. J. 542.

———S. 110—*Revision—High Court, power of—Duty of Lower Courts.*

A High Court is not a Court of Appeal in cases under S. 110, and the responsibility of administering that section, does not rest with it. It is nevertheless a section which Magistrates ought to administer with the most scrupulous care, both as the Court of first instance and the Appellate Court. A High Court ought only to see whether the Court below has approached the consideration of the appeal in a fair way having regard to the interest not only of the prosecution but also of the accused. *Miharban Singh v. Emperor.*

16 Cr. L. J. 805 :
31 I. C. 821 : 13 A. L. J. 1046 :
A. I. R. 1915 All. 464.

———S. 110—*Revision—Interference.*

It is only when something appears unsatisfactory and unusual in the proceedings of the Lower Court that the High Court will look into the record to examine whether the order under S. 110 has been properly passed. *Raj Narayan Panday v. Emperor.*

28 Cr. L. J. 502 :
101 I. C. 886 : L. R. 8 All. 53 Cr. :
25 A. L. J. 393 : 7 A. I. R. Cr. 353 :
A. I. R. 1927 All. 394.

———S. 110.

Revision—Interference—Power to demand security from suspected persons is the concern of Magistrate and local Police. High Court will interfere only on clear grounds showing miscarriage of justice. *Parbati Charan v. Emperor.*

35 Cr. L. J. 952 :
149 I. C. 408 : 61 Cal. 588 :
6 R. C. 593 : A. I. R. 1934 Cal. 482.

———S. 110—*Revision—Interference.*

The High Court is not a Court of Appeal for cases under S. 110, and it is only in very rare

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cases that it will interfere. *Jabruddin v. Emperor*.
20 Cr. L. J. 689 :

52 I. C. 657 : 1 U. P. L. R. All. 143 :
A. I. R. 1919 All. 136.

—S. 110—Revision—Interference.

When there appears anything unsatisfactory or unusual in the proceedings of the Lower Court, High Court will look into the record to satisfy itself. *Khairatiram v. Emperor*.

33 Cr. L. J. 324 :
136 I. C. 753 : I. R. 1932 Sind 49 :
A. I. R. 1932 Sind 100.

—S. 110—Revision—Interference.

Where the evidence against persons charged with bad livelihood under S. 110 is general and vague, a High Court would refuse to confirm the Presidency Magistrate's order under S. 118 against such persons. *Emperor v. Sheikh Abdul*.

17 Cr. L. J. 185 :
33 I. C. 825 : 20 C. W. N. 725 : 43 Cal. 1128 :
A. I. R. 1916 Cal. 344.

—Ss. 110, 112—Revision—Interlocutory order—Interference.

The Chief Court is competent to revise the interlocutory order passed by a Magistrate under S. 112 if sufficient grounds are made out for the exercise of its revisional jurisdiction. *Bahadur Singh v. Emperor*. 11 Cr. L. J. 388 :

6 I. C. 626 : 18 P. W. R. Cr. 1910.

—S. 110—Revision—Magistrate's jurisdiction to initiate—Power of Superior Court to examine materials.

Magistrates have complete jurisdiction to initiate proceedings under S. 110 provided that they are satisfied that there are sufficient materials for doing so, but in each case, the Superior Court will examine, if necessary, the materials upon which the proceedings are based. *Narendra Nath Jha v. Emperor*.

39 Cr. L. J. 811 :
176 I. C. 849 : 19 P. L. T. 542 : 4 B. R. 767 :
11 R. P. 116 : A. I. R. 1938 Pat. 533.

—S. 110—Revision—Proceeding pending—Interference of.

The High Court does not, as a rule, interfere in any pending proceeding unless there is some strong ground for intervening. *Ghulam Rasul v. Emperor*.

20 Cr. L. J. 30 (b) :
48 I. C. 510 : A. I. R. 1919 Cal. 872.

—S. 110—Revision—Proceedings not bona fide—High Court's power of interference.

If it is established that the proceedings are not bona fide, and that in substance, their continuance would mean an abuse of statutory provisions on the subject, it is not only competent to the High Court but it is its obvious duty to interfere with the proceedings at the initial stage. *Rajendra Narayan Singh v. Emperor*.

14 Cr. L. J. 5 :
18 I. C. 149 : 16 C. L. J. 467 : 17 C. W. N. 238.

—S. 110—Revision—Application admitted on certain grounds—Procedure.

Where a party applies for revision and obtains an order issuing notice to show cause, he should, at the hearing, confine himself to the grounds

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upon which that order was made. *Rajbansi v. Emperor*. 22 Cr. L. J. 228 :

60 I. C. 420 : 18 A. L. J. 673 : 42 All. 646.

—S. 110—Revision, interference in.

The High Court will not interfere on the merits with proceedings under S. 110 except in very exceptional cases, provided that the Court hearing the appeal under S. 406 shows in its judgment that it has really and not merely nominally gone through the evidence on the record. *Shiam Lal v. Emperor*.

9 Cr. L. J. 528 :
2 I. C. 225 : 6 A. L. J. 487.

—S. 110—Revision—Questions of fact—High Court, whether will interfere.

Ordinarily, the High Court will not interfere in revision on questions of fact under S. 110; it will interfere in such cases only when the evidence against the accused is extremely vague, general in character, and the prosecution fail to establish their case. *Bisheshwar Dayal v. Emperor*.

22 Cr. L. J. 660 :
63 I. C. 452 : 19 A. L. J. 668 :
A. I. R. 1921 All. 7.

—Ss. 110, 406—Revision—Judgment of lower Appellate Court very sketchy—Evidence not examined or weighed carefully—High Court's power to interfere on merits.

The High Court will not ordinarily interfere on merits with proceedings under S. 110, provided that the Court hearing the appeal under S. 406 shows in its judgment that it has really and not merely nominally considered the evidence on the record. Where the judgment of a District Magistrate, deciding in appeal a case under S. 110 is very short and does not show that the evidence was at all examined and carefully weighed, the High Court will interfere on merits in revision. *Babu Pershad v. Emperor*.

13 Cr. L. J. 9 ;
13 I. C. 102.

—Ss. 110, 435—Revision.

A Sessions Judge has power under S. 435 to call for the record of proceedings under S. 110 before an inferior Criminal Court within his jurisdiction, and to refer the matter to the High Court. *Ashiq Ali v. Emperor*.

24 Cr. L. J. 593 :
73 I. C. 337 : 21 A. L. J. 513 :
A. I. R. 1923 All. 596.

—Ss. 110, 437—Revision.

Order of discharge by Magistrate in proceedings under S. 110—District Magistrate's power. *Kharga v. Emperor*. 15 Cr. L. J. 39 :

22 I. C. 183 : 12 A. L. J. 167 : 36 All. 147 :
A. I. R. 1914 All. 158.

—Ss. 110, 437—Revision—Discharge—District Magistrate's power to interfere.

Where a Subordinate Magistrate has ordered the discharge of an accused person in a proceeding taken under S. 110, the District Magistrate can revise the order under S. 437. *Kharga v. Emperor*. 15 Cr. L. J. 39 :

22 I. C. 183 : 12 A. L. J. 167 : 36 All. 147 :
A. I. R. 1914 All. 158.

—S. 110, 439—Revision—Interference.

The High Court is not a Court of Appeal in

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cases under S. 110, and if it is satisfied that the Courts below have approached the consideration of the evidence in a fair way, it is not called upon in revisions against orders passed under S. 110 to weigh the evidence given on behalf of one side or the other. But at the same time, before affirming an order the Court is to be satisfied that the evidence in the case was of a character which made it imperative in the interests of public security to pass an order under S. 118. *Lachman v. Emperor*.

28 Cr. L. J. 515 :

102 I. C. 211 : L. R. 8 All. 70 Cr. :

7 A. I. Cr. R. 482 : A. I. R. 1927 All. 473.

———S. 110—Scope—Applicability of S. 356 to proceedings under S. 110.

Under S. 117 (2) the Magistrate's inquiry in cases of security for good behaviour must conform with the procedure prescribed in warrant cases and, therefore, S. 256 is applicable to such proceedings. The record should show whether the accused wished to cross-examine any of the witnesses for the prosecution already examined, and should, if he wishes, be allowed to cross-examine them. *Emperor v. Lausha*.

12 Cr. L. J. 89 (a) :

9 I. C. 468 : 4 Bur. L. T. 24.

———S. 110—Scope—"By habit" and "habitually," meaning of.

The word "by habit" as used in S. 110 (d) means persistence in doing an act, a fact which is capable of proof by adducing evidence of the commission of a number of similar acts. The word does not merely signify an inclination by nature to do such acts. The word "habitually" in the same section means repeatedly or persistently. *Local Government v. Hanmant Rao*.

25 Cr. L. J. 60 :

75 I. C. 764 : A. I. R. 1924 Nag. 19.

———S. 110—Scope—"Conviction" and 'acquittal,' meaning of.

The terms 'conviction' and 'acquittal' are not appropriate or properly applicable to an order in security proceedings. *Emperor v. Kurca*.

30 Cr. L. J. 122 :

113 I. C. 232 : 26 A. L. J. 519 :

L. R. 9 All. 75 Cr. : 9 A. I. Cr. R. 467 :

I. R. 1929 All. 193 : A. I. R. 1928 All. 357.

———S. 110—Scope—Detention of suspected in jail.

S. 110 is not intended to afford the Police a means of keeping a suspected person under detention until they are able to work out a case against him. Action of this kind on the part of the Police tends to throw doubt upon their work generally and a Magistrate should not detain a person under S. 110 unless he has the necessary information upon which he can make the order in writing required by S. 112. *Emperor v. Paimal Nai*.

13 Cr. L. J. 827 :

17 I. C. 571 : 10 A. L. J. 351.

———S. 110—Scope—Ex-convict—Jurisdiction for an order to furnish security.

Security cannot be demanded of an ex-convict, where there is nothing to show that since he got out of jail he has been a bad character or has

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done something that would justify an order under S. 110. *Nanku v. Emperor*. 11 Cr. L. J. 637 : 8 I. C. 385 : 29 P. R. 1910 Cr.

———S. 110—Scope—Failure of substantive charge—Security.

Where a substantive charge is made against a person, and that charge breaks down, it is improper for the Court to make use of S. 110 and bind him over in the security. *Raja Ram v. Emperor*.

22 Cr. L. J. 273 :

60 I. C. 673 : 23 O. C. 371.

———S. 110—Scope—Imprisonment for failure to furnish security—Accused, whether can be bound down on suspicion soon after release.

An order under S. 110 cannot be made against an accused person who has been imprisoned for failure to furnish security under that section, until he has had time after his release either to retrieve his character or to show that he has no intention of doing so. *Nga Po Hmi v. Emperor*.

17 Cr. L. J. 85 :

32 I. C. 677 : U. B. R. 1915 II 86 :

A. I. R. 1916 U. Bur. 11.

———S. 110—Scope—Object of—Imprisonment in default of furnishing security, nature of.

S. 110 being essentially a preventive rather than a punitive provision, in ordinary cases where imprisonment is awarded in default of furnishing securities, such imprisonment should be simple, but where the accused is by habit a thief, robber and house-breaker and a desperate and dangerous character, having been previously convicted under S. 110, the imprisonment might be rigorous. *Gandharp Singh v. Emperor*.

21 Cr. L. J. 580 :

57 I. C. 100 : 2 U. P. L. R. All. 159 :

18 A. L. J. 640 : 42 All. 563 :

A. I. R. 1920 All. 205.

———S. 110—Scope—Object of section.

The object of S. 110 of the Cr. P. C. is preventive and not punitive and to afford protection to the public against the repetition of crimes in which the safety of property is menaced and not the security of persons alone is jeopardised. *Rajendra Narayan Singh v. Emperor*.

14 Cr. L. J. 5 :

18 I. C. 149 : 16 C. L. J. 467 :

17 C. W. N. 238.

———S. 110—Scope—Order for security against person already under security.

Proceedings under the section cannot be taken against a person who is already placed under security by another Magistrate. *Beni Singh v. Emperor*.

30 Cr. L. J. 756 :

117 I. C. 346 : I. R. 1929 All. 698 :

A. I. R. 1929 All. 608.

———S. 110—Scope—Penal Code (Act XLV of 1860), S. 401—Conviction under S. 110, nature of—Order, whether bar to trial under S. 401, Penal Code.

A conviction under S. 110 has nothing to do with the punishment for an offence. An order under that section is merely preventive and only binds a person down to be of good behaviour and is not punishment for any offence committed by him. Consequently, there

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is no bar to the subsequent punishment of a person so bound down for an offence under S. 401 of the Penal Code. *Kasem Ali v. Emperor*.

21 Cr. L. J. 386 :
55 I. C. 994 : 47 C. L. J. 192 :
A. I. R. 1920 Cal. 87.

———S. 110—Scope—Primary object of—Imprisonment in default.

The primary object of Chapter VIII of the Code is that persons of ill-repute should be put on security, not that they should be imprisoned as a punishment of safeguard. Therefore, imprisonment in default, should be the exception, not the ordinary consequence of an offence under that chapter. *Nga Po Aung v. Emperor*.

5 Cr. L. J. 377 :
13 Bur. L. R. 91.

———S. 110—Scope—Proceedings, nature of.

The proceedings under S. 110 are judicial and not executive. *Nur Din alias Kada v. Emperor*.

1 Cr. L. J. 99 :
5 P. L. R. 76 : 27 P. R. Cr. 1903.

———S. 110—Scope—Proceedings under, when to be taken.

Proceedings under S. 110 are not intended to enable the Police to get a person sent to Jail where sufficient evidence is not forthcoming to prosecute him for any specific offence. Such proceedings should be taken with great care and caution. *Harnam Das v. Emperor*

22 Cr. L. J. 269 :
60 I. C. 669.

———S. 110—Scope—Prosecution for substantive offence not likely to succeed—Proceedings for security, propriety of.

The prosecuting agency should not adopt the course of taking action under Chap. VII, Cr. P. C., where it is feared that the bolder action of prosecuting for a substantive offence is likely to fail. *Manni Lal v. Emperor*.

30 Cr. L. J. 694 :
116 I. C. 801 : I. R. 1929 All. 628 :
1929 A. L. J. 93 : 51 All. 459 :
A. I. R. 1928 All. 682.

———S. 110—Scope.

S. 110 is not intended to be used to punish accused persons for offences that have been committed. *Jafar Hussain v. Emperor*.

35 Cr. L. J. 1135 :
147 I. C. 551 : 1933 A. L. J. 883 :
L. R. 14 All. 413 Cr. : 6 R. A. 534 :
A. I. R. 1933 All. 859.

———S. 110—Scope—Stolen property, what is.

Where only the words "stolen property" are used, they do not mean property transferred by the commission of dacoity. *Manni Lal v. Emperor*.

30 Cr. L. J. 694 :
116 I. C. 801 : I. R. 1929 All. 628 :
1929 A. L. J. 93 : 51 All. 459 :
A. I. R. 1928 All. 682.

———S. 110—Scope.

The provisions of the section were never intended to be applied to coerce landlords, however recalcitrant they might be, to adopt methods of management of their estate, the

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efficacy of which, very indiscreetly perhaps, they might not appreciate, though pressed upon them with the best of intentions. *Rajindra Narayan Singh v. Emperor*.

14 Cr. L. J. 5 :
18 I. C. 149 : 16 C. L. J. 467 :
17 C. W. N. 238.

———Ss. 110, 192—Transfer from one Court to another.

Inasmuch as a proceeding under S. 110 is a case, the transfer of such a proceeding from the Court of one Magistrate to that of another is authorised by S. 192 of the Code. *Hiranand Ojha v. Emperor*.

24 Cr. L. J. 31 :
71 I. C. 79 : 1 Pat. 621 : 4 P. L. T. 44 :
A. I. R. 1922 Pat. 586.

———S. 110—Surety—Acceptance.

Where the surety is competent from the pecuniary point of view and no other cause of unfitness is shown, he ought to be accepted. *Jaffar Ali v. Emperor*.

11 Cr. L. J. 392 :
6 I. C. 668 : 14 C. W. N. 666.

———S. 110—Surety—Bond, contents of.

When a bond is not executed till after the date on which the period for which security is required commences, it should state plainly the date on which the period expires. *Emperor v. Nga Po Sin*.

13 Cr. L. J. 62 :
13 I. C. 398 : 4 Bur. L. T. 270.

———S. 110—Surety—Breach of bond, what is.

It is not necessary in order to constitute breach of a bond that the offence committed or attempted or abetted by the person bound over should be *ejusdem generis* with the offence for which he was bound over. *Sheo Mangat Prasad v. Emperor*.

30 Cr. L. J. 203 :
113 I. C. 740 : 26 A. L. J. 443 :
L. R. 9 All. 68 Cr. : 9 A. I. Cr. R. 443 :
50 All. 666 : I. R. 1929 All. 124 :
A. I. R. 1928 All. 232.

———S. 110—Surety—Condition as to residence of surety.

A Magistrate, while acting under S. 110, ordered that security must be furnished of a respectable gentleman residing in the same or a neighbouring village in which the accused was living : *Held*, that it was quite unnecessary to demand that the surety should be a resident of any particular place. *Zikri v. Emperor*.

12 Cr. L. J. 472 :
11 I. C. 1008 : 8 A. L. J. 785.

———S. 110—Surety—Conviction of person under security—Forfeiture of bond—Proper procedure.

One F was put on Rs. 1,000 security for a year under S. 110. Before the year was over, he was convicted of an offence under S. 323, I. P. C., and sentenced to imprisonment for two weeks and a fine of Rs. 20. Upon this, the District Magistrate confiscated Rs. 205 of the security money from F and his sureties jointly : *Held*, that there was no real ground for dealing heavily with the surety and a forfeiture of Rs. 50 as against the principal F was enough in

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the circumstances of the case. *Fatia v. Emperor*.
16 Cr. L. J. 287 :

28 I. C. 335 : 6 P. R. 1915 Cr. :
A. I. R. 1915 Lah. 446.

—S. 110—*Surety—Effect of forfeiture of bond.*

A bond after it is forfeited or the penalty under it has been exacted, ceases to remain in force. *Emperor v. Ignatio Reis*.

14 Cr. L. J. 430 :
20 I. C. 414 : U. B. R. 1939 I. 159.

—S. 110—*Surety—Enquiry about fitness.*

A Magistrate should inquire himself into the question of eligibility of a person as surety and not delegate such inquiry to any one else: A delegation of the power to inquire into questions of the eligibility of surety to the Sub-Inspector who was the same who had challaned the case, is peculiarly objectionable. *Mahala v. Emperor*.

16 Cr. L. J. 337 :
28 I. C. 721 : 6 P. R. 1914 Cr. :
142 P. L. R. 1914 : A. I. R. 1914 Lah. 492.

—S. 110—*Surety—Fitness.*

It is not to be supposed that only holders of landed property can be suitable sureties. *Nga Heim v. Emperor*.

16 Cr. L. J. 553 :
29 I. C. 825 : 8 Bur. L. T. 53 :
A. I. R. 1915 U. B. 13.

—S. 110—*Surety—Fitness.*

Mere relationship is no reason for refusing a surety, on the contrary, relationship is a recommendation. *Mahala v. Emperor*.

16 Cr. L. J. 337 :
28 I. C. 721 : 6 P. R. 1914 Cr. :
142 P. L. R. 1914 : A. I. R. 1914 Lah. 492.

—S. 110—*Surety—Fitness—Enquiry.*

Held, that it was not competent to a Magistrate who had passed an order under S. 118 to delegate to another officer the enquiry into the sufficiency of the security tendered: *Held*, also, that a Magistrate has no power to order that security be given by any particular person or class of persons. An order prohibiting the acceptance of security from *Lambardars*, *Inamkhars* and *chaukidars* is illegal. *Emperor v. Kaim Khan*.

5 Cr. L. J. 148 :
18 P. R. Cr. 1906 : 8 P. L. R. 43 :
2 P. W. R. 9.

—S. 110—*Surety—Fitness—Enquiry.*

It is not competent to a Magistrate who has passed an order under S. 118 to delegate to another officer the duty of enquiring into the sufficiency of the security tendered, but such inquiry must be made by the Court by which the original order was passed. *Emperor v. Balcant*.

1 Cr. L. J. 912 :
24 A. W. N. 231 : I. L. R. 27 All. 293 :
1 A. L. J. 601.

—S. 110—*Surety—Fitness—Enquiry.*

The mere fact that the sureties offered in a case under S. 110 live at a distance from the accused is not by itself sufficient to disqualify them. The Magistrate should make a judicial inquiry as to their fitness, and if in his opinion the sureties offered are not men who ought to be accepted, he should afford to the accused

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reasonable opportunity to furnish other and suitable sureties. *Manna v. Emperor*.

18 Cr. L. J. 1039 :
42 I. C. 783 : 5 A. L. J. 848 :
A. I. R. 1917 All. 215.

—S. 110—*Surety—Fitness—Joint sureties—Liability, nature of—Security for more than one year—Reference.*

The petitioner was ordered to give security for good behaviour for a term of three years, and in default, to suffer imprisonment for one year. The Magistrate ordered a security bond to be given for Rs. 1,000 and four sureties to bind themselves. Four sureties were offered. The Magistrate on the report of Police rejected one of them on the ground that he was a boy and another as a bad character and the remaining two as they were relatives. Financially it was admitted that each of these persons was fit to be surety for Rs. 1,000. The appeal against the order was rejected summarily: *Held*, that since the order did not state whether each and all of the sureties required were liable for Rs. 1,000 on occasion arising, or Rs. 1,000 between them, the order was bad in law; that to prevent misunderstanding, particulars like these should always be stated; that under S. 123 (2) of the Cr. P. C., inasmuch as the order for security specified a term exceeding one year during which accused was to be of good behaviour, the Magistrate in ordering detention of the accused should have referred the case to the Sessions Court and that the fact that the Magistrate ordered imprisonment for one year only did not affect the question of jurisdiction. *Mahala v. Emperor*.

16 Cr. L. J. 337 :
28 I. C. 721 : 6 P. R. 1914 Cr. :
142 P. L. R. 1914 : A. I. R. 1914 Lah. 492.

—S. 110—*Surety—Fitness—Refusal.*

Where in a proceeding under S. 110, the accused is required to furnish sureties, the mere fact that the surety offered resides at some distance away from the accused and is a young man, is no reason for refusing to accept him, if otherwise he is a fit and proper person to be surety. *Emperor v. Panchu*.

23 Cr. L. J. 425 :
67 I. C. 585 : 24 O. C. 292.

—S. 110—*Surety—Fitness.*

The first matter to be enquired into is the ability of the surety to pay the sum for which he becomes bound in case of default of the person who is bound down. *Jaffar Ali v. Emperor*.

11 Cr. L. J. 392 :
6 I. C. 668 : 14 C. W. N. 666.

—S. 110—*Surety—Fitness.*

The sureties required in a case under S. 110 are persons who are in a position to influence the accused and likely to be able to restrain him. *Nga Heim v. Emperor*.

16 Cr. L. J. 553 :
29 I. C. 825 : 8 Bur. L. T. 53 :
A. I. R. 1915 U. Bur. 13.

—S. 110—*Surety—Fitness.*

There may also be other objections to a man becoming surety although he is pecuniarily fit for the position, and such an objection

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must be dealt with in each case as it arises.
Jaffar Ali v. Emperor. 11 Cr. L. J. 392 :
 6 I. C. 668 : 14 C. W. N. 666.

—S. 110—Surety—Fitness.

Where an order to furnish security under S. 110 simply requires the sureties to be "approved sureties", the mere fact that the sureties do not reside in the same Police district and have evidenced their friendship by helping the accused in his defence, will not suffice in law to justify a refusal to accept the sureties. *Gobardhan v. Emperor.*

19 Cr. L. J. 441 A :
 44 I. C. 969 : 16 A. L. J. 263 :
 A. I. R. 1918 All. 108.

—S. 110—Surety—Forfeiture.

A bond to be of good behaviour can be forfeited on a conviction under S. 323 or 325 of the Penal Code. *Emperor v. Abdul Aziz.*

25 Cr. L. J. 1131 :
 81 I. C. 955 : 4 Lah. 462 :
 A. I. R. 1924 Lah. 262.

—S. 110—Forfeiture—Grounds.

The flight of a person accused of dacoity to Independent Afridi Territory raises a strong presumption of the intention of the absconder to join a band of dacoits. In such a case, a bond for good behaviour given under S. 118, on proceedings taken under S. 110 of the Code, is liable to forfeiture, provided evidence is produced to show either that the person bound committed an offence in British India prior to his absconding, and during the currency of the bond, or that during the same period, he committed an offence during his outlawry punishable with imprisonment. *Emperor v. Mansur.*

27 Cr. L. J. 588 :
 73 I. C. 332.

—S. 110—Surety—Forfeiture of bond when ordered.

Forfeiture of security, furnished by a person under S. 110, cannot be lawfully ordered unless and until there is on the record legal evidence of the commission of an offence punishable with imprisonment in respect of His Majesty or a subject of His Majesty. *Emperor v. Dewa Singh.*

11 Cr. L. J. 635 :
 8 I. C. 383 : 28 P. R. 1910 Cr.

—S. 110—Forfeiture—Offence committed in Native State.

The commission of an offence in a Native State against a British subject is a violation of the security bond furnished under S. 110. *Emperor v. Dewa Singh.*

11 Cr. L. J. 635 :
 8 I. C. 383 : 28 P. R. 1910 Cr.

—S. 110—Surety—Forfeiture of security—Security for theft and receiving stolen property—Subsequent conviction for serious violence—Liability of surety.

A was required to give security for being suspected as a thief and notorious receiver of stolen property. B, a resident of another village, was accepted as A's surety. A was subsequently convicted on a serious charge of violence under S. 326, Penal Code : *Held*, that

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B should not be held liable for A's sudden act of violence and no part of B's security should be confiscated. *Udham Singh v. Emperor.*

14 Cr. L. J. 575 :
 21 I. C. 175 : P. R. 1913 Cr. :
 59 P. W. R. 1913 Cr. : 334 P. L. R. 1913.

—S. 110—Surety—Forfeiture of security bond in a separate proceeding, when not allowed.

If a Criminal Court knowing that the person charged before it is under security to be of good behaviour, in sentencing that person in the case before it, makes no reference to any confiscation of that security and takes no steps towards confiscation, it is not competent for that Court or any other Court in a subsequent and separate proceeding to take such steps. *Bega Singh v. Emperor.*

16 Cr. L. J. 194 :
 27 I. C. 754 : 6 P. W. R. 1915 Cr. :
 95 P. L. R. 1915 : A. I. R. 1915 Lah. 387.

—S. 110—Surety—Forfeiture—Realisation.

Where security is given for good behaviour, neither the principal nor the surety can be made liable for an offence which occurred before the security was given. *Mansur v. Emperor.*

27 Cr. L. J. 588 :
 73 I. C. 332.

—S. 110—Forfeiture—Security for good behaviour—Subsequent conviction under S. 325, Penal Code—Forfeiture of bond of sureties.

Where a man was placed on security under S. 110, not merely as being a receiver of stolen goods but also as being a dangerous man and the son of a notorious dacoit, and was subsequently convicted of a bad offence under S. 325, I. P. C. : *Held*, that there was nothing in law to prevent the forfeiture of the bond of sureties under the circumstances. *Emperor v. Sher Singh.*

16 Cr. L. J. 549 :
 29 I. C. 821 : 10 P. R. 1915 Cr. :
 21 P. L. R. 1916 : A. I. R. 1914 Lah. 563.

—S. 110—Surety—Liability—Conviction—Procedure.

It is not necessary that there should first of all be a conviction of the person bound over before the surety can be proceeded against. If in the proceedings taken against a surety it is proved that the person bound over had committed an offence, that would be sufficient to lead to a forfeiture of the bond. *Sheo Mangal Prasad v. Emperor.*

30 Cr. L. J. 203 :
 113 I. C. 740 : 26 A. L. J. 443 :
 L. R. 9 All. 68 Cr. :
 9 A. I. Cr. R. 443 : 50 All. 666 :
 I. R. 1929 All. 124 : A. I. R. 1928 All. 232.

—S. 110—Surety—Making each surety liable for whole penalty.

It is a serious mistake in the bond to make each of the sureties liable for the full penalty of the bond. *Emperor v. Nga Po Sin.*

13 Cr. L. J. 62 :
 13 I. C. 398 : 4 Bur. L. J. 270.

—S. 110—Object.

The object of Chap. VIII is sufficiently attained by requiring him to find sureties. *Jatoi v. Emperor.*

27 Cr. L. J. 935 :
 96 I. C. 391 : 20 S. L. R. 122 :
 A. I. R. 1926 Sind 283.

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—S. 110—*Surety—Personal bond by accused, necessity of.*

There is no provision of law by which a person required to find security to be of good behaviour can be called upon to provide sureties for his good behaviour without at the same time entering into his own bond for that purpose. *Emperor v. Udmi*, 1 Cr. L. J. 897 : 24 A. W. N. 230 : 1 A. L. J. 593 : I. L. R. 27 All. 262.

—S. 110—*Surety—Refusal—Enquiry.*

Sureties offered by accused should not be refused, except after judicial inquiry by the Magistrate who has made the order under S. 118, and such inquiry should be made under the provisions of S. 122. *Hiran v. Emperor*, 16 Cr. L. J. 327 : 28 I. C. 563 : 19 C. W. N. 220 : A. I. R. 1915 Cal. 744.

—S. 110—*Surety—Refusal, ground for.*

The mere fact that the surety offered is a relation of that person, and is on intimate terms with him and is named by him as a witness, is not a valid reason in law for refusing to accept the surety. *Muhammad Wasi v. Emperor*, 22 Cr. L. J. 22 : 59 I. C. 134.

—S. 110—*Surety—Rejection.*

Sureties should not be rejected merely on the ground that they live several miles away from the place of residence of the accused. *Rahmatullah v. Emperor*, 22 Cr. L. J. 395 : 61 I. C. 523.

—S. 110—*Surety—Rejection—Enquiry.*

In a case under S. 110, the Magistrate cannot reject the sureties merely on the Police report unless he inquires himself or orders an inquiry by another Magistrate. *Ramdhani Mahto v. Emperor*, 36 Cr. L. J. 1473 : 158 I. C. 948 : 16 P. L. T. 478 : 2 B. R. 32 (1) : 8 R. P. 224 : A. I. R. 1935 Pat. 421.

—S. 110—*Surety—Restrictions and limitations on sureties.*

In proceedings under S. 110, Magistrates must not act arbitrarily, and any restrictions or limitations that they impose on sureties must be reasonable. *Nga Shwe Myo v. Emperor*, 16 Cr. L. J. 422 : 28 I. C. 998 : U. B. R. 1914 II 44 : A. I. R. 1911 U. Bur. 33.

—S. 110—*Surety—Security—Rejection, ground for.*

A Magistrate refused to accept sureties on the ground that they lived at a distance of nine miles from the residence of the accused and, consequently, had no influence over him and could not be expected to exercise proper vigilance over his actions : *Held*, that the reason for refusing was insufficient. *Mashuk Ali v. Emperor*, 14 Cr. L. J. 214 : 19 I. C. 310.

—S. 110—*Surety—Sureties, rejection of—Magistrate, power of.*

A Magistrate cannot reject sureties offered by

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the accused on a Police report without recording any evidence on a point. It is quite open to a Magistrate to ask the Police to report on the character of the sureties offered, but before finally rejecting them, it is his duty to have some materials on which he can act judicially. *Emperor v. Lachhman*, 23 Cr. L. J. 142 : 65 I. C. 574 : 24 O. C. 303.

—S. 110—*Surety—When sureties to be called upon to pay.*

The usual practice should be to require the principal and sureties together to pay the amount to be forfeited. *Emperor v. Ignatio Reis*, 14 Cr. L. J. 430 : 20 I. C. 414 : U. B. R. 1913 I 159.

—Ss. 110 117—*Surety—Security—Rejection, ground for—Police report.*

The accused was called upon to give security for his good behaviour, R. offered himself as surety and thereupon the Magistrate ordered the Sub-Inspector of the Thana within whose limits R resided to report upon him. The Sub-Inspector made an unfavourable report and the Magistrate without taking any evidence and without giving notice to the accused rejected the surety : *Held*, that the Magistrate should not have rejected the surety merely upon the Police report. There is no objection to a Magistrate enquiring whether the Police have any reason to urge why a person should not be accepted as surety, but an unfavourable report should be treated not as evidence but as an objection made by a party to the proceeding, and that before the surety is rejected; notice of the report or objection should be given to the person bound over and the Magistrate should give both him and the Police an opportunity of adducing evidence. *Emperor v. Parmeshwar*, 1 Cr. L. J. 459 : 7 O. C. 113.

—Ss. 110, 514—*Surety—Burma Gambling Act (I of 1899)—Security for good behaviour—Single penalty—Forfeiture of bond—Liability of sureties.*

A bond executed under the provisions of S. 17, Gambling Act, read with S. 110, Code of Criminal Procedure, is a bond with a single penalty. A Magistrate directing the payment of money due thereon may remit any portion of the amount under S. 514 (5) of the Code. But such a remission is clearly an extinction of the liability of the parties to it for the amount remitted. Once the bond is forfeited, there is an end of it. *Emperor v. Ignatio Reis*, 14 Cr. L. J. 430 : 20 I. C. 414 : U. B. R. 1913 I 159.

—S. 110—*Suspicion—Evidence as to suspicion, value of—Ex-convict, position of—Locus penitentiae.*

Where a person bound over to be of good behaviour under S. 110 was, shortly after his release, hauled up again under the same section, and the evidence against him consisted of the suggestion that he had been suspected of having been concerned in two or three thefts : *Held*, that in the absence of any tangible evidence to show that he had, since his release, been leading

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a life of crime, and in view of the short period which he had had to reform himself he could not be bound over again. *Akbara v. Emperor*.

18 Cr. L. J. 710 :
40 I. C. 710 : 4 O. L. J. 319 :
A. I. R. 1917 Oudh 350.

—S. 110—*Suspicion*.

Evidence cannot be led in cases under S. 110, that an accused person has been suspected of committing such and such offences. *Emperor v. Kurwa*.

30 Cr. L. J. 122 :
113 I. C. 282 : 26 A. L. J. 519 :
L. R. 9 All. 75 Cr. : 9 A. I. Cr. R. 467 :
I. R. 1929 All. 193 :
A. I. R. 1928 All. 357.

—S. 110—*Suspicion—Evidence of suspicion, admissibility of*.

Evidence that a person was suspected of having committed murders is not the kind of evidence admissible for the purpose of binding him over to be of good behaviour. *Din Dayal v. Emperor*.

28 Cr. L. J. 8 :
99 I. C. 40 : A. I. R. 1927 All. 146.

—S. 110—*Suspicion—General repute*.

In a proceeding under S. 110, evidence that the accused have been suspected of theft in a large number of cases, is not evidence on the basis of which they can be bound over, yet when evidence of general repute has been given, the fact that the accused have been suspected in a large number of cases may be admissible as corroboration. *Gudri Khatik v. Emperor*.

25 Cr. L. J. 486 :
77 I. C. 886 : A. I. R. 1923 All. 595.

—S. 110—*Suspicion—Ground for security*.

When thefts are committed and the perpetrators are not known, the persons on whom suspicion naturally falls are those persons who have the reputation of being habitual thieves. Conversely the fact that the accused have never been suspected in any case might tend to weaken the evidence of general repute. *Gudri Khatik v. Emperor*.

25 Cr. L. J. 486 :
77 I. C. 886 : A. I. R. 1923 All. 595.

—S. 110—*Suspicion*.

Mere suspicion is no evidence in a case under S. 110. *Raj Narayan Pandey v. Emperor*.

28 Cr. L. J. 502 :
101 I. C. 886 : L. R. 8 All. 53 Cr. :
25 A. L. J. 393 : 7 A. I. Cr. R. 353 :
A. I. R. 1927 All. 394.

—S. 110—*Suspicion—Mere suspicion on particular isolated occasions, whether sufficient*.

Evidence as to mere suspicion on particular isolated occasions is not sufficient evidence at all for the purposes of a case under S. 110. What is necessary is evidence to prove under S. 110 (a) is that the man is by habit a thief. Evidence of his general reputation about the matter and evidence that he was suspected in a particular case by a particular person or by the Police of having committed a theft can be led, but there must be a large number of such cases before it can be held provided on this evidence alone that he is by habit a thief. *Lilu v. Emperor*.

32 Cr. L. J. 62 (b) :
127 I. C. 861 : I. R. 1930 Lah. 893 :
A. I. R. 1930 Lah. 345.

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—S. 110—*Suspicion—Police evidence*.

The mere suspicion of the Sub-Inspector is no legal evidence. No weight should be attached to the view of the Sub-Inspector that the accused are murderers and bad characters when that view is not based on solid facts. *Tor Gul v. Emperor*.

159 I. C. 97 : 8 R. Pesh. 77 :
A. I. R. 1935 Pesh. 158.

—S. 110—*Suspicion*.

Suspicion in the mind of a witness is not admissible evidence in such proceedings although evidence of general repute is admissible. *Emperor v. Bolu Ram*.

29 Cr. L. J. 92 :
106 I. C. 684 : L. R. 8 All. 163 Cr. :
26 A. L. J. 99 : 8 A. I. Cr. R. 557 :
I. L. T. 40 All. 71 :
A. I. R. 1928 All. 1.

—S. 110—*Suspicion, whether justification for order to give security*.

The mere fact that a person is suspected of particular crimes is no justification for demanding security from him. Evidence that a person had been suspected and named in a large number of cases extending over a considerable interval may, however, be very useful corroboration of general evidence of bad reputation. *Raja Ram v. Emperor*.

22 Cr. L. J. 273 :
60 I. C. 673 : 23 O. C. 371.

—S. 110—*Suspicion*.

The evidence of suspicion under S. 457, is evidence of a very weak nature even in a S. 110 case. *Emperor v. Mulhe*.

38 Cr. L. J. 889 :
170 I. C. 482 : 1937 O. L. R. 432 (2) :
10 R. O. 14 : 1937 O. W. N. 816.

—S. 110—*Suspicion*.

The mere fact that some suspicious books and pictures and four leaden bullets were found in a person's house and a box with some air pistol slugs, is not sufficient to show that he entertained revolutionary ideas and was preparing himself for revolutionary crimes. *Sunder Lal v. Emperor*.

35 Cr. L. J. 218 :
146 I. C. 900 : A. I. R. 1933 777 :
L. R. 15 All. 13 Cr. : 6 R. A. 375 :
A. I. R. 1933 All. 676.

—S. 110—*Suspicion of certain offences*.

The mere fact that there may be some reason to suppose that the accused have committed some substantive offence under the Penal Code is no obstacle for the institution of proceedings under S. 110. *Sunder Lal v. Emperor*.

35 Cr. L. J. 218 :
146 I. C. 900 : 1933 A. L. J. 777 :
L. R. 15 All. 13 Cr. : 6 R. A. 375 :
A. I. R. 1933 All. 676.

—S. 111—*Warrant of arrest issued under S. 114—Bail*.

A Magistrate cannot refuse bail to a person arrested under S. 114, Cr. P. C., against whom proceedings have been taken under S. 107 of the Code. *Faiz Mohammad v. Emperor*.

17 Cr. L. J. 77 :
32 I. C. 669 : 9 S. L. R. 158 :
A. I. R. 1916 Sind 93.

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—S. 112.

See (i) Burma Gambling Act, S. 17.

See (ii) The Cr. P. Code, 1898, S. 107.

—S. 112—Bond whether single—Amount, whether can be recovered both from principal and surety.

A bond contemplated by S. 112 and 115 is one bond for one amount and is discharged on forfeiture by the payment of the amount due by either the principal or the surety. The amount of the bond cannot be recovered both from the principal and from the surety. *Emperor v. Abdul Aziz*. 25 Cr. L. J. 1131 : 81 I. C. 955 : 4 Lah. 462 : A. I. R. 1924 Lah. 262.

—S. 112—Construction—Security proceedings—Notice under S. 112—Contents—‘Substance of the information’, meaning of.

Per Ghose, Suhrawardy and Graham, JJ.—The words ‘substance of the information’ in S. 112, mean such or so much of the information as would enable the party to know under what clause of S. 110 he is charged or to what particular class of offenders he is said to belong; it is not necessary that the notice under the section should contain such details of information as to enable the accused to know in what cases he has been suspected and the names of the witnesses. *Bhut Nath Ghosh v. Emperor*. 31 Cr. L. J. 614 : 124 I. C. 71 : 33 C. W. N. 852 : 57 Cal. 503 : A. I. R. 1929 Cal. 739.

—S. 112—Evidence—Notice under S. 107, if must relate to breach of peace or wrongful act in contemplation at time when information is given to Magistrate.

Action taken under S. 112, constitutes a judicial act and therefore the Magistrate should not act arbitrarily. There must be information of a nature which convinces him that there is a likelihood of a breach of the peace. What is reasonably sufficient to satisfy a Magistrate must depend on the particular situation. The Code does not require the information to show the particular act which is in contemplation at the time. The Magistrate must be satisfied that there is a likelihood of a breach of the peace. What will satisfy him must depend on the particular facts of the case. *In re : Muthuswami Chettiar*. 41 Cr. L. J. 238 : 185 I. C. 824 : 50 L. W. 802 : 1939 M. W. N. 1209 : 1940 1 M. L. J. 11 : I. L. R. 1940 Mad. 335 : 12 R. M. 584 : A. I. R. 1940 Mad. 23.

—S. 112—Evidence.

Where a Magistrate of the First Class is informed that a person is likely to disturb the public tranquillity without any information being given as to his intent to do wrongful acts and the Magistrate considers the information to have come from a reliable source, he has jurisdiction to make an order under S. 112. In such a case, it is not necessary to specify in the order any definite acts which the person intends to commit. *Jagaji Rai v. Emperor*. 19 Cr. L. J. 876 : 47 I. C. 72 : 16 A. L. J. 567 : A. I. R. 1918 All. 93.

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—S. 112—Good behaviour—Qualifications of sureties.

Sureties for good behaviour ought not to be rejected merely on the ground that they are caste-fellows or relatives of the accused. The condition that a surety for good behaviour must be capable of controlling the accused is undesirable, but the condition that he should be of the landholding class, is unobjectionable.

Jira Natha v. Emperor. 15 Cr. L. J. 268 : 23 I. C. 476 : 16 Bom. L. R. 38 : A. I. R. 1914 Bom. 5.

—S. 112.

In case under S. 112, evidence cannot be led under S. 110 that an accused person has been suspected of committing such and such offences. *Ram Rup Bhar v. Emperor*. 30 Cr. L. J. 1086 : 109 I. C. 571 : 1932 A. L. J. 981 : I. R. 1929 All. 1067 : A. I. R. 1929 All. 813.

—S. 112—Information by Police—Right of accused to obtain copy.

Accused is not entitled to obtain copy of written information given by Police on which order is based. *Anantapadmanabhiah v. Emperor*. 32 Cr. L. J. 217 : 129 I. C. 70 : 59 M. L. J. 914 : 1930 M. W. N. 1100 : 54 Mad. 422 : I. R. 1931 Mad. 214 : A. I. R. 1930 Mad. 975.

—S. 112—Nature of—Failure to record order, effect of.

S. 112 is merely directory, and a failure to record an order under the section, should be treated as a mere irregularity. *Phagi v. Emperor*. 7 Cr. L. J. 94 : 10 O. C. 365.

—S. 112—Notice—Discretion—Information.

Discretion to issue notice under S. 112 is absolute—Information may be conveyed by private individual or Police Officer. *Laxmi Narain v. Emperor*. 34 Cr. L. J. 42 : 140 I. C. 536 : L. R. 13 All. 125 Cr. : 1932 A. L. J. 880 : 54 All. 1036 : I. R. 1932 All. 668 : A. I. R. 1932 All. 670.

—S. 112—Notice—Police report.

Notice under S. 112—Magistrate can call report from Police before issuing notice. *Laxmi Narain v. Emperor*. 34 Cr. L. J. 42 : 140 I. C. 536 : L. R. 13 All. 125 Cr. : 1932 A. L. J. 880 : 54 All. 1036 : I. R. 1932 All. 668 : A. I. R. 1932 All. 670.

—S. 112—Object of—Order requiring sureties, requirements of—Arbitrary standard—Reluctance to stand surety—Person, when satisfactory surety—Surety, rejection of.

The object of Chapter VIII of the Cr. P. C. is not to consign bad characters to jail, but to prevent them from committing offences. An order under S. 112 must be such that if a suspect have a *bona fide* intention to be of good behaviour, it will not be impossible for him to find sureties. It is unfair to a suspect to call on him to produce sureties of a certain class and then to reject the persons offered because they do not conform to an arbitrary standard not set up in the order. If the sureties offered

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come fairly within the terms of the order, they can only be rejected because they are personally unfit. Mere reluctance to be surety constitutes no valid objection unless the Magistrate is satisfied that the surety is, under what amounts to undue influence, undertaking a risk which, as a reasonable and prudent man, he would not take if a free agent. A man is a satisfactory surety if he is in a position to ascertain how the accused is behaving and if he is also of such character and standing that he would not hesitate to apply for cancellation of his bond if he saw risk of forfeiture. A surety should not be rejected merely because a Police Inspector informs the Magistrate that he is of bad character, when such rejection involves the committal of the accused to prison. *Muhammad Ibrahim v. Emperor*.

16 Cr. L. J. 100 :
27 I. C. 148 : 8 S. L. R. 173 :
A. I. R. 1914 Sind 13.

—S. 112—Order under S. 112 not accompanying warrant, effect of—Prejudice.

Where a copy of the order made under S. 112 does not accompany the warrant as required by S. 115, but the order is read over to the person affected thereby, and there is nothing to show that there was any prejudice, the omission to attach a copy of the order to the warrant is a mere irregularity not fatal to the trial. *Rameshwar Dusadh v. Emperor*.

21 Cr. L. J. 321 :
55 I. C. 593 : 1 P. L. T. 632 :
A. I. R. 1920 Pat. 25.

—S. 112—Person competent to conduct case.

Crown has right to conduct case against person called upon to show cause—Prosecution may be conducted by any person mentioned in S. 495. *Laxmi Narain v. Emperor*.

34 Cr. L. J. 42 :
140 I. C. 536 : L. R. 13 All. 125 Cr. :
1932 A. L. J. 880 : 54 All. 1036 :
I. R. 1932 All. 668 : A. I. R. 1932 All. 670.

—S. 112—Requisition of an order under S. 112.

An order under S. 112, must give in substance, an abstract of the facts upon which the Magistrate charges the persons proceeded against with being likely to commit a breach of the peace as to give them notice of what they have to meet and be prepared to meet it. *Kalia Goundan v. Emperor*.

32 Cr. L. J. 27 (b) :
127 I. C. 652 : 1930 M. W. N. 698 :
32 L. W. 320 : I. R. 1930 Mad. 1036 :
A. I. R. 1930 Mad. 859.

—S. 112—Revision.

The High Court has undoubtedly power to quash proceedings where the notice issued does not comply with the requirements of S. 112, but before doing so, it must be satisfied that there has been a failure to comply. *In re : Muthuswami Chettiar*.

41 Cr. L. J. 238 :
185 I. C. 824 : 50 L. W. 802 :
1939 M. W. N. 1209 : 1940 1 M. L. J. 11 :
I. L. R. 1940 Mad. 335 : 12 R. M. 584 :
A. I. R. 1940 Mad. 23.

Cr. P. CODE (1898), S. 112**—S. 112—Scope.**

S. 112 should be read along with S. 107 of the Code. *Jaguji Rai v. Emperor*.

19 Cr. L. J. 876 :
47 I. C. 72 : 16 A. L. J. 567 :
A. I. R. 1918 All. 93.

—S. 112—Sureties—Class, meaning of.

A District Magistrate, rejected sureties, who were not *Zamindars* holding twenty acres of land around locality as fixed by the Sub-Divisional Magistrate, under S. 112. It was contended that the class thus insisted on by the Magistrate was not a class within the meaning of the section : *Held*, that the order was legal. *Emperor v. Jan Mohamed*.

11 Cr. L. J. 417 :
6 I. C. 887 : 3 S. L. R. 239.

—S. 112—Surety—Restriction to local men.

A Magistrate has no jurisdiction to put such a restriction upon the nature of the sureties as to direct that they should be local. That is a matter which must be decided subsequently if objection is taken to the sureties on that ground by the Public authorities. *Islam Khan v. Emperor*.

15 Cr. L. J. 254 :
23 I. C. 206 : A. I. R. 1914 Cal. 445.

—S. 112.

The Magistrate having allowed bail to the Petitioners on condition of their undertaking that no attempt would be made by them or their agents to realise rent by force and nothing would be done to induce a breach of the peace : *Held*, that the condition could not be imposed under S. 112, and should be struck out of the bail bond. *Bibi Kulsum v. Umatul Mehdi*.

4 Cr. L. J. 456 :
11 C. W. N. 121.

—S. 112.

The provisions of S. 112 ought to be complied with strictly. *Uttam Chand Singh v. Emperor*.

26 Cr. L. J. 430 :
85 I. C. 46 : L. R. 5 All. 24 Cr.
A. I. R. 1924 All. 695.

—S. 112.

Two persons reported by Police to be members of same gang—Joint trial is legal. *Chheda Lal v. Emperor*.

34 Cr. L. J. 793 :
144 I. C. 577 : 10 O. W. N. 233 :
I. R. 1933 Oudh 269 :
A. I. R. 1933 Oudh 195.

—Ss. 112, 107—Order under S. 112, how far can exceed information given under S. 107.

Quaere.—It is doubtful how far an order under S. 112 can properly exceed the information given under S. 107. *Jasoda Lekhraj v. Emperor*.

40 Cr. L. J. 703 :
182 I. C. 698 : 12 R. S. 31 :
1939 Kar. 662 : A. I. R. 1939 Sind 167.

—Ss. 112, 108—Preliminary order under S. 112, requirements of.

S. 112 does not contemplate that the allegations of fact constituting the information should be embodied in the preliminary order. The order need only contain as much of the informa-

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tion as would be sufficient to enable the party to know under which of the several sections or which part of any one of them he is proceeded against. *Jagannath Prasad v. Emperor*.

41 Cr. L. J. 713 :

189 I. C. 74 : 1940 M. L. J. 31 :

13 R. N. 39 : A. I. R. 1940 Mad. 134.

—Ss. 112, 113, 115, 117, 118—*Proceeding under S. 112 not drawn up—Order under S. 118, validity of.*

The fact that no proceedings are drawn up under S. 112 at the time summonses are issued, and, therefore, no copy thereof is served under S. 115 upon the accused, does not invalidate an order passed under S. 118 if, before passing it, the proceedings required by S. 112 are drawn up in the presence of the accused and are read out and explained to him, and due inquiry is held. *In re : Kavatham Putturaju*.

20 Cr. L. J. 763 (b) :

53 I. C. 491 : 10 L. W. 267 :

1919 M. W. N. 639 : 26 M. L. T. 385 :

A. I. R. 1920 Mad. 1014.

—Ss. 112, 117—*Accused, admission by—Inquiry, necessity of.*

Even where a person against whom an order under S. 112, Cr. P. C., has been made, on its being read over to him, admits the allegations in the said order, it is incumbent on the Court to proceed to make an inquiry as provided by S. 117 of the Cr. P. C. *Allahdillo v. Emperor*.

26 Cr. L. J. 1041 :

87 I. C. 961 : A. I. R. 1925 Sind 321.

—Ss. 112, 117, 531, 537—*Security for keeping the peace—Jurisdiction of Magistrate—Accused's residence, absence of proof as to, effect of—Irregularities in recording order under S. 112, effect of—Revision—Limitation.*

An order under S. 107, Cr. P. C., is not invalid merely because there is no evidence on record to show that the accused was within the local jurisdiction of the Magistrate at the time when the proceedings were started, where no objection to his jurisdiction is raised in the trial Court, and no prejudice is shown to have been caused, the irregularity, if any, being cured by S. 537, Cr. P. C. Nor can the validity of such an order be impugned on the ground that the Magistrate, instead of embodying the substance of the information on the order passed as required by S. 112, Cr. P. C., wrote the order on the back of a Police report which gave the information, and gave the substance of the information in the summons itself instead of sending a copy of the order to the accused with the summons. Persons who come to the High Court in revision against an order under S. 107, Cr. P. C., should do so with the utmost promptitude, and at any rate, within 30 days of the order complained of. *Ram Deo Singh v. Emperor*.

27 Cr. L. J. 1132 :

97 I. C. 652 : L. R. 7 All. 174 Cr. :

25 A. L. J. 44 : A. I. R. 1926 All. 767.

—Ss. 112, 117 (3)—*Proviso bond pending inquiry, conditions of.*

Where a person is ordered to show cause why he should not be required to execute a bond under S. 112, and pending inquiry, is called

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upon to execute a bond for keeping the peace or maintaining good behaviour under S. 117, sub-s. 3, the condition of such bond as to the amount or as to the provision of sureties or their number, or, the pecuniary liability shall not be more onerous than those specified in the order under S. 112. An order under S. 117 (3) can be passed without further evidence being adduced but the Magistrate should record in writing his reasons for exercising his powers thereunder. *Pir Shah Murad Shah v. Emperor*.

27 Cr. L. J. 1030 :

96 I. C. 982 : A. I. R. 1926 Sind 276.

—Ss. 112, 118—*Bond, nature of—Forfeiture—Discharge.*

The bond contemplated by Ss. 112 and 118, Cr. P. C., is one bond for one amount and is discharged on forfeiture, by the payment of the amount due by either the principal or the surety. In no case can an amount in excess of the amount secured by the bond be demanded or recovered from the person bound or his sureties individually or collectively. *Harnam v. Emperor*.

26 Cr. L. J. 322 :

84 I. C. 546 : 5 Lah. 448 : 1 L. C. 529 :

A. I. R. 1925 Lah. 228.

—Ss. 112, 118—*Surety—Object of—Imposition of fresh conditions—Good faith of sureties—Court, jurisdiction of.*

The object of Chapter VIII is not the punishment of a suspect for past unproved crimes but to prevent him from committing offences and to afford him an opportunity of reforming himself. When once a Magistrate has, while passing orders under S. 112, imposed conditions as to the nature of sureties, and the amount of their liability, he cannot, when making the order absolute under S. 118, vary his previous order and impose fresh conditions. Sureties are not unfit because the suspect cannot be controlled by them nor can it be made a condition precedent for acceptance of sureties that they should show their good faith and influence over the suspect. *Emperor v. Mani*.

25 Cr. L. J. 1226 :

82 I. C. 154 : A. I. R. 1925 Sind 57.

—Ss. 112, 118—*Order absolute at variance with the conditional order, legality of—Inquiry about sureties—Police report, value of.*

A Magistrate cannot vary the conditional order made under S. 112 by enforcing further conditions in the order absolute. A Magistrate ought not to reject sureties merely on the report of the Police without making any inquiry himself. *Rama Nand Singh v. Emperor*.

8 Cr. L. J. 344 :

11 O. C. 267.

—Ss. 112, 118, 122—*Security for good behaviour—"Respectable" or "suitable" sureties, meaning of—Magistrate's knowledge of his sub-division—Bad character of the inhabitants of a village—Rejection of sureties.*

A Magistrate may fairly demand a reasonable degree of social importance and influence in the sureties, and if it be found on proper inquiry that the income of any surety offered is such as to make it reasonably certain

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that he does not possess that degree of social importance and influence, such surety may be rejected. The standard of respectability must be left to the Magistrate to determine. A Magistrate is justified in using and applying his knowledge of his division when acting under S. 122, and if he knows that the inhabitants generally of a village bear a bad character, he is justified in rejecting as unfit any such inhabitants who may be offered as a surety provided that he records his reasons for doing so. *Emperor v. Din Mohammad*.

11 Cr. L. J. 198 :

4 I. C. 1153 : 3 S. L. R. 168.

—Ss. 112, 118, 439—*Security for good behaviour—Ordering security for a larger amount than what was communicated to an accused.*

A Magistrate is precluded by S. 118 from ordering security for a larger amount than what has been communicated by him under S. 112 to the accused. *Kishen Singh v. Emperor*.

5 Cr. L. J. 219 :

2 P. W. R. Cr. 23.

—Ss. 112, 118, 439 (5)—*Order requiring sureties of a certain status, validity of—Revision.*

S. 112 of the Cr. P. C. gives the Magistrate power to define the class of sureties. An order, requiring sureties to be land-holders in the neighbourhood of the accused, either holding 100 acres of land or paying income-tax and able to control the accused, is not bad. High Court cannot entertain an application for revision of an order under S. 118. *Jumo v. Emperor*.

16 Cr. L. J. 252 :

28 I. C. 108 : 8 S. L. R. 229 :

A. I. R. 1914 Sind 139.

—Ss. 112, 122—*Surety—Ability to influence bad character—Solvency, test of.*

A surety executing a bond undertakes to guarantee the good conduct of his principal, and his fitness to stand as surety must be judged chiefly by the ability to perform his contract of guarantee and to enforce the good behaviour of his principal. This is also the intention of S. 112, empowering the Magistrate to specify the "character and class" of the sureties required. Mere solvency of the surety is, therefore, not the only test of his fitness. The Magistrate has also to consider the question of the ability of the surety to influence the conduct of the bad character. But in so doing, the Magistrate should not exercise his power arbitrarily or impose impossible restrictions. *Imperator v. Manu*.

8 Cr. L. J. 166 :

1 S. L. R. 46.

—Ss. 112, 123—*Object of—Security demanded for more than one year—Appeal—Sessions Judge, duty of—Imprisonment, commencement of—Period spent on bail, exclusion of—Description of security.*

When a Magistrate directs that the accused should give security for more than one year, an appeal from his order would lie to the District Magistrate, and, if such an appeal is filed, the Sessions Court would not proceed under S. 123 of the Code until the appeal is disposed of. Should, however, no appeal be filed within the period of limitation, then the Sessions Court

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would proceed under the section. The Sessions Judge, should, hear both the accused person and the Crown and see, whether there are substantial grounds for demanding security; but it is not necessary for him to write a judgment as if the matter were an appeal. The imprisonment under Chapter VIII, Cr. P. C., runs from the date of the Magistrate's order, and is not suspended during the time spent on bail. S. 123, however, gives the Sessions Judge power in suitable cases to enhance the sentence passed by the Magistrate. In such cases, the Sessions Judge would have jurisdiction to exclude from the computation of the period of imprisonment the period spent by the accused person on bail. It is, however, undesirable to adopt this course without special reasons. The object of Chapter VIII of the Cr. P. C. is partially served even when an accused is on bail for a long time, Chapter VIII, Cr. P. C. is not intended to punish but to prevent crime, and it is not permissible to limit the security or the amount of the security to such descriptions that it is impossible for the accused to furnish them. *Allahdad v. Emperor*.

26 Cr. L. J. 179 :

83 I. C. 883 : 17 S. L. R. 160 :

A. I. R. 1924 Sind 120.

—Ss. 112, 167—*Remand to Police custody—Magistrate—Jurisdiction—Action under Chap. VIII, when justified.*

S. 167 is not intended for cases in which action is taken under S. 112. A Magistrate acting under Chap. VIII has no power to act until after he has recorded an order in writing under S. 112. No person is to be called upon to show cause why an order should not be made against him until there is, before the Magistrate, some information which such Magistrate has reason to believe. The Code gives a Magistrate no power to issue summons, warrant or order of detention until he has first upon his table something recorded by him in writing showing the ground upon which he is taking action. *Rameshwar v. Emperor*.

15 Cr. L. J. 288 :

23 I. C. 496 : 12 A. L. J. 365 :

36 All. 262 : A. I. R. 1914 All. 466.

—Ss. 112, 192—*Transfer of proceedings.*

A case under S. 111, Cr. P. C., can be transferred by a District Magistrate as he is competent under S. 192, Cr. P. C., to transfer any case cognizable by a Criminal Court and his power of transfer is not restricted to Criminal cases only. *Chintamon Singh v. Emperor*.

7 Cr. L. J. 146 :

7 C. L. J. 177 : 12 C. W. N. 299 :

I. L. R. 35 Cal. 243.

—Ss. 112, 443, 87—*Notice under S. 112, requisites of—Admission, recording of—Proclamation—Absconding person—30 days' time.*

Where a notice issued under S. 112, Cr. P. C., is not accompanied by the order mentioned, the proceedings are liable to be set aside. A statement made by the person proceeded against expressing willingness to give security should be recorded as nearly as possible in the words used by him. A proclamation issued under S. 87 against an absconding person should allow at least 30 days' time to the absconding person

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for his appearance, and if he fixes a less period, the proclamation is bad in law. *In re : Subba Naicken*.

6 Cr. L. J. 332 :
17 M. L. J. 438.

———Ss. 112, 439, 107, 144—Magistrate applying powers under S. 112 equally to wrong-doer as well as wronged—Interference in revision.

High Court is always very unwilling to interfere in the case of orders passed under the preventive sections of the Cr. P. C. These orders are largely of an administrative nature; they are concerned with the maintenance of the public peace and the prevention of breaches of the public peace for the maintenance of which the District Magistrate is responsible. But these orders, though largely of an administrative nature, have a legal basis, and if it is clear that an order under S. 112, has no legal basis, and that the District Magistrate has proceeded upon a wrong legal principle applying equally to the wrong-doers as well as to the wronged, his wide powers, the High Court is bound to interfere. *Jasoda Lekhraj v. Emperor*.

40 Cr. L. J. 703 :

182 I. C. 698 : 12 R. S. 31 :

1938 Kar. 662 : A. I. R. 1939 Sind 167.

———Ss. 112, 439 (5)—Order requiring security for good behaviour not appealed against—Application against order rejecting sureties—Procedure contrary to law—Reference by Sessions Judge—High Court, power to quash proceedings.

A person being ordered, under S. 112, to furnish security to be of good behaviour, offered sureties who were rejected. He applied to the Sessions Judge asking him to invoke the interference of the High Court for setting aside the order rejecting the sureties. On examining the record, the Sessions Judge found that the proceedings before the Magistrate had been altogether irregular and that the applicant had been bound over without any enquiry or evidence required by law. He referred the matter to the High Court for quashing of proceedings : *Held*, that although the accused, not having appealed against the order requiring him to furnish security, could not ask the High Court to take up in revision the question of the propriety of the order, yet the High Court had, on reference by the Sessions Judge, jurisdiction to deal with the entire question and to set aside the proceedings of the Magistrate as being in contravention of the provisions of the law. *Emperor v. Sukhdeo*.

17 Cr. L. J. 157 :

33 I. C. 687 : 14 A. L. J. 215 :

A. I. R. 1916 All. 316.

———Ss. 112, 548—Court, what is.

A Magistrate acting under S. 112 is a Court within S. 548. *Anantapadmanabhaiah v. Emperor*.

32 Cr. L. J. 217 :

129 I. C. 70 : 32 L. W. 784 : 59 M. L. J. 914 :

1930 M. W. N. 1100 : 54 Mad. 422 :

I. R. 1931 Mad. 214 : A. I. R. 1930 Mad. 975.

———S. 114—Application of—Consideration justifying arrest.

To attract S. 114, the Magistrate must be of opinion that the only way of preventing an imminent breach of the peace is to commit the

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persons concerned to custody, and must put on record, the substance of the Police or other report by which he is influenced. *Maniruddin v. Emperor*.

24 Cr. L. J. 829 :

74 I. C. 861 : 5 P. L. T. 93 :

2 P. L. R. 45 Cr.

———S. 114—Application of.

S. 114 cannot be limited to arrests within jurisdiction. *Monindra Mohan Sanyal v. Emperor*.

19 Cr. L. J. 696 :

46 I. C. 152 : 28 C. L. J. 25 : 23 C. W. N. 193 :

A. I. R. 1919 Cal. 702.

———S. 114—Omission to send copy of order under S. 112.

The omission on the part of a Magistrate to send a copy of the order under S. 112, with the summons issued under S. 114, does not invalidate the trial unless it has led to some prejudice to the accused person. Such an omission is covered by S. 537. *Suleman Adam v. Emperor*.

10 Cr. L. J. 375 :

3 I. C. 774 : 11 Bom. L. R. 740.

———S. 114—Warrant for arrest of person who has left local limits of Magistrate's jurisdiction.

A Magistrate cannot legally issue a warrant under S. 114 for the arrest of a person who has already left the local limits of his jurisdiction. The person proceeded against must be actually and physically present in the District in which the Magistrate exercises jurisdiction. *In re : Ramjibhai*. 13 Cr. L. J. 796 :

17 I. C. 540 : 14 Bom. L. R. 889.

———Ss. 114, 309—"On all charges," meaning of—Assessors' opinion on some charges not separately recorded—Conviction.

The words 'on all charges' in S. 309 of the Cr. P. C. mean that distinct opinion on each charge must be taken and recorded and omission to do so is fatal to the conviction of the accused on a charge on which the opinion is not taken and recorded. *Shevanti v. Emperor*.

29 Cr. L. J. 561 :

109 I. C. 497 : 10 A. I. Cr. R. 358 :

A. I. R. 1928 Nag. 257.

———Ss. 114 (4), 192, 528—Order under S. 144—Power of District Magistrate to rescind such order—Application for rescission to Sub-Divisional Magistrate, whether takes away District Magistrate's powers—Suspension of order of Subordinate Magistrate and delegation of enquiry, legality of.

The power of a District Magistrate to entertain an application under S. 144 (4), Cr. P. C., is not lost by reason of the fact that the Sub-Divisional Magistrate subordinate to him had already dealt with an application made under that subsection to him. The provisions of that section are intended for the protection of the liberty of the subject and should be construed liberally. The Cr. P. C. does not confer a power on superior Magistrates to suspend orders of Subordinate Magistrates. A superior Magistrate can rescind or alter an order under S. 144 without hearing the person at whose instance the original order was passed; the only limitation on his power is that he should hear the parties who apply for rescission or alteration before declining to do so. The power conferred by

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S. 114 (4), Cr. P. C., to rescind or alter orders made by Subordinate Magistrates cannot be delegated or transferred by the District Magistrate to a Sub-Divisional Magistrate. *Mooka Pandaram v. Sinny Mutheriyar*.

38 Cr. L. J. 125 :
166 I. C. 77 : 1936 M. W. N. 1089 :
44 L. W. 686 : 71 M. L. J. 761 :
I. L. R. 1937 Mad. 171 : 9 R. M. 328 :
A. I. R. 1937 Mad. 167.

—S. 114, proviso, S. 495—*Security proceedings—Execution of bond—Re-arrest of accused, legality of—Bail.*

The proviso to S. 114, is a proviso to the section which relates to the circumstances set out in S. 114 and is not a substantive provision standing by itself. It does not give the power to a Magistrate to re-arrest a person who has already been discharged after executing surety bonds. A person who is so re-arrested is entitled to be released on bail under S. 496, Cr. P. C., if he is not accused of non-bailable offences. *Nathan Gope v. Emperor*.

30 Cr. L. J. 809 :
117 I. C. 628 : I. R. 1929 Pat. 436 :
10 P. L. T. 801 : A. I. R. 1920 Pat. 654.

—S. 117.

See Cr. P. C., S. 110—General Reputation

—S. 117—*Application of.*

When it is alleged that a person is in the habit of committing theft in association with other persons as members of a gang of thieves, the Magistrate is at liberty in his discretion to deal with the case of all such persons in the same enquiry. *Rangoo Mean v. Emperor*.

35 Cr. L. J. 1257 :
151 I. C. 205 : 12 Rang. 169 : 7 R. Rang. 49 :
A. I. R. 1934 Rang. 121.

—S. 117—*Conviction by public opinion, when proper—Presumption as to criminality of person.*

S. 117 (4), is an exception to the general rule of evidence and should be sparingly used and only in exceptional circumstances. The general rule of law is that every man is presumed not to be a criminal or an offender until he has been found guilty by a competent Court. Conviction by public opinion should only be permitted to take the place of conviction by a Court in rare and exceptional circumstances, e.g. where the advent of a suspicious stranger in a village coincides with a series of crimes and suspicion waxes so strong and is so well justified that it may fairly be allowed to take the place of proof, and in such unusual circumstances, the section sanctions an experimental use of the security sections. But where a person has lived all his life in a locality without being ever brought before a Court of Law for any crime, there is absolutely no justification for any such experiment or for making any presumption that he is a criminal. *In re : K. S. Rathinam Pillai*.

39 Cr. L. J. 230 :
172 I. C. 866 : 1937 M. W. N. 1065 :
1937 2 M. L. J. 749 : 46 L. W. 858 :
10 R. M. 498 : A. I. R. 1938 Mad. 35.

—S. 117—*Enquiries under Chap. VIII—Rules of evidence—General repute, evidence of,*

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what is—Admissibility of evidence, test of—Witness to general reputation—Examination and cross-examination—Practice.

Enquiries under Chapter VIII of the Code of Cr. P. are governed by the ordinary rules of evidence. Evidence which would not be admissible at an ordinary trial should not be admitted at a trial under S. 117. Evidence of general repute may be either evidence as to the general opinion of the neighbourhood or community in which the person concerned lives or to which he belongs, or the personal opinion of the witnesses who are examined. The test of the admissibility of evidence of general opinion is whether it shows the general reputation of the man, not necessarily the opinion of the entire community to which he belongs but at least the opinion of a considerable number of persons. It must not be merely the repetition of what one or two persons have said to the witness. A witness to general reputation may be examined and cross-examined as to his means of knowledge, and when he gives his own opinion, he may be asked to give the grounds of his opinion and to give the names of the persons whom he has heard speak against the character of the person concerned. *Bechai v. Emperor*.

15 Cr. L. J. 705 :
26 I. C. 153 : 12 A. L. J. 937 :
A. I. R. 1914 All. 280.

—S. 117—*Inquiry into correctness of information.*

Magistrate is bound to inquire whether the information which prompted him to issue notice, was correct. *Sadhu Singh v. Emperor*.

36 Cr. L. J. 1212 :
157 I. C. 755 : 8 R. Pesh. 33 :
A. I. R. 1935 Pesh. 116.

—S. 117—*Evidence of mere suspicion, value of.*

Evidence of mere suspicion of a person having taken part in certain criminal offences is not evidence of general repute within the meaning of S. 117, cl. (3). *Amjad Ali v. Emperor*.

25 Cr. L. J. 35 :
75 I. C. 723 : 5 P. L. T. 129 : 2 Pat. L. R. 79 Cr. :
1924 A. I. R. Pat. 498.

—S. 117.

Expression "associated together," interpretation of. See Cr. P. C., S. 165.

—S. 117—*General repute, evidence of.*

Where in consequence of a series of dacoities having taken place in certain villages, a proceeding under S. 110, Cr. P. C. is instituted against a person for being a robber by habit, the evidence of general reputation, coming from the people of the villages where dacoities had taken place, is certainly to be treated as evidence of general repute although that person did not live amidst those people. *Chintamon Singh v. Emperor*.

7 Cr. L. J. 146 :
7 C. L. J. 177 : 12 C. W. N. 299 :
I. L. R. 35 Cal. 243.

—S. 117—"General repute" meaning of—*General repute, evidence of—Character, evidence of—Personal opinions, admissibility of.*

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Evidence of personal opinions as to the character of an accused person in inquiries under S. 117 is inadmissible. Every man is conscious as to what his general reputation is, and by necessary association of ideas, he is also conscious of the limited or the extensive circle, as the case may be, within which his reputation generally exists. The opinion held by the body of persons within that circle as to his character is his "general repute." Evidence which discloses the opinion of such persons collectively is, therefore, evidence in proof of general reputation. Evidence of general repute is evidence of a fact which could be heard, and evidence of only such witnesses is admissible who say that they heard the general reputation of the accused to be so and so. Evidence, therefore, which only repeats what the witnesses heard from some specified individuals will be purely hearsay, and as such, inadmissible. *Ashiq Ali v. Emperor*.

21 Cr. L. J. 810 :
58 I. C. 682 : 23 O. C. 229 :
2 U. P. L. R. (J. C.) 147 : 7 O. L. J. 612 :
A. I. R. 1920 Oudh 255.

—S. 117—Habitual offender—Proof, evidence of general repute.

No doubt that S. 117 provides that, for the purpose of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise, but it is only in the case of a person who is an habitual offender and is called upon to furnish security for good behaviour, that the fact of his being an habitual offender may be proved by evidence of general repute. *Nga Po Aung v. Emperor*.

5 Cr. L. J. 377 :
1 Bur. L. R. 91.

—S. 117—Joint enquiry, legality of.

A joint inquiry under S. 117 (5), is out of the question when one charge at least is that two persons are so desperate and dangerous as to render their being at large without security hazardous to the community. *In re : K. S. Rathinam Pillai*.

39 Cr. L. J. 230 :
172 I. C. 866 : 1937 M. W. N. 1065 :
1937 2 M. L. J. 749 : 46 L. W. 858 :
10 R. M. 498 : A. I. R. 1938 Mad. 35.

—S. 117—Joint enquiry of contending factions, legality of—"Associated together in the matter", meaning of.

Persons belonging to two contending factions cannot be legally dealt with and bound over to keep the peace in one proceeding. Such persons cannot be said to be "associated together in the matter under inquiry". *Kamal Narain v. Emperor*, 11 C. W. N. 472 : 5 Cr. L. J. 197; *Ganapathi v. Emperor*, 31 M. 276; 3 M. L. T. 408; 8 Cr. L. J. 151, followed. *Ganapati v. Emperor*.

9 Cr. L. J. 560 :
2 I. C. 240 : 5 N. L. R. 65.

—S. 117—Order for furnishing surety, contents of.

There should be no restriction in the order itself that the accused should produce sureties in movable property. Magistrate should follow the words of S. 117 and the bond

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should be in the form given in the schedule. *Emperor v. Harihar Kakkar*. 33 Cr. L. J. 229 :
136 I. C. 65 : L. R. 13 All. 8 Cr. :
1932 A. L. J. 157 : I. R. 1932 All. 113 :
A. I. R. 1932 All. 122.

—S. 117—Order, nature of—Application to offence of perjury.

An order under S. 117 is in the nature of an *interim* order and must be capable of direct relation to the application under Ss. 107, 108, 109 and 110 on which the proceedings are based, and it is not intended to apply to an offence that has no relation whatever to proceedings under Chapter VIII; S. 117 cannot, therefore, apply to an offence of perjury. *Emperor v. Sumar*.

41 Cr. L. J. 937 :
190 I. C. 532 : 1940 Kar. 494 :
13 R. S. 91 : A. I. R. 1940 Sind 175.

—S. 117—Procedure.

S. 342 does not apply to proceeding under S. 117. *Benode Behari Nath v. Emperor*.

25 Cr. L. J. 1085 :
81 I. C. 909 : 50 Cal. 985 :
A. I. R. 1924 Cal. 392.

—S. 117 (3)—"Or otherwise", meaning of.

The effect of the words "or otherwise" in sub-s. (3) of S. 117 is to render admissible any evidence which would be relevant if the accused person or persons were being tried on a charge of being habitual offenders. *Sarja v. Emperor*.

20 Cr. L. J. 206 :
49 I. C. 654 : 17 A. L. J. 147 :
41 All. 231 : 1 U. P. L. R. All. 89 :
A. I. R. 1919 All. 220.

—Ss. 117, 109, 110, 112—Joint trial.

A Magistrate is not empowered to deal in one and the same enquiry with a person called upon to give security under S. 109, and another person called upon to give security under S. 110. *Emperor v. Mohan*.

2 Cr. L. J. 224 :
8 O. C. 91.

—Ss. 117 and 110—Security for good behaviour—Nature of evidence required.

The intention of the Legislature is that the Magistrate should use a very large discretion as to the evidence which he may admit in proceedings under S. 110 and the following sections of the Code. *Emperor v. Kallu Mal*.

1 Cr. L. J. 534 :
24 A. W. N. 140.

—Ss. 117, 242—Procedure—Revision.

A Magistrate proceeding under S. 117 should state the particulars of the matter against the accused and ask the accused if he could show cause why he should not be ordered to execute a bond. He should satisfy himself by enquiry of the truth of the information before making an order. The procedure laid down in S. 242 of the Code should be followed. It is not sufficient to ask the accused if he is willing to execute the bond required, a bond executed on the accused answering

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in the affirmative is illegal. *In re : Palaniappa Asary.*

11 Cr. L. J. 393 :
6 I. C. 682 : 7 M. L. T. 304 :
1 M. W. N. 228.

———Ss. 117, 257, 526—“Further evidence,” meaning of—Transfer of criminal case—Reasonable apprehension that justice would not be done—Long list of defence witnesses—Refusal to summon—Cross-examination—Indecent and insulting question—Discretion of Court.

The words “such further evidence as may appear necessary” in S. 117 refer to evidence *ejusdem generis* with the evidence described in the words immediately preceding. The law does not intend that the transfer of a case should be ordered simply because an accused person thinks that he would not get an impartial trial but the real question to be considered is whether on the facts disclosed in the application and the affidavit supporting the application for transfer, there arises a reasonable apprehension that the Magistrate who is seized of the case may be prejudiced willingly or unwillingly against the accused. The accused summoned 20 witnesses in the first list, and then gave a second list to summon 200 more witnesses. The Magistrate refused to summon the 200 men mentioned in the second list on the ground that it had been given for the purpose of vexation and delay and for defeating the ends of justice. The Magistrate also prevented the Counsel of the accused from putting some questions in cross-examination under Ss. 151 and 152 of the Evidence Act which led the Counsel to withdraw from the case: *Held*, that on both points the Magistrate exercised the judicious discretion vested in him by laws and there was no justification for transferring the case from the Court of that Magistrate. *Juggan v. Emperor.*

15 Cr. L. J. 212 :
22 I. C. 995 : 12 A. L. J. 399 : 36 All. 239 :
A. I. R. 1914 All. 382.

———Ss. 117, 356, 357, 360—Security proceedings—Evidence, record of—Procedure—Non-compliance with provisions of S. 360—Illegality.

Per *Neebould, J.*—S. 356, Cr. P. C., must be held to prescribe the manner in which evidence should be recorded in warrant cases. Therefore S. 360 is applicable to proceeding under S. 117 when a person is called upon to show cause why he should not furnish security for good behaviour and failure to comply with the provisions of that section would vitiate the inquiry or trial. Per *Ghose, J.*—The provisions of S. 360 of the Cr. P. C. are matter of procedure and having regard to the fact that the directions contained in the section are mandatory, the disregard of the provisions of that section with regard to any trial or inquiry vitiates the whole trial or inquiry. In making inquiries under S. 117 evidence should be recorded as in a warrant case, but Chap. VIII of the Code not having been referred in S. 356, S. 360 of the Code has no application to the record of such evidence. *Sanatan Bhattacharya v. Emperor.*

26 Cr. L. J. 1240 :
88 I. C. 856 : 41 C. L. J. 352 :
52 Cal. 632 : A. I. R. 1925 Cal. 720.

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———Ss. 117, 526 (8)—Application for transfer—Duty of Court to stay proceedings—Power of Court to pass emergent orders.

Although where an accused presents an application under S. 526 (8), the Court is bound to stay all judicial proceedings, the jurisdiction of the Court in the matter does not cease altogether and the Court has power to pass emergent orders which the law authorises it to pass, e. g., an order under S. 117 (3) directing the accused to execute a bond to keep the peace till the final disposal of the case. *Haji Baqridi v. Emperor.*

29 Cr. L. J. 448 :
108 I. C. 569 : L. R. 9 All. 37 Cr. :
9 A. I. Cr. R. 269 : 26 A. L. J. 398 :
L. R. 9 All. 102 Cr. : 10 A. I. Cr. R. 142 :
A. I. R. 1928 All. 268.

———Ss. 117 (2), 107—Consent to give security—Whether amounts to plea of guilty—Order requiring execution of bond, legality of.

It depends upon the facts and circumstances of each case as to whether a consent to give security amounts to a plea of guilty. When an accused called upon to give security for keeping the peace, says in terms that no prosecution evidence may be recorded and is willing to give security, there is ample ground for calling upon him to execute the bond. *Dukhi v. Emperor.*

38 Cr. L. J. 302 :
166 I. C. 850 : 1937 O. W. N. 133 :
1937 O. L. R. 62 : 9 R. O. 341 :
A. I. R. 1937 Oudh 289.

———Ss. 117 (2), 256, 257—Security proceedings—Accused's right of further cross-examination.

In security proceedings where the other side has no absolute right to recall a prosecution witness under S. 256 of the Cr. P. C. but has a right under S. 257, the order calling on a person to show cause why he should not execute a bond to be of good behaviour is “equivalent to a charge.” *In re : Karuthaswami Servai.*

31 Cr. L. J. 618 :
124 I. C. 1 : 31 L. W. 243 :
58 M. L. J. 229 : 53 Mad. 173 :
1930 M. W. N. 178 : A. I. R. 1930 Mad. 331.

———S. 117 (3)—Revision—Emergency order under S. 117 (3)—Order without legal basis—Interference.

In a case of emergency order, under S. 117 (3), although a Court in revision is not in a position, as is the Magistrate, to understand the emergency and the necessity for the order and will not substitute its own opinion for that of the Magistrate; yet the order of the Magistrate must have a legal basis. The High Court can interfere with the order in revision where the order is without legal basis. *Emperor v. Sumar.*

41 Cr. L. J. 937 :
190 I. C. 532 : 1940 Kar. 494 : 13 R. S. 91 :
A. I. R. 1940 Sind 175.

———S. 117 (3)—Surety bond by two sureties—Nature of their liability.

T executed a bond for Rs. 2,000 under S. 117 (3), N and K were her sureties and each signed a bond for a like amount. Proceedings under S. 514, Cr. P. C., were taken against them and they were ordered to pay

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a sum of Rs. 1,500 each : *Held*, that the two sureties were jointly and severally liable and therefore more than Rs. 2,000 could not be recovered from them. *Namdeo v. Emperor*.

40 Cr. L. J. 23 :
178 I. C. 207 : 1938 N. L. J. 79 :
11 R. N. 210 : A. I. R. 1938 Nag. 275.

—Ss. 117 (3), 498, 526—S. 117 (3), *object of—High Court's power to reduce security—Transfer, ground for.*

An order made under S. 117 (3), is exempt from the provisions of Chap. XXXIX relating to bail. The function of S. 117 (3) is to prevent a breach of peace or disturbance of the public tranquillity or the commission of any offence or in the interest of public safety pending an enquiry under Ss. 108, 109 and 110. The security which the Magistrate orders to be furnished cannot be reduced by the High Court under S. 498, though in exercise of its inherent powers it can consider whether the *interim* security is not too high. The order of the High Court reducing *interim* security does not, however, fetter the discretion of the Magistrate as to the amount of security which he may order to furnish ultimately. Where, there is nothing to indicate that the inquiry has not been fair and impartial, except that the proceedings against the petitioners were hurried and the petitioners remain unrepresented through no fault of the Magistrate, there is no ground for transfer. *Jagir Singh v. Emperor*.

31 Cr. L. J. 812 :
125 I. C. 322 : A. I. R. 1930 Lah. 529.

—S. 117 (3).

The provision in S. 117 (3) must be strictly construed and is, therefore, inapplicable where the charge is under cl. (f) of S. 110. *Ganapati v. Emperor*.

19 Cr. L. J. 871 :
47 I. C. 67 : A. I. R. 1917 Nag. 113.

—Ss. 117 (3), 526—*Transfer application, pendency of—Court, power of, to pass interim orders—Order for security, requirements of.*

When an application is made to a Court under S. 526 of the Cr. P. C. for postponement of a case to enable the accused to make an application for transfer, the Court does not lose its jurisdiction to make ancillary orders not affecting the merits of the case, either in the accused's favour or prejudicial to him or an order to require the accused to execute a bond under S. 117 (3). An order passed under S. 117 (3), Cr. P. C., merely stating that it is passed "on account of emergency" is a bad order. The Court must state its reasons in writing for passing such an order. *Sahib Dino v. Emperor*.

28 Cr. L. J. 173 :
99 I. C. 605 : 7 A. I. Cr. R. 326 :
A. I. R. 1927 Sind 148.

—S. 117 (4)—*Habitual offender—proof by general repute.*

The fact that a person is an habitual offender, may be proved by evidence of general repute; such evidence does not offend against the rule against reception of hearsay evidence or the provisions of S. 60, Evidence Act. What

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weight is to be attached to such evidence must depend on the fact whether the witness is independent and impartial. If the witness is unable to disclose the source of his knowledge, his evidence is entitled to no weight. *Raghubar Dayal v. Emperor*.

36 Cr. L. J. 83 :
152 I. C. 120 : 3 A. W. R. 655 :
L. R. 15 All. 79 Cr. : 7 R. A. 261 :
A. I. R. 1934 All. 735.

—S. 117 (4)—*Joint enquiry, legality of.*

The law allows joint inquiries under S. 117, clause (4). *Sheo Sahai v. Emperor*.

20 Cr. L. J. 750 :
53 I. C. 158 : A. I. R. 1919 All. 376.

—S. 117 (4), 110—*Joint trial—Jurisdiction, want of—Acquiescence of accused, effect of.*

S. 117 (4) allows a joint proceeding where two or more persons have been associated together in the matter under enquiry. The section, however, does not apply to proceedings under S. 110 where the evidence is generally to the effect that the accused are persons of bad livelihood who associate with other *badmashes* and evidence is also given of specific facts against individual accused. The mere acquiescence in a joint enquiry does not give the Magistrate a jurisdiction which he does not possess. *Lugman v. Emperor*. 18 Cr. L. J. 617 :
39 I. C. 985 : 3 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 207.

—S. 118.

See Bombay Gambling Act, S. 17.

—S. 118—*Delegation of enquiry into fitness of surety, legality of.*

It is not competent to a Magistrate who has passed an order under S. 118 to delegate to another the duty of inquiring into the fitness of a surety; he should make such inquiry himself. *Kamcal Nabh v. Emperor*.

25 Cr. L. J. 91 :
76 I. C. 27 : A. I. R. 1924 Lah. 672.

—S. 118.

Mere fact that the accused says he is willing to give a security to keep the peace is not the kind of proof required by S. 118, as condition precedent to taking of security under S. 107. *Prem Singh v. Emperor*. 18 Cr. L. J. 847 :

41 I. C. 671 : 37 P. R. 191 Cr. :
236 P. W. R. 1917 Cr. : A. I. R. 1917 Lah. 304.

—S. 118—*Not admitting crime—Ground for binding over.*

It cannot be inferred from the mere fact that a person has insisted upon putting his case before the Court and taking its decision, that it is necessary after the decision has been given to bind him down under S. 118, Cr. P. C., from doing the same thing again. *Chakravarty v. Emperor*. 27 Cr. L. 1154 :

97 I. C. 738 : 30 C. W. N. 953 :
44 C. L. J. 172 : 54 Cal. 59 :
A. I. R. 1926 Cal. 1133.

—S. 118—*Order, if suspended during time spent in prison.*

An order under S. 118 is not suspended during

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the time spent in prison if the suspect is not on bail. *Ghousbux v. Emperor*.

38 Cr. L. J. 363 :
167 I. C. 227 : 9 R. S. 173 : 30 S. L. R. 382 :
A. I. R. 1937 Sind 26.

—S. 118.

Order of Additional District Magistrate under S. 118—Appeal lies to District Magistrate and not to Sessions Judge. *Emperor v. Jahangir Chand*.

32 Cr. L. J. 849 (1) :
132 I. C. 206 : 32 P. L. R. 453.

—S. 118—Order setting aside order to furnish security, whether order of acquittal—Appeal by Local Government, maintainability of.

The terms 'conviction' and 'acquittal' are wholly inapplicable to orders under S. 118. An order of a Sessions Judge setting aside an order of a Magistrate directing a person to furnish security for good behaviour is not consequently appealable under S. 417 of the Code. *Emperor v. Babu Ram*.

29 Cr. L. J. 92 :
106 I. C. 684 : L. R. 8 All. 163 Cr. :
26 A. L. J. 99 : 8 A. I. Cr. R. 557 :
I. L. T. 40 All. 71 A. I. R. 1928 All. 1.

—S. 118—Person required to furnish security, whether convict.

Persons against whom proceedings are taken under Chap. VIII, Cr. P. C., are not accused persons, nor can they be called convicted persons when an order is passed against them adversely. *Emperor v. Masuria*.

36 Cr. L. J. 155 :
159 I. C. 804 (2) : 1935 A. L. J. 1337 :
1935 A. W. R. 1401 : 8 R. A. 518 :
A. I. R. 1936 All. 107.

—S. 118—Proceedings pending—Some defence witnesses called upon to show cause why they should not be prosecuted under S. 193, Penal Code—Accused prejudiced—Order bad.

While proceedings under S. 118, were still pending against an accused, the Magistrate called upon some of the defence witnesses to show cause why they should not be prosecuted under S. 193, Penal Code, whereby the other defence witnesses were frightened and did not give evidence: Held, that the action of the Magistrate was highly injudicious and was calculated seriously to hamper and prejudice the accused and the order under S. 118 was bad. *Kedar Mullick v. Emperor*.

16 Cr. L. J. 114 :
27 I. C. 187 : A. I. R. 1915 Cal. 368.

—S. 118—Punjab Restriction of Habitual Offenders Act (V of 1918)—Order for security for good behaviour—Order of restriction, whether legal.

Where a person is required, under S. 118 to furnish security for behaviour, it is illegal to make an order at the same time under S. 7 of the Punjab Restriction of Habitual Offenders Act, restricting his movements. *Kabir Bakhsh v. Emperor*.

21 Cr. L. J. 385 (b) :
55 I. C. 993 : 1 Lah. 100 : 95 P. L. R. 1920 :
6 P. W. R. 1920 Cr. : A. I. R. 1920 Lah. 330.

—S. 118.

S. 118 in the matter of the amount of the

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bond is really restrictive of S. 106 of the Code. *Abdus Sattar v. King-Emperor*.

39 Cr. L. J. 831 :
176 I. C. 948 : 1938 O. W. N. 676 :
11 R. O. 7 : 1938 O. L. R. 355 :
A. I. R. 1938 Oudh 195.

—S. 118—Security—Amount.

The security demanded under S. 118, Cr. P. C., should not be more than the accused may reasonably be expected to furnish. *Satindra Nath Sen v. Emperor*.

32 Cr. L. J. 593 :
130 I. C. 880 : 52 C. L. J. 405 :
I. R. 1931 Cal. 400 : A. I. R. 1931 Cal. 18.

—S. 118—Security—Order—Accused already undergoing sentence—Computation of the period of security.

Where a suspected person against whom an order under S. 118 is passed, is undergoing imprisonment for a substantive offence, the period for which the security is required should commence not from the date of order but from the date of the expiration of the sentence which the suspect was undergoing for the substantive offence. *Emperor v. Lashkaro*.

38 Cr. L. J. 961 :
170 I. C. 676 : 10 R. S. 71 : 31 S. L. R. 409 :
A. I. R. 1937 Sind 203.

—S. 118—Security for good behaviour—Ground for rejection.

A surety cannot be rejected on the sole ground that he does not live within a radius of 5 miles from the residence of the accused. *Hasin-ud-Din v. Emperor*.

13 Cr. L. J. 831 :
17 I. C. 575 : 10 A. L. J. 354.

—S. 118—Security for good behaviour—Showing cause—Accused must be ready with his evidence.

When a person is called upon to show cause why he should not be required to give security for good behaviour, he must be ready with his evidence when he appears in obedience to the notice. If he has been unable to bring the evidence with him on account of the shortness of the notice or other reasonable cause, it is his duty when he appears to apply at once for summonses to the witnesses he proposes to call. *Emperor v. Narayan*.

7 Cr. L. J. 24 :
9 Bom. L. R. 1385 : 3 M. L. T. 53.

—S. 118—Security for keeping the peace—Appeal.

No appeal will lie from an order under S. 118 requiring security to be furnished for keeping the peace. In the matter of the Petition of Chet Ram. In re : Chet Ram. 2 Cr. L. J. 329 : 25 A. W. N. 135 : 2 A. L. J. 716.

—S. 118—Security from the member of association.

Where an association has not been declared unlawful, security cannot be demanded from all the members of the association merely because some of the activities of the association have been shown to involve breach of the peace. *Satindra Nath Sen v. Emperor*.

32 Cr. L. J. 593 :
130 I. C. 880 : 52 C. L. J. 405 :
I. R. 1931 Cal. 400 : A. I. R. 1931 Cal. 18.

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—S. 118—*Security proceedings—Surety—Living at a distance, whether ground for rejecting surety.*

The fact that the surety offered lives at a distance from the accused is not, by itself, a sufficient reason for refusing to accept him as surety. *Jugal Singh v. Emperor.*

30 Cr. L. J. 45 :
112 I. C. 909 : I. R. 1929 Pat. 43 :
10 P. L. T. 23 : A. I. R. 1928 Pat. 374.

—S. 118—*Surety, Fitness, test of.*

The test of the fitness of a surety is not whether he can supervise the person bound down, but whether he is a person of sufficient substance to warrant his being accepted. *Adam Sheikh v. Emperor.*

7 Cr. L. J. 439 :
I. L. R. 35 Cal. 400.

—S. 118—*Surety's previous conviction, effect of.*

The fact that a proposed surety is a previous convict, does not of itself render him afterwards unfit to be surety for a party who is required to give security for good behaviour. *Budhu Ahir v. Emperor.*

22 Cr. L. J. 483 (b) :
62 I. C. 179 : 25 C. W. N. 140 :
A. I. R. 1921 Pat. 333.

—Ss. 118 and 110—*Security for good behaviour—Evidence required.*

The evidence against certain persons called upon to furnish security for good behaviour consisted mainly of the fact that they were Mewatis of a particular place and that the Mewatis of that place were looked upon generally and collectively by the other inhabitants of the neighbourhood as bad characters and dangerous persons: *Held*, that such evidence was not enough to support an order under S. 118. *Emperor v. Hurmat Khan.*

2 Cr. L. J. 88 :
25 A. W. N. 41 : 2 A. L. J. 174.

—Ss. 118, 120, 123—*Security, failure to give—Concurrent imprisonment, legality of.*

Section 120 (1), read with S. 123 (1), makes it illegal for a Magistrate to pass a sentence of imprisonment to run concurrently with some other sentence the accused is already undergoing. *In re : Chinnaswamy.*

16 Cr. L. J. 272 :
28 I. C. 160 : A. I. R. 1916 Mad. 534.

—Ss. 118, 120, 123—*Security proceedings—Suspect undergoing imprisonment or imprisoned before expiry of time for furnishing security—Detention of accused—Procedure.*

If on the date an order is passed under S. 118, the suspect is undergoing imprisonment for a substantive offence, the provisions of cl. (1) of S. 120 come into operation and the period of security does not commence till the suspect has served out his substantive sentence of imprisonment. The proper procedure under the circumstances would be that the Magistrate should not pass the order for detention of the suspect under S. 123 at once but postpone further proceedings under that section till the suspect has served out his period of sentence for the substantive offence. If, on the other hand, on the date of the order under S. 118, the suspect is not undergoing imprison-

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ment for a substantive offence and the Magistrate grants him time to furnish security, and before the expiry of that time the suspect is convicted of a substantive offence and sentenced to imprisonment, the Magistrate should proceed to pass an order of detention under S. 123 and his detention would then *ipso facto* run concurrently with the substantive sentence which the suspect is undergoing. *Emperor v. Saidu.*

28 Cr. L. J. 431 :
101 I. C. 463 : 8 A. I. Cr. R. 31 :
A. I. R. 1927 Sind 166.

—Ss. 118, 120, cl. (ii)—*Security—Time given to furnish security—Conviction of suspect during that time—Security, whether runs from expiry of sentence.*

Where during the time allowed to furnish the security as required by an order under S. 118, Cr. P. C., the accused is sentenced to imprisonment for an offence committed by him prior to the date of such order, the Magistrate cannot fix the date of the expiry of such sentence as the date for computing the period from which such security is to be furnished. *Emperor v. Ahmed.*

27 Cr. L. J. 865 :
96 I. C. 113 : 20 S. L. R. 163 :
A. I. R. 1926 Sind 273.

—Ss. 118, 122—*Sureties for good behaviour, fitness of—Magistrate, duty of.*

Sureties offered for good behaviour should not be rejected except after judicial inquiry; the Magistrate should himself decide, after holding an enquiry, as to the fitness of the proposed sureties and he cannot call upon other persons to exercise the functions which are entrusted by law to him alone. Where each of several persons bound down under S. 118, offers two sureties, the fitness of each of the sureties must be separately determined. The fact that the sureties do not show that they have sufficient control over the accused person bound down is not a valid ground for their rejection under S. 122. *Rayan Khan v. Emperor.*

18 Cr. L. J. 408 :
37 I. C. 968 : 24 C. L. J. 51 :
20 C. W. N. 1133 : 43 Cal. 1024 :
A. I. R. 1917 Cal. 378.

—Ss. 118, 122, 123—*Surety for good behaviour—Qualifications of fit surety.*

It is not the pecuniary sufficiency alone of the surety that the Court has to look to under S. 122. The question whether a surety offered is a fit person is one of discretion, and what the Court of Revision has to look to is whether, under the circumstances of each particular case, the order rejecting the surety is a reasonable and proper order. A Magistrate refused to accept a Pleader as a surety for a person found to be a member of a large gang of swindlers, and required to furnish security for his good behaviour for a period of three years, on the ground that the surety was unable to control the accused: *Held*, that the order was reasonable and proper. *Abdul Karim v. Emperor.*

18 Cr. L. J. 453 :
39 I. C. 293 : 21 C. W. N. 925 :
44 Cal. 737 : A. I. R. 1917 Cal. 209.

—Ss. 118, 123, 350—*Security proceedings—Preventive sections—Order on evidence recorded*

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by predecessor—Security for more than one year—Submission of proceedings to Sessions Judge—Order of Sessions Judge—Period of imprisonment in default of security.

When a Magistrate makes an order under S. 118 requiring the accused to give security for more than one year, he himself has no power to pass any order for imprisonment in default of the security being given. He can only issue a warrant for the detention of the accused pending the orders of the Sessions Judge. The proceedings in such a case are not laid before the Sessions Judge for confirmation of an order, but for the purpose of his passing an order himself under S. 123 (3), Cr. P. C. The period for which imprisonment in default of giving security is ordered must coincide with the period for which security is demanded. *Emperor v. Myat Aung.*

7 Cr. L. J. 412 :
4 L. B. R. 135.

———Ss. 118, 123 (2)—*Security not furnished—Reference to Sessions Judge—Magistrate's power to accept security pending reference—Reference, termination of—Accused's right of appeal.*

Where an accused fails to furnish security under S. 118, and a reference is made to the Sessions Judge under S. 123 (2) of the Code, the Magistrate does not become *functus officio*. Notwithstanding such a reference he can accept security if one is offered before the decision of the reference by the Sessions Judge and when security is accepted by the Magistrate the reference to the Sessions Judge automatically comes to an end, and the right of the accused to appeal which was in abeyance revives. *Emperor v. Muhammad Akbar.*

29 Cr. L. J. 236 :
107 I. C. 286 : 9 I. A. Cr. R. 490 :
A. I. R. 1928 Lah. 64.

———Ss. 118, 125—*Security to keep peace—Power of District Magistrate to cancel bond.*

Where a Magistrate has bound over an accused to keep the peace, it is open to a District Magistrate to cancel a bond given by the accused for keeping the peace but he is not empowered to cancel the bond of the surety and to send the accused person so bound to jail. *Fakhr-ud-Din Khan v. Emperor.*

12 Cr. L. J. 480 :
12 I. C. 88 : 8 A. L. J. 658.

———Ss. 118, 367 (6)—*Several accused—Order under S. 118, nature of—Case of each to be considered separately—Appellate judgment, requirements of.*

Proceedings in which suspected persons can be sent to prison on evidence on which they would not ordinarily be convicted if charged with a substantive offence in a Criminal Court are serious proceedings and require to be dealt with quite as carefully as cases where accused persons are charged in the ordinary way with substantive offences in the Criminal Courts. An order passed under S. 118 or S. 123 (3), Cr. P. C., must be self-contained; it must show that the Court has considered the evidence against each of the suspected persons and has found that the evidence proves the case against each of the suspected persons individually. In proceedings against several suspected persons where they can be dealt with in one inquiry

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under the law, the appellate judgment must show that the case against each has been considered separately and that the case against each of them individually is proved by evidence. *Ghousbux v. Emperor.*

38 Cr. L. J. 363 :
167 I. C. 227 : 9 R. S. 173 :
30 S. L. R. 382 : A. I. R. 1937 Sind 26.

———Ss. 118, 407, 439—*Order under S. 118—Revision—Interference.*

A High Court will not ordinarily interfere on the merits of orders passed under S. 118 except in very exceptional circumstances: provided that the Court hearing the appeal under S. 406 of the Code shows in its judgment that it has really, and not merely nominally, gone through the evidence on record. But where the judgment of the Sessions Judge does not fulfil these requirements and shows a clear misconception of the evidence, the High Court will interfere. *Kashiram v. Asram.*

31 Cr. L. J. 20 :
120 I. C. 215 : A. I. R. 1929 Nag. 328.

———Ss. 118, 426 (1)—*Order for executing bond—Appeal—Power of Appellate Court to release appellant on bail—Proceedings under Chap. VIII.*

A person ordered to execute a bond under S. 118, is not a 'convicted person' within the meaning of S. 426 (1) of the Code and cannot, therefore, be released on bail by the Appellate Court pending an appeal against the order directing him to execute a bond. *Charan Mathu v. Emperor.*

31 Cr. L. J. 958 :
125 I. C. 792 : 11 P. L. T. 261 :
9 Pat. 131 : A. I. R. 1930 Pat. 274.

———Ss. 118, 514—*Surety offering house property as security—Security, whether to be accepted.*

Accused was ordered under S. 118 to furnish a bond for Rs. 200 and to provide one respectable and reliable surety in Rs. 100. A surety came forward and offered as security house property which the Tahsildar reported to be worth Rs. 500. The surety was also reported to be respectable: Held, that the surety and the security offered might be accepted, notwithstanding that so long as the surety was alive only movable property could be attached and sold for recovery of the penalty. *Nanhe v. Emperor.*

19 Cr. L. J. 711 :
40 I. C. 295 : 16 A. L. J. 503 :
A. I. R. 1918 All. 182.

———S. 118 Prov. (2)—*Security for good behaviour—Consideration for fixing the amount of security.*

The character and reputation of a suspect are not the sole considerations determining amount of security. It should be fixed after consideration of the station in life of the accused. *Piral v. Emperor.*

12 Cr. L. J. 110 :
9 I. C. 651.

———S. 118 proviso 3, S. 562—*Minor accused—Bond for good behaviour and to appear and receive sentence—Executant.*

The third proviso to S. 118, that a bond for keeping the peace or for good behaviour in respect of a minor shall be executed only by his sureties, does not apply to bonds of first

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offenders released on probation under S. 562, Cr. P. C. *Emperor v. Mi Pyu*. 6 Cr. L. J. 123.
4 L. B. R. 12.

———S. 119—*Discharge of persons informed against on ground that Police report of date mentioned in proceedings not in existence—Mistake of date—Second proceeding based on report of real date, if barred.*

Proceedings were drawn up against the petitioners and terminated in their discharge under S. 119. The proceedings purported to have been based on a Police report dated July 27th, 1912, and the Magistrate discharged the petitioners on the ground that no such report was in existence. The Police report was dated July 29th, 1912, but in the proceedings by mistake, July 27th, 1912, was put down. Another Magistrate drew up the present proceedings against the petitioners on the Police report of July 29th, 1912: *Held*, that as the present proceedings were based on a Police report which was not the foundation of the former proceedings, these proceedings were not invalid. *Chandan Sahu v. Bhada Rai*.

14 Cr. L. J. 189.
19 I. C. 189.

———S. 119.

Order of discharge under S. 119—Reference to High Court to set aside order—Mere conflict of opinion on value of evidence—Interference is not justifiable.

35 Cr. L. J. 189 (1):
146 I. C. 831 (1): 1933 A. L. J. 272:
L. R. 14 All. 45 Cr.: 6 R. A. 351.

———Ss. 119, 436, as amended by Act XVIII of 1923—*Discharge, order of—Revision.*

Under S. 436, Cr. P. C., a District Magistrate has no jurisdiction to revise an order under S. 119 of the Code discharging a person who has been called upon to give security. *Neur Ahir v. Emperor*.

30 Cr. L. J. 63:
113 I. C. 79: 10 A. I. Cr. R. 488:
I. R. 1929 All. 104: 1929 A. L. J. 146:
L. R. 9 All. 146 Cr.: 51 All. 408:
A. I. R. 1928 All. 755.

———Ss. 119 and 437—*Order of discharge—Further inquiry—"Discharge" meaning of.*

A Sub-Divisional Magistrate after hearing the defence, discharged the accused under S. 119, and the District Magistrate acting under S. 437, ordered further inquiry: *Held*, (1) that the District Magistrate had no jurisdiction to make the order; (2) That when an accused person by evidence adduced on his behalf satisfies the Magistrate trying him that he ought not to be convicted, the Code does not contemplate a further inquiry by order of a superior Magistrate; (3) That the word "discharged" in S. 437 is equivalent to "discharged" within the meaning of Ss. 209, 253 and 259 of the Code and the term "discharge" as used in S. 119 is merely a permission to depart. *Velu Taji Ammal v. Chidambaram Pillai*.

11 Cr. L. J. 162:
4 I. C. 1057: 6 M. L. T. 133.

———Ss. 119, 437—*Order of discharge—Revision—Further enquiry.*

S. 437, Cr. P. C., does not apply to proceedings

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under Chapter VII of the Code. Therefore, a District Magistrate cannot order further inquiry into the case of a person discharged under S. 119, but it is open to him to institute fresh proceedings on entirely fresh materials. It is proper to give notice to the person discharged before an order for further inquiry is made against him. *U. P. B. R. Ismail v. Nolan*.

15 Cr. L. J. 531:
24 I. C. 843: 2 U. B. R. 1914:
A. I. R. 1914 U. Bur. 28.

———Ss. 119, 438—*Reference by District Magistrate in respect of order of discharge—His duty.*

When a District Magistrate makes a reference in respect of an order of discharge passed by a Subordinate Magistrate, he should not permit himself to be associated with criticism by a Police Officer of the order. He should himself consider the case with greater care before he commits himself to the reference. *Emperor v. Ali Muhammad*.

38 Cr. L. J. 117:
165 I. C. 950: 9 R. S. 114:
30 S. L. R. 36: A. I. R. 1936 Sind 243.

———S. 120.

See Cr. P. C., S. 106.

———S. 120—*Period for which security is to be given, commencement of.*

Under S. 120 (2), Cr. P. C., the period for which security is to be given commences on the date of the order under S. 118, that is, the date of the final order, and not from the date of the preliminary order. *Taranugowd v. Emperor*.

29 Cr. L. J. 77:
106 I. C. 589: 1927 M. W. N. 185:
55 M. L. J. 24: 51 Mad. 515: 28 L. W. 418:
A. I. R. 1927 Mad. 542.

———Ss. 120, 118, 120, 123—*Security for good behaviour, failure to furnish—Sentence of imprisonment—Imprisonment for substantive offence—Overlapping of two periods, effect of.*

An order was passed under S. 118, Cr. P. C., calling upon a certain person to furnish security to be of good behaviour, and on his failure to furnish such security, an order was made under S. 123 that he should be detained in Jail for a period of one year. A few days later he was convicted for a substantive offence and was sentenced to seven years' rigorous imprisonment after the expiry of the substantive sentence: *Held*, that the period for which he had been directed to be detained in prison under S. 123 having expired, he was entitled to be set at liberty. *Emperor v. Aba Farid Bargir*.

28 Cr. L. J. 652:
103 I. C. 108: 29 Bom. L. R. 700.

———S. 120 (1)—*Accused bound over in security after sentence for another offence—Failure to furnish security—Imprisonment in default, when to commence.*

Accused was convicted under S. 147 of the Penal Code, but was released on bail pending the appeal. While on bail, he was proceeded against under S. 119, Cr. P. C. and was ordered to furnish security, or in default, to undergo imprisonment. His appeal was dismissed, and the Magistrate directed that, as he was under-

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going sentence in default of furnishing security, the sentence under S. 147 would take effect after the expiry of the sentence under S. 110, Cr. P. C. : *Held*, that the order was illegal as it contravened the provisions of S. 120 (1), Cr. P. C., and that the period of detention on failure to furnish security could not commence before the sentence under S. 147 of the Penal Code had been served out. *Emperor v. Jhabdey*.

22 Cr. L. J. 95 :
59 I. C. 383.

———S. 121, nature of—Bond for good behaviour—Forfeiture.

S. 121, Cr. P. C. is explicit and it is, so far as concerns bonds for good behaviour, exhaustive. Such a bond cannot be forfeited unless there has been the commission of, or attempt to commit, or abetment of, an offence punishable with imprisonment. *Emperor v. Jalal Shah*.

11 Cr. L. J. 252 :
5 I. C. 827 : 5 P. R. 1910 Cr :
8 P. W. R. 1910 Cr.

———S. 121—Security bond—Grounds for forfeiture of bond.

S. 121 is exhaustive and a bond can only be forfeited if the person bound over commits, attempts to commit or abets any offence punishable with imprisonment. *Sheo Mangal Prasad v. Emperor*.

30 Cr. L. J. 203 :
113 I. C. 740 : 26 A. L. J. 443 :
L. R. 9 All. 68 Cr. : 9 A. I. Cr. R. 443 :
50 All. 666 : I. R. 1929 All. 124 :
A. I. R. 1928 All. 232.

———S. 121—Commission of offence—Proof.

The commission of an offence within the meaning of S. 121 may be proved otherwise than by a conviction, for instance, by evidence recorded under S. 512 of the Code. *Mansur v. Emperor*.

27 Cr. L. J. 588 :
73 I. C. 332.

———Ss. 121, 438, 514 & 515—Forfeiture of security—Appeal—Reference to High Court.

In an appeal under S. 515 of the Cr. P. C., a District Magistrate took action under S. 438 (1) and reported the case for the orders of the Chief Court, as he entertained some doubts about the correctness of the rulings reported as 13 P. R. 1913 Cr. : 15 P. R. 1913 Cr. : *Held*, that the Procedure adopted by the District Magistrate was unauthorized by any provision of the Code. His business was to dispose of the appeal before him. *Bega Singh v. Emperor*.

15 Cr. L. J. 485 :
24 I. C. 573 : 7 P. W. R. 1914 Cr. :
62 P. L. R. 1914 : A. I. R. 1914 Lah. 266.

———Ss. 121, 514, Sch. V, Form XI—Security for good behaviour—Bond, construction of—Offence committed in Native State—Forfeiture of bond.

A penal bond must be construed literally and strictly. The subjects of the ruler of an independent Native State are not the subjects of His Majesty the King-Emperor. A bond executed by a surety in the form prescribed by Schedule V, Form XI, Cr. P. C., cannot be forfeited on the principal committing an offence

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in an independent Native State. *Bahadur Singh v. Emperor*.

19 Cr. L. J. 924 :
47 I. C. 440 : 26 P. R. 1918 Cr. :
35 P. W. R. 1918 Cr.
A. I. R. 1918 Lah. 30.

———S. 122.

Court should not reject sureties on Police report—Illegal rejection ignoring S. 122 is ground for transfer of case. *Sukhai v. Emperor*.

36 Cr. L. J. 1285 :
157 I. C. 1049 : 1935 A. I. R. 906 :
1925 A. W. R. 300 : 8 R. A. 257 :
A. I. R. 1935 All. 517.

———S. 122—Discretion, nature of—Opinion formed on Police report.

The discretion given to a Magistrate by S. 122, Cr. P. C. is a wide one, but there must be some independent inquiry showing that a judicial discretion has been exercised in rejecting a surety. Therefore, a Magistrate's order rejecting a surety merely on the Police report and without any independent inquiry by himself is bad. *Bhawani Singh v. Emperor*.

16 Cr. L. J. 54 :
26 I. C. 646 : 12 A. L. J. 1094 :
A. I. R. 1914 All. 489.

———S. 122—Enquiry, nature of—Knowledge of Magistrate—Refusal to accept surety—Judicial inquiry without taking evidence.

An inquiry under S. 122, Cr. P. C. being a judicial inquiry, a Magistrate cannot refuse to accept a surety on the ground of his knowledge as Magistrate that the surety's innocence or connection with thieves is far from established. *Piru Abdulla v. Emperor*.

15 Cr. L. J. 378 :
23 I. C. 746 : 7 S. L. R. 94 :
A. I. R. 1914 Sind 108.

———S. 122—Inquiry into the fitness of a surety—Magistrate's power to record evidence.

In enquiring into the fitness of a surety, a Magistrate has power to record evidence on oath in the exercise of the power and duty conferred and imposed on him by S. 122. *Emperor v. Ghulam Mustafa*.

1 Cr. L. J. 190 :
24 A. W. N. 52 : I. L. R. 26 All. 371.

———S. 122—Judicial proceedings—Evidence—Admissibility—Police reports—Procedure—Evidence need not be formally recorded.

Proceedings under S. 122, Cr. P. C. are judicial proceedings. Consequently, an order under S. 122 can only be based on admitted facts or legal evidence. Reports of Police Inspectors or *Mukhtiyarkar* are not evidence admissible in proceedings either under Division B or Division C of Chapter VIII, Cr. P. C. A Magistrate is not required to formally record the evidence. It is sufficient to indicate the nature of the evidence in the formal record in writing of reasons for refusing to accept sureties. *Emperor v. Haji Usman*.

11 Cr. L. J. 497 :
7 I. C. 592 : 4 S. L. R. 18.

———S. 122—Magistrate's power to reject surety—Sufficient ground—Defence witness, whether can stand surety—Revision.

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Sureties for good behaviour should not be rejected merely on the strength of the report of a Tahsildar and a Sub-Inspector of Police, without giving the sureties an opportunity of meeting any allegations that may be made against them. The fact that a person offering himself as surety has given evidence in favour of that person in a proceeding under S. 109 or S. 110 which resulted in the passing of an order requiring security, would not be at all a good reason for refusing to accept the surety. *Bairagi v. Emperor*.

15 Cr. L. J. 727 :

22 I. C. 175 : A. I. R. 1914 All. 487.

—S. 122—Magistrate refusing to accept surety—Reasons for non-acceptance—Relationship.

A surety should not be rejected on the sole ground that he is related to the accused. A Magistrate can refuse to accept a surety only on a valid and reasonable ground. A Magistrate should exercise his independent judgment and not implicitly accept the opinion expressed in a Police Report without considering the facts on which such opinion is based. *In re : Abdul Khan*.

4 Cr. L. J. 169 :

10 C. W. N. 1027.

—S. 122—Order based on Police Report, legality of.

An order of rejection of surety based merely on Police is bad in law. *Imperator v. Mahro*, 2 S. L. R. Cr. 11; 10 Cr. L. J. 225, followed. *Emperor v. Kamal*.

10 Cr. L. J. 230 :

2 S. L. R. 15.

—S. 122—Refusal to accept sureties upon invalid and unreasonable grounds—Acting on Police report and not on enquiry by the Magistrate himself, improper.

Where a Magistrate refused to accept sureties tendered by a person bound down under S. 110, Cr. P. C., upon the following grounds: (i) that three out of four sureties are not residents of the village where the defendants live; (ii) that none of them have sufficient movable property; (iii) that all of them are reported to be of bad character and (iv) that three of them are relations of a person who was suspected of receiving stolen property: *Held*, that the first, second and fourth grounds are not sufficient; that the third ground may be sufficient, but the Magistrate in determining that question cannot act on a report submitted by the Police, but must hold an enquiry in respect thereto. *Suresh Chandra Basu v. Emperor*.

3 Cr. L. J. 468 :

3 C. L. J. 575.

—S. 122—Refusing Sureties merely on Police report—Legality of the order.

The discretion vested in the Magistrate, of refusing to accept sureties is not arbitrary or absolute, but judicial, the determination of which can only be made on legal evidence. In all such cases, it is the duty of the Magistrate to examine the sureties offered, as to their fitness, and to take such other evidence as the accused may tender. If the Magistrate asks the Police to report, it should be merely with a view of

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enabling them to collect evidence. But the Magistrate's order must proceed on a consideration of the evidence and not of the Police Report. *Imperator v. Mahro*, 10 Cr. L. J. 225 : 2 S. L. R. 11.

—S. 122—Refusing Sureties on ground of relationship.

Sureties offered under S. 122 should not be refused on the ground that they are related to the accused. *Emperor v. Miro*, 9 Cr. L. J. 247 : 1 S. L. R. 3.

—S. 122—Security for good behaviour—Proposed surety—Previous conviction.

The mere fact that a person was once convicted does not render him unfit for suretyship for all times to come. *Emperor v. Raghunath Singha*.

1 Cr. L. J. 359 :

I. L. R. 26 All. 189.

—S. 122—Security for good behaviour, object of—Sureties, rejection of—Judicial enquiry—Grounds for refusal.

The object of an order for furnishing security for good behaviour is the prevention of crime, and not to secure the imprisonment of the person concerned. Under S. 122, Cr. P. C. when a surety for good behaviour is offered, the Magistrate is required to consider the matter judicially, and to state reasons for not accepting a surety. The mere fact that the sureties offered, although solvent and respectable, live at a distance from the persons bound over, is not a good reason for refusing to accept them. *In re : Jesa Bhatha*.

21 Cr. L. J. 377 :

55 I. C. 857 : 22 Bom. L. R. 190 : 44 Bom. 385 : A. I. R. 1920 Bom. 292.

—S. 122—Security for good behaviour—'Unfit'—Discretion of Magistrate.

The 'unfitness' of a surety under S. 122, is not limited to pecuniary unfitness. The question as to whether a particular person is 'fit' or not is for the Magistrate to decide. *In re : Jalil*.

8 Cr. L. J. 388 :

8 C. L. J. 244.

—S. 122—Security for keeping the peace—Surety, inability of, to control person bound—Rejection of surety—Security, nature of.

Inability of the surety to control the accused whether owing to distance or any other reason, is a good ground for rejecting the surety, though mere distance is not. In the case of a bond for good behaviour to keep peace personal security must be given. A security of house or cattle is not enough. *Emperor v. Mohamad Bakhsh*.

25 Cr. L. J. 796 :

81 I. C. 316 : 26 O. C. 284 :

A. I. R. 1924 Oudh 80.

—S. 122—Sureties—Report by Police as to fitness of sureties, admissibility of.

Where a Magistrate calls for a report from the Sub-Inspector of Police as well as from the Tahsildar as to the fitness of particular persons to act as sureties in a case and the Tahsildar reports in the affirmative and the Sub-Inspector in the negative, the Magistrate should not act upon Police report, it being inadmissible but

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should take evidence and base a decision thereon. *Zorawar v. Emperor*.

16 Cr. L. J. 445 :
29 I. C. 77 : 13 A. L. J. 469 :
A. I. R. 1915 All. 177.

———S. 122—*Sureties, fitness of—Distance, whether disqualification.*

S. 122 of the Cr. P. C. gives a discretion to a Magistrate to refuse or accept the sureties according as he considers them unfit or otherwise for the purpose for which the security is required. In each case the Magistrate must consider whether the surety is in a position to exercise considerable control and supervision over the accused. The mere solvency of a surety may not invariably be sufficient to ensure the good conduct of the accused any more than the mere fact of his residing at a distant place may be a sufficient ground for rejecting him as such. It is reasonable to expect and require that the sureties to be rendered, should not be sureties from such distance as to make it unlikely that they would exercise any control over the man for whom they are willing to stand surety. If the sureties undertake to keep the accused within the area of their observation or to adopt other suitable measures, for securing the supervision and control needed to keep him in good behaviour, there can be no inherent objection to their being accepted as sufficient. *Emperor v. Rameswar Tewari*.

24 Cr. L. J. 795 :
74 I. C. 539 : 10 O. L. J. 299 :
A. I. R. 1923 Oudh 165.

———S. 122—*Sureties, fitness of.*

Sureties cannot be rejected on the ground that they will not be able to influence the bad character by example and precept. The most that a Magistrate can demand is that they should be respectable men, neighbours of the bad character and solvent. *Crown v. Ahmed*.

9 Cr. L. J. 256 :
1 S. L. R. 14.

———S. 122—*Surety, evidence about fitness of, rejection of—Magistrate, duty of—Burden of proof.*

The power of rejection of sureties should not be used merely to prevent a 'badmash' from giving security. The burden on accused to produce the evidence of the fitness of the surety, is ordinarily discharged by the evidence of the surety himself. If the Magistrate is not satisfied with that evidence, that alone is not sufficient ground for rejection. He must make further inquiry and come to a definite conclusion one way or the other. *Muhammad Ibrahim v. Emperor*.

16 Cr. L. J. 479 :
29 I. C. 111 : 8 S. L. R. 322 :
A. I. R. 1914 Sind 15.

———S. 122 — *Surety — Good behaviour—Fitness of surety.*

The ground of refusal by a Magistrate to accept a surety for good behaviour under S. 122 must be valid and reasonable, and must be dealt with in each case as it arises. Refusal by a Magistrate to accept as sureties the brothers of the person bound down to be of good behaviour because they were unfit for the reason

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that the person bound down was a notorious dacoit and there was a consensus of opinion that his brothers would not be able to keep him in control, is reasonable and valid one. *Asiraddi Mandal v. Emperor*.

15 Cr. L. J. 169 :
22 I. C. 745 : 41 Cal. 764 :
A. I. R. 1914 Cal. 626.

———S. 122—*Surety for good behaviour, fitness of.*

A surety for good behaviour cannot be rejected on the ground that he is already a surety for another person. *Ghisa v. Emperor*.

24 Cr. L. J. 517 :
73 I. C. 53 : A. I. R. 1924 Oudh 132.

———S. 122—*Surety, unfitness of—Reasons—Notice to recording of sureties.*

The Magistrate, in rejecting sureties under S. 122, has to record his reasons for doing so. The reasons must be carefully considered and tested which is best done by their being brought to the notice of the persons who are refused as sureties, and by their having an opportunity for controverting them. If that is not done, the order rejecting the sureties must be set aside. *Ela Buksh v. Emperor*.

11 Cr. L. J. 243 :
6 I. C. 124.

———S. 122—*Surety, when can be rejected—Reliability, test of.*

When an accused person is called upon to produce a surety, such surety must be accepted, or, if rejected, he must be rejected upon tangible evidence recorded and considered by the Magistrate. The mere fact that a person has once been challaned for a theft, is no ground for holding that he is not a reliable person. *Munshi Singh v. Emperor*.

21 Cr. L. J. 365 :
55 I. C. 733 : 18 A. L. J. 324 :
A. I. R. 1920 All. 170.

———S. 122.

The discretion conferred on a Magistrate by S. 122 is a wide one, and the High Court should not lightly interfere with any reasonable exercise of the same. *Bairagi v. Emperor*.

15 Cr. L. J. 727 :
22 I. C. 175 : A. I. R. 1914 All. 487.

———Ss. 122, 123—*Acceptance of surety—Procedure.*

There is a procedure laid down which is to be followed by the Magistrate in rejecting a surety. But there is nothing to prevent him from accepting persons, with whom he is satisfied without any sort of inquiry or examination of witness on oath. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Azizur Rahman Chaudhury*.

38 Cr. L. J. 635 :
168 I. C. 716 : 41 C. W. N. 415 :
9 R. C. 873 : A. I. R. 1937 Cal. 233.

———Ss. 122, 123—*Fitness of surety—Onus—Decision—Order passed by Sessions Court—Jurisdiction of Magistrate to decide fitness of surety.*

The accused should prove to the satisfaction of the Magistrate that the surety is a fit person. The Magistrate should decide this on evidence

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and on a proceeding which is judicial. But he cannot decide in anticipation, without taking any evidence, that no evidence but that of a particular class of witnesses will satisfy him. The word "Magistrate" in S. 122 implies the Magistrate who made the order or his successor in office who is properly seized of the inquiry. The same is the case with the superior Courts mentioned in S. 123. The Magistrate has no jurisdiction to decide on the fitness on a bond ordered by the Sessions Court; the adequacy of the security should be decided by the latter Court. *Imperator v. Allahdino*.

12 Cr. L. J. 410 :
11 I. C. 594.

—Ss. 122, 123—*Security proceedings—Proceedings under S. 123 (2)—Power of Sessions Judge to test sureties.*

A Sessions Court before which proceedings are laid under S. 123 (2), Cr. P. Code, has neither the duty nor the power to test the sureties, this is the function of the Magistrate. *Emperor v. Narendra Nath Singh*.

31 Cr. L. J. 802 :
125 I. C. 156 : 9 Pat. 741 :
A. I. R. 1930 Pat. 217.

—Ss. 122, 123 (3), 367, 424—*Judgment—requirement of sureties—Rejection of—Enquiry, delegation of—Habitual cheat—Proof—Evidence Act (I of 1872), S. 11.*

The Sessions Judge, in writing his order, should show that he has considered the case of each individual prisoner on its own merits. When the question is whether a man is a habitual cheat, the fact that he belongs to an organization formed for the purpose of habitually cheating in concert, is relevant under S. 11 of the Evidence Act. It is unsafe and improper to accept, as security for good behaviour, men whom the Magistrate does not know himself, and who will not appear before him to be questioned. A Magistrate cannot refuse the sureties on the ground that when they were called on to state in writing what influence they had over the accused persons, they failed to do so. (Per *Coxe, J.*—*Ryver, J.* dissenting)—S. 122 does not necessitate a judicial inquiry at all; but if it does, such an enquiry may be delegated to another Magistrate. A Magistrate ought to record his reasons in the order; but the omission does not justify interference by the High Court in revision where the Subordinate Magistrate to whom the inquiry was transferred recorded his reasons for rejecting the sureties and the inquiring Magistrate accepted them. *Kalu Mirza v. Emperor*.

11 Cr. L. J. 23 :
5 I. C. 29 : 14 C. W. N. 49.

—S. 123.

See Cr. P. C., S. 106.

—S. 123—*Badmash—Security bond for 3 years—Fresh proceedings within week from expiry of years—Evidence of conduct prior to the expiry of the term, admissibility of.*

It is not fair to run in a man as *badmash* before he has had an opportunity of showing that he is willing to adopt an honest livelihood. Hence where a man who was under a bond for good behaviour for 3 years, is again run in within a

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week of the expiry of that term, the proceedings are bad in law. Evidence, relating to the period prior to the date when the term of 3 years expired, is not admissible in such a case. *Ranjit v. Emperor*.

3 Cr. L. J. 96 :
3 A. L. J. 29 : 26 A. W. N. 30 :
I. L. R. 28 All. 306 : 1 M. L. T. 58.

—S. 123—*Detention by Magistrate pending order of Sessions Judge—Imprisonment by latter—Starting point.*

Where a person is ordered by a Magistrate to be detained in prison pending the orders of the Sessions Judge under S. 123 and the Sessions Judge orders him to be imprisoned for failure to give security, the period of imprisonment should be taken to commence from the date of the Magistrate's order. *Emperor v. Balak*.

32 Cr. L. J. 1186 :
134 I. C. 406 : 8 O. W. N. 888 :
I. R. 1931 Oudh 358 : A. I. R. 1931 Oudh 387.

—S. 123—*Disseminates, etc., meaning of—Evidence.*

The words 'disseminates or attempts to disseminate' in S. 108, refer to whether the evidence showed that there was something to show that a repetition of the offence was probable. In such a case, the prosecution has not to show that the act complained of is a habit on the part of the person who is bound over. *Gudri Chaudhry v. Emperor*.

33 Cr. L. J. 711 (1) :
139 I. C. 88 : 13 P. L. T. 275 :
I. R. 1932 Pat. 195 : A. I. R. 1932 Pat. 2132.

—S. 123—*Sureties, necessity of.*

Proceedings under S. 123 should not be taken without notice to the persons affected by the order. *Sitaram Ahir v. Emperor*.

34 Cr. L. J. 813 :
144 I. C. 447 : 14 P. L. T. 299 : 12 Pat. 770 :
6 R. P. 2 (1) : A. I. R. 1933 Pat. 276 (1).

—S. 123—*Failure to give security—Subsequent conviction—Sentence, starting of.*

When a person who is committed to prison under S. 123 is sentenced to imprisonment on a conviction for a substantive offence, the term of imprisonment cannot be deferred but must commence at once. *Emperor v. Durga Bahirav*.

1 Cr. L. J. 1114 :
6 Bom. L. R. 1098.

—S. 123—*Imprisonment under S. 123 (6)—Order, how to be made.*

Under S. 123 (6), imprisonment can be either rigorous or simple, and ordinarily the order with respect to this should be made along with the order under S. 123 (1), for commitment to prison. *Rangi v. Emperor*.

38 Cr. L. J. 388 :
167 I. C. 403 : 9 R. N. 185 :
I. L. R. 1937 Nag. 173 :
A. I. R. 1936 Nag. 265.

—S. 123—*Order for security—Security furnished—Reference to Sessions Judge.*

S. 123 has reference to a case where default is made in furnishing the security, but if the security is given, the section does not

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apply and no reference to the Court of Session is necessary. *Ram Kishen v. Emperor*.

19 Cr. L. J. 2 :
42 I. C. 914 : 15 A. L. J. 822 :
40 All. 39 : A. I. R. 1918 All. 215.

———S. 123—Order for security for good behaviour—Failure to give security—Imprisonment, period of.

Under S. 123, a person who is ordered to furnish security for good behaviour and fails to do so, must be detained in prison for the period for which security was demanded. An order for imprisonment for a shorter period is illegal. *Emperor v. Khushi Mohammad*.

31 Cr. L. J. 583 :
123 I. C. 835 : A. I. R. 1930 Lah. 49.

———S. 123—Order to give security—Imprisonment in default of security long after date fixed, legality of.

If a person ordered to give security fails to do so within the time fixed by the Court or within such further time as the Court may grant, the Court should, on non-compliance by the fixed date, commit him to prison. It cannot inflict punishment long after the fixed date has expired. *In re : Mukhu Gowden v. Emperor*.

10 Cr. L. J. 481 :
4 I. C. 36.

———S. 123—Procedure—Sessions Judge, duty of.

The Sessions Judge must pass a definite order binding over and is not merely required to confirm an order passed by the Magistrate. *Bahadur v. Emperor*.

26 Cr. L. J. 659 :
85 I. C. 914 : 1 O. W. N. 773 :
A. I. R. 1925 Oudh 517.

———S. 123—Reference—Sessions Judge, powers to decide fitness of surety.

There is nothing in S. 123 which specifically confers a power on the Sessions Judge, while hearing an appeal to decide who are fit persons to give the security demanded. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Azizur Rahman Chaudhury*.

38 Cr. L. J. 635 :
168 I. C. 716 : 41 C. W. N. 415 :
9 R. C. 873 : A. I. R. 1937 Cal. 233.

———S. 123—Reference to Sessions Judge—Sessions Judge's power to order fresh trial.

In a submission under S. 123, the Sessions Judge has no jurisdiction to direct the Magistrate to pass a fresh order under S. 112 and to try the case *de novo* after complying with the provisions of S. 112. *Emperor v. Nim*.

33 Cr. L. J. 898 :
139 I. C. 783 : 26 S. R. 200 :
I. R. 1932 Sind 144 : A. I. R. 1932 Sind 88.

———S. 123—Security for good behaviour—Term exceeding one year—Reference to Sessions Judge—Sessions Judge's power.

S. 123 contemplates a decision by the Sessions Judge on the merits of the order demanding security for good behaviour and not on the sufficiency of the security offered. *In re : Gagan Chandra Das v. Emperor*.

7 Cr. L. J. 323 :
12 C. W. N. 463.

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———S. 123—Sureties—Acceptance or rejection by sureties.

Sessions Judge cannot, under S. 123, accept or reject sureties but he must send back proceedings to Magistrate. *Parbati Charan v. Emperor*.

35 Cr. L. J. 952 :
149 I. C. 408 : 61 Cal. 588 : 6 R. C. 593 :
A. I. R. 1934 Cal. 482.

———S. 123.

The committal of person to prison under S. 123 amounts to a sentence of imprisonment. *In re : Mala Chengadu*

35 Cr. L. J. 1153 :
150 I. C. 796 : 1934 M. W. N. 486 :
40 L. W. 63 : 67 M. L. J. 300 :
57 Mad. 928 : 7 R. M. 48 (1) :
A. I. R. 1934 Mad. 457.

———Ss. 123, 109—Imprisonment, nature of.

S. 109 is a preventive and not a punitive section, and so, in the absence of special reasons, the type of imprisonment should be simple. *Rangi v. Emperor*.

38 Cr. L. J. 388 :
167 I. C. 403 : 9 R. N. 185 :
A. I. R. 1936 Nag. 265.

———Ss. 123, 110—Security required for period longer than one year—Failure to furnish security—Procedure.

The provisions of S. 123 are clear on the point that if security is not furnished and security for a period of more than one year has been ordered, the case must be referred to the Sessions Judge, who alone is empowered to pass orders under that section for the imprisonment of the person who has failed to furnish security. *Qamar Din v. Emperor*.

23 Cr. L. J. 454 :
67 I. C. 726 : 66 P. L. R. 1922 Cr. :
A. I. R. 1922 Lah. 475.

———Ss. 123, 118—Sessions Judge confirming order of Magistrate—Order, if overrides Magistrate's order.

When an order has been passed by a Sessions Judge under S. 123 (3), it is this order that is in force and not the order of the Magistrate though the order passed may be one of confirmation of that of Magistrate. *Emperor v. Lashkaro*.

38 Cr. L. J. 961 :
170 I. C. 676 : 10 R. S. 71 : 31 S. L. R. 409 :
A. I. R. 1937 Sind 203.

———Ss. 123, 193 (2)—Interpretation of—Sessions Judge, transfer of, reference by, to Additional Sessions Judge—Jurisdiction.

S. 193 (2) should be interpreted in a liberal sense. Where a Sessions Judge, who was authorised by a Government Notification to transfer cases to the Additional Sessions Judge, transfers the hearing of a reference to the Additional Sessions Judge, the latter has jurisdiction to hear the reference. *Binoda Behari Nath v. Emperor*.

25 Cr. L. J. 661 :
81 I. C. 149 : 50 Cal. 229 :
39 C. L. J. 75 : A. I. R. 1923 Cal. 649.

———Ss. 123, 397—Accused under detention in default of giving security—Subsequent sentence of imprisonment for substantive offence—Commencement of sentence.

A person committed to prison under S. 123 (1),

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is not undergoing 'a sentence of imprisonment' within the meaning of S. 397. Consequently when such a person is sentenced to imprisonment for some substantive offence, the sentence for the substantive offence should commence from the date on which it was passed not from the expiration of the detention in default of furnishing security. *Emperor v. Lekria*.

13 Cr. L. J. 189 :
13 I. C. 1005 : 8 N. L. R. 20.

See also *Emperor v. Vishnu Balkrishna Ram*.

13 Cr. L. J. 849 :
17 I. C. 785 : 14 Bom. L. R. 965.

———Ss. 123, 397—*Detention in prison under S. 123—Subsequent sentence, concurrent running.*

An order detaining a person in prison until he gives security is not a sentence of imprisonment and, therefore, S. 397, Cr. P. C., does not authorise a Magistrate to direct that a subsequent sentence should take effect on the expiry of the previous detention. *Emperor v. Sukhalsing*.

23 Cr. L. J. 255 :
66 I. C. 191 : 15 S. L. R. 205.

———Ss. 123, 397—*Failure to give security—Detention—Conviction and sentence for offence—Concurrent running of sentences.*

A person who has been committed to prison, or is 'detained in prison' under S. 123, is not 'undergoing a sentence of imprisonment' within the meaning of S. 397, Cr. P. C. Where a man so committed or detained is convicted and sentenced to imprisonment for a substantive offence, the sentence should run concurrently with the period of detention under S. 123. *Emperor v. Pandhi*.

11 Cr. L. J. 115 :
4 I. C. 603 : 3 S. L. R. 114.

———Ss. 123, 397—*Failure to give security—Detention, whether imprisonment—Object of detention—Imprisonment for substantive offence.*

Imprisonment on account of failure to furnish security for good behaviour is not a sentence of imprisonment within the meaning of S. 397, Cr. P. C. The object of detaining men in prison under S. 123 is to control their conduct for a certain period, and this object is attained equally well if a subsequent sentence of imprisonment for a substantive offence is made to run concurrently with imprisonment under the section. *Markandar Genda v. Emperor*.

17 Cr. L. J. 528 :
36 I. C. 496 : 1 P. L. J. 212 :
A. I. R. 1916 Pat. 182.

———Ss. 123 and 397—*Imprisonment in default of security—Subsequent sentence—Date of commencement.*

A person committed to prison under S. 123 is not undergoing a sentence of imprisonment within the meaning of S. 397, Cr. P. C. So where a person undergoing imprisonment under S. 123 was convicted under S. 176, and sentenced, the sentence of imprisonment should be ordered to commence from the date of order. *In re : Joghi Kannigan*.

8 Cr. L. J. 402 :
4 M. L. J. 223 : 31 Mad. 515.

———Ss. 123, 397, proviso—*Sentence, what*

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The word "sentence" in S. 397, and its proviso includes an order of committal to, or detention in, prison within the meaning of S. 123 of the Code. *In re : Nga Pye* (F. B.).

32 Cr. L. J. 714 :
131 I. C. 501 : 9 Rang. 110 :
I. R. 1931 Rang. 133 : A. I. R. 1931 Rang. 127.

———Ss. 133, 493—*Reference—Bail pending reference.*

Pending the hearing of a reference made to a Sessions Judge under S. 123 (2) in respect of an order made under S. 110 of that Code, the Sessions Judge has jurisdiction under S. 408 to admit the person adversely affected by that order to bail. *Ahmed Ali Sardar v. Emperor*.

24 Cr. L. J. 953 :
75 I. C. 537 : C. L. J. 592 : 50 Cal. 969 :
A. I. R. 1923 Cal. 723.

———Ss. 123, 514, Sch. V, Form No. 42—*Bail bond filed in Court since abolished—Successor, powers of, to enforce bond—Security for keeping peace or good behaviour—Order directing accused to furnish security within fixed time—Absconding of accused—Sureties for attendance, liability of.*

A security bond was given in form No. 42 of the Fifth Schedule, Cr. P. C., originally filed in a Court which has since ceased to exist, can also be enforced by its successor to which the other functions of the defunct Court have been transferred. Where a Magistrate passes an order under S. 123, Cr. P. C., directing an accused to give security for keeping the peace or for good behaviour for more than one year and allows him time to file a security by a fixed date, but the accused absconds on that date the liability of the sureties who held themselves responsible for the accused's attendance in Court cannot be held to be terminated. *Mustaqimuddin v. Emperor*.

27 Cr. L. J. 377 :
92 I. C. 889 : 24 A. L. J. 327 :
L. R. 7 All. 78 Cr. & 152 Cr. :
A. I. R. 1926 All. 297.

———S. 123 (1)—*Accused undergoing imprisonment—Security proceedings—Conviction during imprisonment, legality of—Procedure.*

The proper course to be followed by a Magistrate where security proceedings have to be taken against an accused undergoing imprisonment is to adjourn the proceedings till the expiry of the term of imprisonment and to communicate the order requiring the accused to furnish security to the jail authorities and to ask them to detain the prisoner in jail, upon the expiration of the sentence in accordance with the provisions of S. 123 (1). A conviction for not furnishing security, while the accused is undergoing imprisonment is premature. *Emperor v. Nana Ramji Shinde*.

27 Cr. L. J. 1163 :
97 I. C. 747 : 28 B. L. R. 1038 :
A. I. R. 1926 Bom. 545.

———Ss. 123 (1), 120 (1), 118—S. 123 (1), *scope of—Suspected person in prison when order under s. 118 is passed—Proper order—Period of security, commencement of.*

S. 123 (1) does not contemplate, that time when a suspected person was to

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when the order under S. 118, against him is passed, he should be released from prison on the expiration of the sentence in order that he might find his sureties. He can, if it is possible for him to do so, furnish security while he is in prison undergoing his sentence of imprisonment; and he can, if he cannot furnish security before the expiration of his sentence, furnish security on the expiration of that sentence or at any time during the period for which he is committed to prison in default, and his sureties will be accepted or rejected according to the provisions of S. 122.

Consequently, where the suspected person is already undergoing imprisonment at the time an order under S. 118 has to be passed, the proper order is to direct that the period for which the suspect is required to give security shall commence from the date of the expiration of the sentence of imprisonment he is then undergoing. An order detaining him in prison for a certain period on failure to furnish security is not sufficient. *Emperor v. Hussain Allahdin*.

38 Cr. L. J. 1014 :

171 I. C. 61 :

A. I. R. 1937 Sind 204 ;

10 R. S. 86 : 31 S. L. R. 412.

———S. 123, sub-section (2)—Notice to accused.

Before dealing with a reference under S. 123 (2), the Sessions Judge is bound to fix a date for hearing and to give reasonable notice to the person concerned and to hear him if he wishes to be heard. *Nga Hnaung v. Emperor*.

2 Cr. L. J. 736 :

3 L. B. R. 43.

———Ss. 123 (2), 397—Detain in custody—Failing to give security—Nature of imprisonment—Second sentence—Mode of serving sentence.

The words "committed to prison" used in S. 123 (1) are equivalent to a sentence of imprisonment, and do not merely mean committed to custody. The words, "detained in prison," in sub-s. (2) have also a similar meaning. A person failing to give security for his good behaviour is liable to imprisonment and the imprisonment takes effect from the day on which the warrant of the Magistrate directing detention in prison has been executed. If the accused is in the meantime convicted from another offence, the sentence under S. 123 should be carried out first. *Emperor v. Tula Khan*.

7 Cr. L. J. 427 :

5 A. L. J. 318 : 28 A. W. N. 133 :

3 M. L. T. 41 : 30 All. 334.

———S. 123 (3)

It is a fatal defect in regard to an order under S. 123 (3) that it was passed without giving the accused an opportunity of being heard by the Sessions Judge. *Kyaw Wa v. Emperor*.

10 Cr. L. J. 69 :

2 I. C. 531 : 5 L. B. R. 34.

———S. 123 (3)—Magistrate, whether can award imprisonment for default of furnishing security.

A Magistrate has no authority to pass an order for an imprisonment of a person, who upon being required to furnish security, fails to

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do so. He should refer the matter to the Sessions Judge and detain the man in prison pending the orders of the Judge. *Sundar v. Emperor*.

21 Cr. L. J. 623 :

57 I. C. 287 : A. I. R. 1920 Lah. 283.

———S. 123 (3)—Scope of—Proceedings laid before Sessions Judge—His power to require further information or order re-trial.

S. 123 (3) empowers the Sessions Judge, when proceedings by a Magistrate are laid before him to require from the Magistrate any further information or evidence which he thinks necessary, but it does not empower him to order a re-hearing of the case. *Narayan Singh v. Emperor*.

25 Cr. L. J. 1112 :

81 I. C. 936 : A. I. R. 1925 Cal. 191.

———Ss. 123 (3), 406—Powers of Sessions Judges and High Courts—Appeal to D. M.

S. 123 (3) gives discretionary power to a Sessions Judge or High Court, to deal with a case on the merits and, after giving an accused an opportunity of being heard, to pass such order as the circumstances of the case may require. An order passed by a Sessions Judge under S. 123 cannot be the subject of an appeal to a District Magistrate under S. 406 of the Code. *Emperor v. Amir Bala*.

12 Cr. L. J. 257 :

10 I. C. 802 : 13 Bom. L. R. 203 :

35 Bom. 271.

———Ss. 124, 125 and 126—Security for good behaviour—Order of Deputy Magistrate accepting security—District Magistrate's order passed without notice to parties, cancelling that order, legality of.

Where the Deputy Commissioner is not satisfied with the securities accepted by the Deputy Magistrate, he cannot himself cancel the order and issue warrants for the arrest of the accused. He should hold such enquiry as he thinks necessary after notice to the parties concerned and report the matter to the Court of the Judicial Commissioner. *Mahabir v. Emperor*.

2 Cr. L. J. 507 :

8 O. C. 245.

———S. 125—Application under section, whether appeal—Bond to keep the peace—District Magistrate's power to cancel.

An application under S. 125, is not an appeal and does not give power to the District Magistrate to review an order passed by a Deputy Magistrate on the ground that it was improperly passed. It is open to a District Magistrate to set aside, under S. 125, a bond to keep the peace if, on such evidence as may be laid before him, he finds that the danger of a breach of the peace no longer exists. *Ram Din Singh v. Naujadar Singh*.

24 Cr. L. J. 204 :

71 I. C. 668 : A. I. R. 1923 All. 484.

———S. 125—Bond for keeping peace, cancellation of—Jurisdiction—District Magistrate, power of—Forum.

A District Magistrate has power at any time, for sufficient reasons to be recorded, to cancel any bond for keeping peace, provided it was given in obedience to an order of a Court subordinate to him. *Lalji v. Emperor*.

19 Cr. L. J. 188 :

43 I. C. 604 : 16 A. L. J. 39 :

40 All. 140 : A. I. R. 1918 All. 343.

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—S. 125—*Bond for keeping the peace—District Magistrate, to modify.*

Under S. 125, a District Magistrate has power to cancel a bond for keeping the peace at any time, if he considers it inadmissible but he cannot alter or modify it. Under Ss. 406 and 408 of the Code, he can alter or modify a bond for good behaviour only. *Paines v. Emperor.*

23 Cr. L. J. 334 :
67 I. C. 346 : A. I. R. 1922 Nag. 180.

—S. 125—*Bond to keep the peace, cancellation, grounds of—District Magistrate, power of, to cancel bond.*

A District Magistrate has power under S. 125 to direct the cancellation of a bond to keep the peace executed pursuant to an order of a subordinate Magistrate, for any reasons which may appear sufficient to him. He may cancel the bond on the ground that it should never have been required. *Nabu Sardar v. Emperor.*

4 Cr. L. J. 399 :
4 C. L. J. 428 : 11 C. W. N. 25 :
I. L. R. : 34 Cal. 1.

—S. 125—*District Magistrate, power of, to cancel a bond for keeping the peace—Grounds for cancellation.*

A District Magistrate taking action under S. 125 cannot treat an application made under the section as an appeal and reverse the order of the First Class Magistrate on the facts. If he considers the order to be wrong on the merits, he can exercise his revisional powers and submit the record to the High Court. But the cancellation of bonds contemplated by S. 125 can only be on the ground that the bonds are no longer necessary. *Nizamuddin Khan v. Muhammad Zia-ul Nabi Khan.*

23 Cr. L. J. 398 :
67 I. C. 350 : 20 A. L. J. 521 :
4 U. P. L. R. All. 142 : 44 All. 614 :
A. I. R. 1921 All. 191.

—S. 125—*District Magistrate's powers to cancel order as to execution of bonds—Grounds for cancellation.*

The jurisdiction of a District Magistrate under S. 125 is not appellate or revisional but original jurisdiction. His jurisdiction commences *after the execution* of the bonds and not *before their execution*. A District Magistrate may, in the case of an *executed* bond, hold for sufficient reasons, based on circumstances *subsequent* to the date of the execution of the bond, that it is no longer necessary and cancel it. But he has no power to declare that it was never necessary, and if he considers that a bond should not have been executed in pursuance to the orders of a Magistrate, he should make a reference to the High Court under S. 438, Cr. P. C. *Barpa Chandra Dev v. Janmejy Dutt.*

2 Cr. L. J. 550 :
9 C. W. N. 860 : I. L. R. 32 Cal. 948.

—S. 125—*District Magistrate, when can cancel bond.*

Under S. 125 the District Magistrate can cancel the bonds only on the ground that they are no longer necessary. *Banarsi Das v. Partap Singh.*

14 Cr. L. J. 63 :
18 I. C. 351 : 11 A. L. J. 16 : 35 All. 103.

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—S. 125—*Petition under S. 125—Right of petitioner to be heard.*

A District Magistrate dealing with an application under S. 125 is exercising neither appellate nor revisional jurisdiction and it is not incumbent upon him to hear the *Mukhtiar* of the petitioner before disposing of the application. *Khetrabasi Sahu v. Emperor.*

19 Cr. L. J. 246 :
44 I. C. 38 : A. I. R. 1918 Pat. 184.

—S. 125—*Security for keeping peace—Bond for keeping peace, cancellation of—District Magistrate, jurisdiction of.*

S. 125 does not confer upon a District Magistrate either an appellate or revisional jurisdiction, but it confers an original jurisdiction in respect of orders binding down persons to keep the peace. A person so bound down has no remedy by way of appeal to the District Magistrate. The proper course for him is to bring his case in revision before the Sessions Judge. *Sheo Singh v. Emperor.*

15 Cr. L. J. 721 :
26 I. C. 69 : 1 O. L. J. 541 :
A. I. R. 1914 Oudh 305.

—S. 125—*Security to keep peace—Petition for cancellation of bond—District Magistrate giving date for hearing—Petition dismissed without hearing petitioner—Dismissal set aside.*

A case was fixed by the District Magistrate for a certain date while he was on tour. Intimation of the date so fixed was given to the accused but they were not informed of the place where the case would be heard; they failed to appear at that place, and the District Magistrate dismissed their petition without hearing them: *Held*, that the order of dismissal could not be maintained. *Mehr Bakhsh v. Emperor.*

15 Cr. L. J. 143 :
22 I. C. 495 : 53 P. L. R. 1914 :
A. I. R. 1914 Lah. 73.

S. 125.

The jurisdiction of a District Magistrate under S. 125 is neither appellate nor revisional, it is merely confined to examining the record to satisfy himself whether it is no longer necessary to keep the parties under the bond. *Emperor v. Balwant Singh.*

24 Cr. L. J. 616 :
73 I. C. 504.

S. 125.

Under S. 125 the District Magistrate can cancel bonds only on grounds that they are no longer necessary. *Banarsi Das v. Partap Singh.*

14 Cr. L. J. 63 (a) :
18 I. C. 351 : 11 A. L. J. 16 : 35 All. 103.

S. 125.

Where a person has been ordered under Ss. 107 and 118, Cr. P. C., to execute a bond, without there being any evidence justifying such an order, the District Magistrate is entitled to entertain a petition under S. 125 for cancellation of the bond. *Mary Gaud v. Emperor.* (F. B.)

14 Cr. L. J. 546 :
21 I. C. 146 : 1913 M. W. N. 715 :
14 M. L. T. 328 : 25 M. L. J. 459.

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—Ss. 125, 107 and 439—*Security to keep peace—District Magistrate's power to cancel security bond—Grounds.*

Power under S. 125 is not limited to cases in which the District Magistrate finds that a bond is no longer necessary but extends also to those in which he thinks that bond ought not to have been required. *Chanan Singh v. Emperor.*

7 Cr. L. J. 347 :
3 P. W. R. Cr. 25.

—Ss. 125, 110, 122—*Security for good behaviour, acceptance of—Fresh sureties should not be demanded.*

Where security for good behaviour has once been furnished and accepted by a Magistrate, a fresh surety should not be demanded again. *Emperor v. Pirya Lal.*

2 Cr. L. J. 278 :
16 P. R. Cr. 1905 : 6 P. L. R. 445.

—Ss. 125, 406, *Scope of—Order to execute bond for keeping peace—District Magistrate's power to cancel bond.*

S. 125 covers a case where the District Magistrate finds that the materials before the Subordinate Magistrate were not sufficient to justify an order for taking security. S. 406 of the Code gives an appeal to the District Magistrate from an order to furnish security for good behaviour, while S. 125 relates to orders for keeping the peace as well as to those from which S. 406 allows an appeal. *Emperor v. Dalli.*

16 Cr. L. J. 555 :
29 I. C. 827 : 11 N. L. R. 98.
A. I. R. 1915 Nag. 113.

—Ss. 125, 428—*Proceeding under S. 125, nature of—Remand order, validity of—Procedure.*

A proceeding under S. 125 is neither appellate nor revisional and S. 428 of the Code dealing with remand has no application to an order under S. 125. Where, therefore, a District Magistrate finds that an order regarding security is illegal or irregular, he should set it aside and not remand the case for further enquiry. *Nasiban v. Emperor.*

20 Cr. L. J. 221 (b) :
49 I. C. 781 : A. I. R. 1919 Pat. 171.

—Ss. 125, 435, 438—*Revision—Concurrent power of High Court with subordinate Courts—Procedure.*

In cases where the High Court has concurrent revisional jurisdiction with a subordinate Court, the aggrieved party should, in the first instance, seek his remedy before the subordinate Court. There is no ground for holding that the revisional jurisdiction of a Sessions Judge or of a District Magistrate under Ss. 435 and 438, Cr. P. C. is in any way trenching upon by the provisions of S. 125. The jurisdiction of a Sessions Judge or a District Magistrate under S. 435, Cr. P. C. is concurrent with that of the High Court, even where the former cannot pass a formal order but can only refer the matter to the latter under S. 438. *Bipin Bihari Mukherji v. Emperor.*

19 Cr. L. J. 589 :
45 I. C. 397 : 4 P. L. W. 327 :
3 P. L. J. 302 : A. I. R. 1918 Pat. 588.

—Ss. 125, 439—*Security to keep peace, order for—Application to cancel bond, hearing of—Procedure—Appeal—Revision.*

Cr. P. CODE (1898), S. 127

S. 125 does not give a right of appeal against an order directing security to be given to keep the peace. All that the accused is entitled to under the section is to ask the District Magistrate to exercise his powers under the section to cancel the bond. Such an application should not be dismissed without giving an opportunity of being heard. *Semle.*—An application for revision made to a High Court in respect of orders to give security to keep the peace ought not to be rejected solely on the ground that the applicant did not first make an application to the District Magistrate. *Sita Ram v. Emperor.*

18 Cr. L. J. 630 :
39 I. C. 998 : 15 A. L. J. 469 : 39 All. 466 :
A. I. R. 1917 All. 428.

—Ss. 125, 476—*Sanction to prosecute—Judicial proceeding—Magistrate acting under S. 125—No jurisdiction to direct prosecution.*

Proceedings under S. 107, Cr. P. C. were instituted against M at the instigation of the petitioner who, in the course of the proceedings filed certain documents. M was bound down under S. 107. He applied to the District Magistrate to have the order set aside. The Magistrate cancelled the bonds under S. 125 and directed that the petitioner be prosecuted under S. 471, Penal Code : *Held*, that the documents did not come before the Magistrate in a judicial proceeding and that he had no power to direct the prosecution of the petitioner. *Nabu Sardar v. Emperor*, 31 Cal. 1 : 11 C. W. N. 25 : 4 C. L. J. 423 : 4 Cr. L. J. 399 : 1 M. L. T. 368 (F. B.) : referred to. *Daya Nath v. Emperor.*

11 Cr. L. J. 147 :
5 I. C. 555 : 14 C. W. N. 306.

—Ss. 126 (3), 514—*Forfeiture of bond—Discharge of Sureties—Fresh security for unexpired period.*

When a bond for good behaviour is broken and the punishment for such breach is completely suffered before the period named in the bond expires, the sureties, when paying the forfeiture should be asked whether they agree to the bond continuing in force. If they do not agree, the Magistrate should proceed under S. 126 (3), Cr. P. C. *Emperor v. Nga Thein Ga.*

1 Cr. L. J. 547 :
U. B. R. 1904 : 1st. Qr. : Cr. P. C. 13.

—S. 127.

See Police Act, 1861, S. 30 (2).

—S. 127.

Legality of command is to be determined from previous and not subsequent conduct. *Yeshwant v. Emperor.*

34 Cr. L. J. 705 :
144 I. C. 232 : I. R. 1933 Nag. 215 :
A. I. R. 1933 Nag. 217.

—S. 127.

Police is not final authority to determine character of assembly. *Yeshwant v. Emperor.*

34 Cr. L. J. 705 :
144 I. C. 232 : I. R. 1933 Nag. 215 :
A. I. R. 1933 Nag. 277.

—S. 127.

Provision itself not unlawful if not calculated to create disturbance—Conduct of provision is

Cr. P. CODE (1898), S. 128

material evidence to be considered—Each case stands on its own facts. *Yeskavant v. Emperor*.

34 Cr. L. J. 705 :
144 I. C. 232 : I. R. 1933 Nag. 215 :
A. I. R. 1933 Nag. 277.

———**S. 127.**

Procession with music—Use of public road is not unauthorised. *Yeskavant v. Emperor*.

34 Cr. L. J. 705 :
144 I. C. 232 : I. R. 1933 Nag. 215 :
A. I. R. 1933 Nag. 277.

———**S. 127.**

Requisite conditions of S. 127 wanting—command is not lawful—Prosecution under S. 151, I. P. C., for disobedience cannot stand. *Yeskavant v. Emperor*.

34 Cr. L. J. 705 :
144 I. C. 232 : I. R. 1933 Nag. 215 :
A. I. R. 1933 Nag. 277.

———**Ss. 127, 128, 297—Jury trial—Misdirection—Summing up—Mode of placing evidence before Jury—Penal Code (Act XLV of 1860), Ss. 149, 304, 326, prosecution of Police Officers under—Omission of Judge to direct attention of Jury to defence.**

Where in a charge against certain constables for offences under Ss. 149, 304 and 326 of the Penal Code, for which no sanction was necessary, the defence was that they, under the orders of an officer-in-charge of a Police Station, acted in pursuance of the provisions of Ss. 127 and 128, Cr. P. C., the Jury should be told that if they could not accept the case for the prosecution, they would have next to consider the provisions of Ss. 127 and 128, Cr. P. C. and determine whether the officer-in-charge of the Police Station acted or meant to act under these sections and whether the constables acted under his orders, and that, if the Jury were unable to accept the case for the prosecution, and on the contrary accepted the defence, the prosecution could not, in the absence of sanction of the Governor-General in Council, be continued and the accused were entitled to an acquittal. Only if the Jury negatived both the case for the prosecution and the case for the defence, was it necessary for them to consider the further questions then arising, namely, whether the accused acted in the exercise of the right of private defence and whether they had or had not exceeded that right.

To take the witnesses one by one in the order of their examination and to place their disconnected statements before the Jury is not in general very helpful. More assistance will be derived by the Jury from a careful collection of the evidence, as it bears on the several allegations of the respective parties.

To read to the Jury the exposition of the law of England re : the use of military force can only serve to confuse the Jury and to distract their attention from the facts with which they have to deal. *Abdul Rahim Mir v. Emperor*.

22 Cr. L. J. 606 :
62 I. C. 878 : 33 C. L. J. 340 : 25 C. W. N. 623 :
A. I. R. 1921 Cal. 697.

———**Ss. 128, 132, 297—Penal Code, (Act XLV of 1860), S. 16—Unlawful assembly, dispersing of—Police Officer-in-charge of patrol boat,**

Cr. P. CODE (1898), S. 132

power of—Jury trial—Charge to Jury—Right of private defence, failure to explain, effect of—Misdirection—Charge by angry crowd—Right of private defence, extent of.

The power to disperse an unlawful assembly by force is not given by Cr. P. C. to any Police Officer below the rank of an officer-in-charge of a Police Station. The powers of a Police Officer-in-charge of a patrol boat are no higher than those of an officer-in-charge of an outpost, and such an officer has no power to act under Chapter IX of the Cr. P. C. and cannot, therefore, purport to act under that Chapter within the meaning of S. 132 of the Code.

Where in explaining S. 100 of the Penal Code to the Jury the Sessions Judge failed to explain that an apprehension of grievous hurt would also confer a right on the accused to cause death in the exercise of the right of private defence :

Held, that the omission amounted to a serious misdirection.

When a person is set on by any angry crowd and there is apprehension of death or grievous hurt being caused, the only remedy is the drastic one of shooting to kill in the first instance, as anything less is likely to increase the fury of the crowd.

An angry crowd is the more dangerous because persons composing it will commit crimes jointly that they would never commit individually. *Mahommed Yunus v. Emperor*.

25 Cr. L. J. 467 :
77 I. C. 819 : 50 Cal. 318 :
A. I. R. 1923 Cal. 517.

———**Ss. 130, 397—Detention, whether imprisonment.**

When a person is committed to prison under S. 123, he is not undergoing a sentence of imprisonment within the meaning of S. 397 of the Code. *Emperor v. Ghulam Ali*.

15 Cr. L. J. 592 :
25 I. C. 344 : 7 S. L. R. 203 :
A. I. R. 1914 Sind 22.

———**Ss. 131, 137—Public Nuisance—Omission to take evidence—Order made absolute on mere personal knowledge of Magistrate.**

It is not open to a Magistrate to make an order under S. 131 absolute without complying with the provisions of S. 137 which are mandatory. *Balbhadra v. Emperor*.

18 Cr. L. J. 448 :
38 I. C. 1008 : I. P. L. W. 292 :
A. I. R. 1917 Pat. 509.

———**S. 132.**

See Cr. P. C., S. 537.

———**S. 132—Enquiry resulting in dismissal of complaint, whether prosecution.**

Per Graham, J. (Mukherji, J. dubitante).—A mere enquiry which results in the dismissal of a complaint does not amount to a prosecution within the meaning of S. 132. *Sentiram Mandal v. Emperor*.

30 Cr. L. J. 942.
118 I. C. 572 : I. R. 1929 Cal. 668 :
A. I. R. 1929 Cal. 229.

Cr. P. CODE (1898), S. 133

———S. 132—*Nature of protection.*

Protection given by S. 79, Penal Code, is a protection against conviction, while the protection given by S. 132, is a protection against trial. These provisions cannot, therefore, be held to be identical. *M. N. Schamnad v. M. N. Rama Rao.* 34 Cr. L. J. 528 : 143 I. C. 115 : 1932 M. W. N. 1225 : I. R. 1933 Mad. 271 (2) : A. I. R. 1933 Mad. 268.

———S. 132—*Want of sanction.*

The proposition that in order to decide whether a prosecution is barred under S. 132 for want of the sanction of the Local Government, only the complaint and the sworn statement should be referred to, is not a correct one. *M. N. Schamnad v. M. N. Rama Rao.*

34 Cr. L. J. 528 :
143 I. C. 115 : 1932 M. W. N. 1225 :
I. R. 1933 Mad. 271 (2) :
A. I. R. 1933 Mad. 268.

———S. 133.

———Applicability.

———Arbitration.

———*Bona fide* claim.

———Cancellation of order.

———Claim of right.

———Costs.

———Enquiry.

———Evidence.

———Injury to physical comforts.

———Jurisdiction.

———Jury.

———Mode of service of notice.

———Nuisance.

———Obstruction.

———Procedure.

———Public place.

———Scope.

———S. 133.

See also (i) Cr. P. C., 1898, S. 143.

(ii) S. 133, 137, Cr. P. C. 1898, S. 142.

(iii) Bombay District Police Act, 1857, S. 33.

(iv) Penal Code, 1860, S. 283.

———S. 133—*Applicability—Conditions for initiation of proceedings under S. 133.*

In order that action may be taken under S. 133 for the removal of an unlawful obstruction, the way, river, or channel must be one of public use and the obstruction must also be of that public use. *Munna Tewari v. Chandrabali.*

29 Cr. L. J. 661 :
110 I. C. 213 : 10 A. I. Cr. R. 201 :
50 All. 871 : 26 A. L. J. 1285.
A. I. R. 1928 All. 627.

———S. 133—*Applicability—Construction of latrine on one's own land—Magistrate's power to order removal of latrine.*

The mere construction of a latrine on one's own land cannot be considered a nuisance within the meaning of S. 133. A Magistrate has, therefore, no power to make an order directing a person to remove a latrine though he can

Cr. P. CODE (1898), S. 133

direct not to use it in such a way. *Gauri Shankar v. Sri Krishna.* 29 Cr. L. J. 233 :

107 I. C. 242 : L. R. 8 All. 172 Cr :

26 A. L. J. 86 : 9 A. I. Cr. R. 12 :

A. I. R. 1928 All. 128.

———S. 133—*Applicability—Dispute as to right of digging and clearing a water-course.*

A dispute between two villages in respect of the rights to dig and clear a water-course for irrigation purposes, is a dispute to which S. 133 is applicable, to avoid a breach of the peace.

Budha v. Mohan Lal. 13 Cr. L. J. 594 :

16 I. C. 162 : 25 P. W. R. 1912 Cr.

———S. 133—*Applicability—Dispute concerning private right.*

Where the dispute is one of private right and has no reference to a public nuisance, S. 133 has no application and the parties must be left to their remedy in the Civil Court. *Gauri Shankar v. Bhagalu Pandey.* 25 Cr. L. J. 1118 :

81 I. C. 942 : 11 O. L. J. 659 :

1 O. W. N. 356 : A. I. R. 1925 Oudh 130.

———S. 133—*Applicability—Inoculating children—Trade or occupation.*

Some persons, who inoculated their children upon an out-break of small-pox, were ordered under S. 133 to stop the practice : *Held*, that the section did not apply. The persons could not be said to be carrying on a trade or to be engaged in an occupation. *Emperor v. Nga Kyauk Lon.* 15 Cr. L. J. 253 :

23 I. C. 205 : U. B. R. 1913 I. 180 :

A. I. R. 1914 U. Bur. 3.

———S. 133—*Applicability—Long-standing obstruction.*

Section 133 is not intended for long-standing obstructions but for an unlawful obstruction lately built in a public place. *Baisakhi Ram v. Emperor.* 31 Cr. L. J. 167 :

120 I. C. 796 : A. I. R. 1930 Lah. 361.

———S. 133—*Applicability—Long-standing obstruction—Section, if applies—Action under S. 133, when can be taken.*

S. 133 is not intended for long-standing obstructions but for an unlawful obstruction lately built in a public place. It is only on proof of urgency or imminent danger to the public interest that action under S. 133 *et seq* can be taken, and these provisions should not be allowed to be taken as a substitute for litigation in Civil Court. The existence of a long-standing obstruction cannot, without proof of something having recently happened, be considered to be a "public nuisance." *Emperor v. Tulsi Ram.* 39 Cr. L. J. 775 :

176 I. C. 669 : 40 P. L. R. 492 : 11 R. L. 225 :

A. I. R. 1938 Lah. 523.

———S. 133—*Applicability—Nuisance—Encroachment—Bona fide dispute.*

If a *bona fide* dispute as to whether an encroachment exists or not, S. 133 should not be applied in order to relieve the Government of the necessity of filing a civil suit. This is particularly the case where the encroachment has been in existence for a large number

Cr. P. CODE (1898), S. 133

of years at the time the notice is issued under S. 133. *Ram Lakhan v. Emperor.*

24 Cr. L. J. 496 :
72 I. C. 958 : A. I. R. 1923 Oudh 22.

———S. 133—*Applicability—Nuisance—Magistrate's jurisdiction.*

S. 133 enables a Magistrate to take action if he considers on information and inquiry that an unlawful obstruction or nuisance should be removed from any way, river, or channel which is or may be lawfully used by the public or from any public place. *Bharosa Patil v. Emperor.*

13 Cr. L. J. 183 :
13 I. C. 999 : 9 A. L. J. 355 : 34 All. 345.

———S. 133—*Applicability—Nuisance—Obstruction to channel not used by public.*

The owner of field, across which the surplus water of the neighbouring fields used to flow into a tank, raised the level of field so much that the flood water, instead of flowing into the tank, was held back and caused injury to the neighbouring field : *Held*, that the case was not one in which a Magistrate could proceed under S. 133 of the Cr. P. C. *Jagar Nath Sahu v. Parmeshwar Narain.*

15 Cr. L. J. 229 :
23 I. C. 181 : 12 A. L. J. 248 : 36 All. 213 :
A. I. R. 1914 All. 213.

———S. 133—*Applicability—Potential nuisance.*

S. 133 can have no application to something which may become a nuisance that is a potential nuisance, but applies only where the nuisance is in existence in a way, river or channel which is or may be lawfully used by the public and which is in existence in a public place. *Shri Ram v. Emperor.*

37 Cr. L. J. 347 (2) :
159 I. C. 198 : 1935 A. W. R. 1004 :
L. R. 17 All. 8 Cr. : 8 R. A. 407 :
A. I. R. 1935 All. 926.

———S. 133—*Applicability—Obstruction, removal of—Findings necessary to confer jurisdiction.*

In proceedings under S. 133, it is necessary to establish first, that the act complained of is a nuisance or an obstruction ; and, secondly, that it was committed in a public place which may lawfully be used by the public. *Teni Prasad Singh v. Sarjoo Singh.*

20 Cr. L. J. 556 :
51 I. C. 844 : A. I. R. 1919 Pat. 528.

———S. 133—*Applicability—Obstruction to public river—Order directing removal of obstruction—Riparian owners, rights of.*

An order directing the removal of a dam constructed across a public river which causes damage to the lower riparian owners, is justified under the provisions of S. 133. No riparian owner is entitled to obstruct a public river. *Jagan Nath v. Chandrika Prasad.*

21 Cr. L. J. 55 :
54 I. C. 497 : 6 O. L. J. 616 :
A. I. R. 1919 Oudh 74.

———S. 133—*Applicability—Pre-existing rights can be enforced only in Civil Court.*

In proceedings under S. 133, the Criminal Court has to maintain the possession as found

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at the time and the right, if any, an aggrieved party had before the proceedings, can only be revived by the decision of a competent Court in their favour. *Janki Ram v. Saudhi Panjara.*

29 Cr. L. J. 422 :
108 I. C. 559 : 10 A. I. Cr. R. 127 :
9 P. L. T. 587 : A. I. R. 1928 Pat. 268.

———S. 133—*Applicability—Privy near a public well—No denial of existence of public right—Section applies if it constitutes a nuisance.*

An application for removal of a privy near a public well was made on the ground that the water would be insanitary and unfit for public use, and there was no denial of the existence of public right : *Held*, that in such a case S. 133 applied if the Magistrate thinks that the nuisance should be removed. 163 I. C. 514.

———S. 133—*Applicability—Public way—Bona fide dispute.*

S. 133 is not intended to be applicable to a case where there is a *bona fide* dispute as to the existence of a public way. Such a dispute should be determined by a Civil Court. *Phalla v. Niaz Ahmad.*

22 Cr. L. J. 700 :
63 I. C. 828.

———S. 133—*Applicability—Question of title.*

If the Magistrate finds on the parties appearing to show cause against the conditional order, that a question of title is involved, he must refuse to act unless the claim of title is not *bona fide* ; and unless he finds that the place or way, as the case may be, is public, he has no power to proceed with the investigation. *Khushi Ram v. Emperor.*

24 Cr. L. J. 457 :
72 I. C. 617 : 4 Lah. 224 : 5 L. L. J. 420 :
A. I. R. 1923 Lah. 525.

———S. 133—*Applicability.*

S. 133, is not intended for the removal of long-standing obstructions, but for unlawful obstructions lately built on public places. *Khair Din v. Wasan Singh.*

37 Cr. L. J. 70 :
159 I. C. 374 : 8 R. L. 381 :
A. I. R. 1935 Lah. 28.

———S. 133—*Applicability—Nuisance likely to arise—Nuisance ceasing to exist—Order.*

S. 133 applies to an existing nuisance and not to a nuisance that is likely to arise in future. So where the nuisance has abated, an order under S. 133 should not be made absolute. *Kalyam Mal Mathur v. Emperor.*

37 Cr. L. J. 1159 :
165 I. C. 542 : 3 B. R. 69 : 9 R. P. 186 :
A. I. R. 1936 Pat. 577.

———Ss. 133, 137 (3)—*Applicability—Conditional order may absolute after 1 years, legality of.*

A conditional order was passed under S. 133 (3) on the 12th February, 1916, and was made absolute under S. 137 (3) on the 11th September, 1920. The High Court refused to treat the latter order as resting on the former order, and consequently, reversed it. *In re: Rangubai Gururan.*

22 Cr. L. J. 605 :
62 I. C. 877 : 23 Bom. L. R. 844 :
A. I. R. 1921 Bom. 29.

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—Ss. 133, 142—*Applicability*—S. 133 *whether governs cases where imminent breach of peace is apprehended.*

S. 133 does not govern cases where an imminent breach of the peace is apprehended. The serious injury or the "imminent danger" contemplated by S. 142, refers to the injury or danger emanating from those things themselves which are specified in S. 133 and consequently S. 142 is limited in its scope. An order under S. 142 can, therefore, be passed only if an injury or danger specified in S. 133 was apprehended and not otherwise. *Mohammad Ashraf v. Emperor.*

39 Cr. L. J. 13 :
171 I. C. 941 : I. L. R. 1937 Lah. 303 :
39 P. L. R. 863 : 10 R. L. 250 :
A. I. R. 1937 Lah. 101.

—S. 133 (1)—*Applicability*—Cattle market—Obstruction—Danger to human life—Order suppressing market.

An order suppressing a market for cattle, on the ground that it is situated in a congested part of the town, and driving through narrow and congested lanes, causes obstruction and is a source of danger to human life, is a valid order under S. 133 (1). *Mohendra Narain v. Emperor.*

22 Cr. L. J. 532 :
62 I. C. 822.

—Ss. 133, 137—*Arbitration*—*Dispute*, *whether can be referred to arbitration.*

A dispute under S. 133 must be decided either by a jury or by the Magistrate. The Magistrate has no power to refer the dispute to arbitration even if the parties agree. *Rajbalam Rai v. Nawalakh Singh.*

22 Cr. L. J. 327 :
61 I. C. 55 : 2 P. L. T. 6 :
A. I. R. 1921 Lah. 28.

—Ss. 133, 138—*Arbitration*—*Reference to*, *not permissible.*

It is not permissible to refer to arbitration the subject-matter of a proceeding under Chapter X. *Ajit Shaikh v. Jamatulla Tarafdar.*

22 Cr. L. J. 511 :
62 I. C. 335 : A. I. R. 1922 Lah. 137.

—S. 133—*Bona fide claim of right*—*Competency of the Magistrate to decide whether the claim is barred by limitation.*

Petitioner raised a claim of proprietary right to the land in dispute and the Magistrate came to the conclusion, that it was barred by limitation. He, however, stayed the passing of final order for one month allowing the Petitioner an opportunity of establishing his right by a civil suit and more than two months after the expiration of that period, made his order absolute. *Held*, that the order of the Magistrate under S. 133 was bad in law. The Magistrate should have refrained from exercising jurisdiction when a *bona fide* claim to the land was raised and he was not competent to decide whether the claim was barred by limitation. *Kamini Kumar v. Emperor.*

7 Cr. L. J. 105 :
12 C. W. N. 267 : I. L. R. 35 Cal. 283 :
7 C. L. J. 188.

—S. 133—*Bona fide claim of right*—*Jurisdiction*—*Decision as to the bona fides of claim, if necessary*—*Right of way, obstruction to.*

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It does not follow that, because the land over which a right of way is claimed, belongs to a particular person, that person must necessarily be acting *bona fide* when he denies that there is a way over his land. The question of *bona fides* of a claim is a matter of fact which has to be enquired into like any other question of fact. When, there is in fact, a *bona fide* claim of right, the Magistrate's jurisdiction is ousted and he has no power to make an order under S. 133. *Nando Gopal Chatterjee v. Kusam Kumar Banerjee.*

2 Cr. L. J. 349 :
1 C. L. J. 434.

—S. 133—*Bona fides, claim of*—*Enquiry.*

The question of the *bona fides* of a claim is a question of fact which has to be inquired into like any other question of fact. *Teni Prasad Singh v. Sarjoo Singh.*

20 Cr. L. J. 556 :
51 I. C. 844 : A. I. R. 1919 Pat. 528.

—S. 133—*Bona fide claim*—*Building obstructing view of Railway Signals*—*Claim in good faith*—*Order for removal of building, legality of.*

Petitioner erected a building on land in his possession obstructing the Home Signal from the Distant Signal. Petitioner claimed the right to erect the building on his own land, but was directed to remove the building. *Held*, that, as the petitioner had put forward his claim in good faith, the order could not be maintained. *Suraj Mull Agarwalla v. Emperor.*

22 Cr. L. J. 389 :
61 I. C. 517.

—Ss. 133, 135, 136—*Bona fide claim*—*Time to set up.*

Where a conditional order is passed under S. 133, and the person against whom the order is made raises a *bona fide* claim that the subject of contention is private property, the Magistrate is bound to investigate the claim and cannot leave it to a Jury appointed under S. 138. But when a Jury has once been appointed, it is not open to set up such a claim and to have it determined. *Ah Yway v. Ma Gyi.*

15 Cr. L. J. 259 :
23 I. C. 467 : 7 Bur. L. T. 23 :
A. I. R. 1914 L. B. 31.

—Ss. 133, 137—*Bona fide claim*—*Dispute to be settled by Civil Courts*—*Magistrate—Jurisdiction.*

When, in proceedings under Ss. 133 and 137, a claim of ownership is set up, the Magistrate has to see whether it is a *bona fide* claim or pretence to oust jurisdiction. In the latter case, jurisdiction will not be ousted; but in the former case, the Magistrate's proper course is to stay his hand and to allow the dispute to be settled in the Civil Courts. The question is not whether the claim is established to the Magistrate's satisfaction, but whether it is in good faith and is supported by *prima facie* respectable evidence. *In re : Muse Bagas.*

8 Cr. L. J. 33 :
10 Bom. L. R. 563.

—Ss. 133, 137—*Bona fide claim, obstruction—Procedure.*

In taking evidence under S. 137 in a case

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where the public nature of the way is disputed, it is for the Magistrate, even if he finds that the claim of title to the land in question on the part of the person showing cause is not justified, to determine further whether the claim is a *bona fide* claim, and if he finds in the affirmative, to stop proceedings and give time to establish claim in the Civil Court. *Rangi Sah v. B. N. W. Railway Co.* 24 Cr. L. J. 855 :

74 I. C. 1047 : 4 P. L. T. 402 :

I. P. R. 154 Cr. : A. I. R. 1923 Pat. 540.

—Ss. 133, 137—*Bona fide claim—Removal of obstruction—Order directing institution of civil suit within certain period, legality of—Evidence not taken, effect of.*

In a proceeding for the removal of an obstruction from a riverside *ghat* as being part of public way, the second party claimed the *ghat* as private property, the Magistrate, while declaring the good faith of the second party's claim, directed without taking any evidence that unless the second party sought to establish his right in the Civil Court within six months, his *bona fides* would be questioned again: *Held*, that the Magistrate's conditional order was bad in form and that he should not have made it without taking evidence. *Peary Lal Mullick v. Surendra Krishna Mitter.* 20 Cr. L. J. 752 :

53 I. C. 160 : 23 C. W. N. 774 :

A. I. R. 1919 Cal. 182.

—Ss. 133, 138, 139—*Bona fide claim—Obstruction to a pathway—Magistrate to decide the question—Jury, function of.*

It is the duty of the Magistrate, before any proceedings are taken under S. 133, and before any reference to a Jury appointed under S. 118, to determine whether the claim by the opposite party is *bona fide* and whether the road is a public pathway. The Jury appointed under S. 138, is to determine whether the order passed by the Magistrate is or is not a reasonable order. The Magistrate cannot leave to the Jury the decision of the question whether a pathway is public or not, and whether the claim of private pathway set up is *bona fide* or not. *Dulalram Deb v. Baishnab Charan Deb.* 4 Cr. L. J. 42 :

10 C. W. N. 845.

—S. 133—*Cancellation of order—Conditional order vague and indefinite.*

Where the person against whom an order under S. 133 is directed, cannot learn from its terms what it is to be to comply with it, the order is vague and indefinite and should be set aside. *Kali Mohan v. Nakari Chandra Das.* 11 Cr. L. J. 213 :

5 I. C. 722 : 11 C. L. J. 114.

—S. 133—*Cancellation of order—Order directing removal of obstruction—Cancellation of order without evidence, propriety of.*

A Magistrate cannot cancel an order for the removal of an obstruction made under S. 133, merely on the statement of opposite party without recording evidence showing cause for doing the same. *Ganga Prasad v. Khilish Chandra Sanyal.* 30 Cr. L. J. 973 :

118 I. C. 863 : I. R. 1929 Cal. 687 :

A. I. R. 1929 Cal. 21.

—S. 133—*Cancellation of order—Ord*

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for removal, nuisance—Non-service of notice, effect of—Setting aside order, legality of.

A Magistrate cannot cancel an order passed by his predecessor for removal of a nuisance under S. 133, on the ground that one of the parties to the proceedings had not been properly served with a notice or on the ground that the nuisance was in existence for a long time. *Shahabuddin Ahmed v. Abdul Kader.* 28 Cr. L. J. 30 :

99 I. C. 62 : 44 C. L. J. 211 : 7 A. I. Cr. R. 218 :

31 C. W. N. 530 : A. I. R. 1927 Cal. 70.

—S. 133—*Cancellation of order—Power to draw up fresh proceedings.*

Where a Magistrate has once drawn up proceedings against a person under S. 133, on insufficient materials, there is nothing in law to prevent him drawing up fresh proceedings based on proper materials. *Satish Chandra Sen v. Krishna Kumar Das.* 32 Cr. L. J. 189 :

128 I. C. 810 : 34 C. W. N. 957 :

I. R. 1931 Cal. 106 : A. I. R. 1931 Cal. 2.

—Ss. 133, 137—*Cancellation of order—Order under S. 133 made absolute without giving an opportunity for production of evidence.*

Order under S. 133, made absolute without giving the accused an opportunity for production of evidence though cause was shown against the order being made absolute as required by S. 137 of the Code, is illegal and liable to be set aside on the revision side. *Ghasi v. Emperor.* 5 Cr. L. J. 1 :

1 P. W. R. Cr. 40.

—Ss. 133, 135 (b)—*Claim of right—Claim trial by Jury—Effect.*

If a party against whom proceedings under S. 133 have been initiated, applies to have the case tried by a Jury under S. 135 (b), without contending that the matter is one for the Civil Court to decide, he must be deemed to have waived his right to claim that the matter is of a civil nature. *Abdul Shakur Khan v. Emperor.* 32 Cr. L. J. 565 :

130 I. C. 627 : 1930 A. L. J. 1335 :

L. R. 12 All. 13 Cr. : I. R. 1931 All. 291 :

A. I. R. 1931 All. 257.

—S. 133—*Claim of right—Magistrate, duty of—Appointment of Jury—Jurisdiction.*

Where in a proceeding under S. 133, the opposite party alleges, that the place alleged by the complainant to be a public path is his private property, the Magistrate is bound to decide whether the claim of right is made in good faith. If it is made in good faith, the Magistrate has no jurisdiction. If he holds otherwise, he must proceed according to law. *Sudhangshudhar Roy v. Rahim Pramanik.* 22 Cr. L. J. 577 :

62 I. C. 817.

—S. 133—*Costs.*

There is no provision for the payment of costs by any party to a proceeding under S. 133. *Rahimuddi Jamadar v. Emperor.* 26 Cr. L. J. 517 :

85 I. C. 357 : 40 C. L. J. 297 :

A. I. R. 1925 Cal. 399.

—S. 133—*Costs—Costs of removal, liability for.*

The question of the costs for the removal of a

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nuisance has to be determined upon a consideration of the question as to the parties upon whom the notices were served, as it will be unjust to make an order for recovery of costs from a party not actually served. *Shahabuddin Ahmed v. Abdul Kader* 28 Cr. L. J. 30 : 99 I. C. 62 : 45 C. L. J. 211 : 7 A. I. Cr. R. 218 : 31 C. W. N. 530 : A. I. R. 1927 Cal. 70.

—S. 133 (1)—Enquiry, necessity of.

The expression 'on taking such evidence, if any, as he thinks fit' in S. 133 does not make it incumbent on the Magistrate to hold such an enquiry. *Abdul Shakur Khan v. Emperor*.

32 Cr. L. J. 565 :
130 I. C. 627 : 1930 A. L. J. 1335 :
L. R. 12 All. 13 Cr. : I. R. 1931 All. 291 :
A. I. R. 1931 All. 257.

—S. 133—Evidence—Appreciation—Enquiry, how to be made.

A Magistrate cannot select for his decision certain evidence, and discard other evidence on the ground that, even if taken, he would not believe it, and then to determine the very question of title involved. *In re : Dnyanoba Pandurang Bamne*.

14 Cr. L. J. 74 :
18 I. C. 410 : 15 Bom. L. R. 57.

—S. 133—Evidence—Conditional order—Respondent failing to adduce evidence—Order absolute without taking complainant's evidence, legality of.

A conditional order under S. 133 cannot be made absolute without the complaining party being required to adduce evidence in support of their claim, even though, the opposite party after showing cause fail to give evidence in support of their denial. *Akhoy Sardar v. Lalchand Sardar*.

23 Cr. L. J. 859 :
104 I. C. 635 : 31 C. W. N. 963 :
9 A. I. Cr. R. 41 : A. I. R. 1928 Cal. 96.

—S. 133—Evidence—Effect of not—Recording evidence.

A Magistrate noticed that accused had erected a *thara* in a village which took up part of an open space. The Magistrate issued a conditional order under S. 133. The accused put in a written statement that no obstruction had been caused and produced witnesses who gave evidence to the same effect. Nevertheless the Magistrate, who had not recorded any evidence for the prosecution, made the order absolute under S. 137 (3) : *Held*, that the procedure adopted was irregular and the order passed, was illegal. *Sita Ram v. Emperor*.

18 Cr. L. J. 888 :
41 I. C. 1000 : 32 P. R. 1917 Cr. :
43 P. W. R. 1917 Cr. : A. I. R. 1917 Lah. 243.

—S. 133—Evidence—Information to Magistrate, admissibility of, against opposite party—Order based on local enquiry, legality of.

An order, under S. 133 cannot, even by consent of parties, be based upon information gathered at a local inquiry. The report or the other information whereon the Magistrate takes action before making the conditional order is no evidence against the opposite party. *Rai Mohan Karmokar v. Emperor*.

17 Cr. L. J. 409 :
35 I. C. 969 : 20 C. W. N. 1171 :
A. I. R. 1917 Cal. 207.

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—S. 133—Evidence—Existence of hayricks on premises—Conditional order under S. 133—Denial, if nuisance—Inspection by Magistrate—No evidence taken—Order made absolute—Order, whether legal.

On representation from the respondent that the hayricks on the petitioner's premises were a nuisance and likely to cause conflagration, the Magistrate issued a conditional order under S. 133. The petitioner admitted their existence but denied that they were a nuisance. The Magistrate, on inspection, decided that they were a danger to adjoining houses and made the order absolute without taking any evidence : *Held*, that the Magistrate should not have made the order absolute on his own opinion but should have called on the respondent to adduce evidence that a nuisance was constituted and the order must, therefore, be set aside. *Doraishwamy Mudaliar v. Sudarsana Chariar*.

16 Cr. L. J. 207 :
27 I. C. 767 : 17 M. L. T. 142 :
A. I. R. 1916 Mad. 304.

—S. 133—Evidence.

In the absence of evidence of actual dedication, the person defending the case under S. 133, has merely to adduce reliable evidence to show that the use of the path by the public has not been sufficiently long to establish a prescriptive right. *Harisadhan Chaudhry v. Tek Narain Singh*.

36 Cr. L. J. 367 :
153 I. C. 471 : 15 P. L. T. 386 :
7 R. P. 344 : A. I. R. 1934 Pat. 438.

—S. 133—Evidence—Magistrate's duty to record evidence—Order based upon Naib-Tahsildar's report, not maintainable.

A Magistrate is bound to record evidence in proceedings under S. 133, after the issue of a notice to the accused. An order passed upon the report of the Naib-Tahsildar is irregular and must be set aside. *Ran Bahadur Singh v. Bhagwati Prasad*.

27 Cr. L. J. 1254 :
98 I. C. 102 : 3 O. W. N. 844 :
A. I. R. 1927 Oudh 26.

—S. 133—Evidence—Magistrate, whether can substitute his own evidence for that adduced by parties.

When under S. 133, the second party shows cause and the Magistrate goes into the evidence adduced by the parties, he cannot make the conditional order absolute by relying on the result of his own enquiry or by substituting his own evidence for that adduced by the parties. *Kali Saday Ghoshal v. Siddheswar Banerjee*.

20 Cr. L. J. 322 :
50 I. C. 658 : 23 C. W. N. 1054 :
A. I. R. 1919 Cal. 153.

—S. 133—Evidence—Nuisance—Volume of evidence whether a criterion.

Evidence is not to be judged by volume. The testimony of a few witnesses may be sufficient to prove that a noise is injurious to the physical comfort of a community. *Krishna Mohan Banerjee v. A. K. Guha*.

21 Cr. L. J. 669 :
57 I. C. 829 : 32 C. L. J. 42 :
A. I. R. 1920 Cal. 550.

—S. 133—Evidence—Order cannot be made

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absolute without taking evidence of witnesses produced by party.

An order under S. 133 cannot be made absolute without taking evidence of witnesses produced by the party, against whom it is passed. *Kalyan Mal Mathur v. Emperor.*

37 Cr. L. J. 1159 :
165 I. C. 542 : 3 B. R. 69 : 9 R. P. 185 :
A. I. R. 1936 Pat. 577.

———S. 133—Evidence—Order under S. 133, without inquiry as to whether obstruction amounts to nuisance, properly of.

An order under S. 133, without an inquiry as to whether the obstruction in dispute amounted to a nuisance, is improper. Before passing any orders, an inquiry should be made into these matters. *Consolidation Co-operative Society v. Har Gobind.*

40 Cr. L. J. 758 :
183 I. C. 292 : 12 R. L. 104 :
A. I. R. 1929 Lah. 276.

———S. 133—Evidence—Previous conviction of petitioner under S. 311, Penal Code, is not sufficient.

To pass an order of removal of building under S. 133, the fact that the petitioner was previously convicted under S. 311, Penal Code, in respect of the same building was relied on. Held, that the Magistrate should have proceeded *de novo* as in summons cases. *Bhedu v. Emperor.*

5 L. L. J. 81 :
A. I. R. 1924 Lah. 128.

———S. 133—Evidence—Public nuisance—Contamination of river water by Industrial Concern—Evidence of contamination.

Although it is of the utmost importance that sources of public water supply must be maintained pure and free from pollution by industrial factories, yet such pollution must be convincingly proved against a wrong-doer before any order can be passed against him. Whether the water of a river has been contaminated, calls for scientific enquiry, and cannot be decided merely upon the opinion of the neighbouring villagers. *Deshi Sugar Mill v. Tupsi Kahar.*

28 Cr. L. J. 317 :
100 I. C. 541 : 8 P. L. T. 302 :
A. I. R. 1926 Pat. 506.

———Ss. 133, 134, 135, 244—Evidence—Proceeding under S. 133—Magistrate, duty of—Evidence.

A Magistrate conducting a proceeding under S. 133 is bound, under Ss. 134 and 135, read with S. 244, to record evidence produced for the prosecution and to examine the accused and take his evidence in defence. *Emperor v. Kanhaiya Lal.*

22 Cr. L. J. 765 :
64 I. C. 285 : 24 O. C. 267 :
A. I. R. 1921 Oudh 147.

———Ss. 133, 137—Evidence—Magistrate cannot drop proceedings without taking evidence.

The provisions of S. 137 are imperative. Before a Magistrate can make an order under cl. (2) of that section dropping a proceeding started under S. 133, he must take evidence in the

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matter as directed by cl. (1) of S. 137. *Shree Khelaon Ram Kakkar v. Nayan Bepari.*

22 Cr. L. J. 239 :
60 I. C. 431.

———Ss. 133, 137—Evidence—Nuisance proceedings—Magistrate's duty to record evidence—Decision on local inspection on consent of parties, legality of—Consent of parties whether confers jurisdiction.

The provisions of S. 137 are imperative and where a person against whom a notice under S. 133 is issued, appears and shows cause, a Magistrate should record evidence on the matter as in a summons case. Consent of parties will not justify a Magistrate in ignoring the provisions of S. 137 and vest him with jurisdiction to decide the matter simply after a local inspection. *Bhoora v. Tara Singh.*

28 Cr. L. J. 159 :
99 I. C. 415 : L. R. 8 All. 25 Cr :
7 A. I. Cr. R. 118 : 49 All. 270 : 25 A. L. J. 155 :
A. I. R. 1927 All. 267.

———Ss. 133, 137, 139 (a)—Evidence—Conditional order for removal of nuisance, denial of public right—Enquiry before making order absolute—Stage for producing evidence.

Where a conditional order under S. 133 is made, and the opposite party denies the existence of the public right before the order can be made absolute, opportunity to produce evidence must be given under S. 137. But until an enquiry under S. 139-A is concluded, there can be no enquiry under S. 137, and it is not possible to produce any evidence relating to it. *Etraj Mandal v. Emperor.*

30 Cr. L. J. 622 :
116 I. C. 384 : 49 C. L. J. 49 : 33 C. W. N. 201 :
I. R. 1929 Cal. 480 : A. I. R. 1928 Cal. 879.

———Ss. 133, 137, 140—Evidence—Nuisance—Complainant first to produce evidence.

In a proceeding under S. 133, before any order can be passed under S. 140, the complainant must produce evidence, and until this has been done, the opposite party is not bound to produce evidence. *Indar v. Emperor.*

15 Cr. L. J. 23 :
22 I. C. 167 : 11 A. L. J. 931.

———Ss. 133, 139—Evidence—Test of reliable evidence.

As to what is reliable evidence, will depend upon the circumstances of each case. But a good test is that if the evidence adduced stands un rebutted, the public nature of the right will be demolished. *Harnandan Lal v. Rampalak Mahato.*

40 Cr. L. J. 837 :
184 I. C. 47 : 18 Pat. 76 : 20 P. L. T. 748 :
6 B. R. 6 : 12 R. P. 212 : A. I. R. 1929 Pat. 460.

———Ss. 133, 359—Evidence—Penal Code, S. 193—Party to a proceeding under S. 133, Cr. P. C., whether an accused—Examination on oath—False evidence, prosecution for giving, if legal.

Proceedings under S. 133, Cr. P. C., are more of the nature of Civil than of Criminal proceedings, and a party is not an accused person within the meaning of S. 369, Cr. P. C. and he can be examined on oath, and if such a person gives false evidence, he may be prosecuted for an

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offence under S. 193, I. P. C. *Hirananda Ojha v. Emperor*. 2 Cr. L. J. 575 : 9 C. W. N. 127 : 2 C. L. J. 149.

———S. 133—*Injury to physical comforts—Circumstances to be considered.*

S. 133 authorises action by the Magistrate if the trade in question is injurious to the physical comfort of the community. But it is necessary to take all the circumstances into account, to see that the interference with public comfort is considerable, and that a considerable section of the public is affected injuriously, general equitable principles not being lost sight of. *Emperor v. Fazal Din*.

12 Cr. L. J. 146 :
9 I. C. 891 : 117 P. L. R. 1911 :
20 P. W. R. 1911 Cr.

———S. 133—*Injury to physical comforts—Nuisance—Lawful trade—Abatement of nuisance—Remedy, alternative jurisdiction.*

A noise made in a lawful trade under a license, if injurious to the physical comfort of a community, is a public nuisance. A Magistrate has jurisdiction to proceed under S. 133. An alternative remedy does not deprive the Magistrate of jurisdiction. *Krishna Mohan Banerji v. A. K. Guha*.

21 Cr. L. J. 669 :
57 I. C. 829 : 32 C. L. J. 42 :
A. I. R. 1920 Cal. 550.

———S. 133—*Jurisdiction—Bona fide claim.*

Where a *bona fide* claim of private right is raised, a Magistrate cannot make an order under S. 133, but should leave the determination of the question to the Civil Court. *Mohammad Ashrafuddin v. Kareem Bukhsh*.

15 Cr. L. J. 515 :
24 I. C. 603 : 19 C. L. J. 631 :
18 C. W. N. 1148 : A. I. R. 1915 Cal. 113.

———S. 133—*Jurisdiction—Bona fide claim of title.*

Under S. 133 the inquiring Magistrate has to consider whether there is or is not a *bona fide* claim. If there is a *bona fide* claim, he is debarred from proceeding. If there is no *bona fide* claim, he is to proceed. *In re: Dnyanoba Pandurang Bamne*.

14 Cr. L. J. 74 :
18 I. C. 410 : 15 Bom. L. R. 57.

———S. 133—*Jurisdiction—Bona fide dispute as to public right.*

A *bona fide* dispute about the right of the public to pass over a certain path does not oust the jurisdiction of a Magistrate to proceed under S. 133. *Hari Kishan v. Kanshi Ram*.

29 Cr. L. J. 254 :
107 I. C. 485 : 9 A. I. Cr. R. 540 :
A. I. R. 1928 Lah. 664.

———S. 133—*Jurisdiction—Burial ground, order closing.*

An order prohibiting the use of a graveyard is not such an order as can be made under S. 133. *Sheo Saran Lal v. Lal Mohamad Lal*.

6 Cr. L. J. 370 :
12 C. W. N. 70.

———S. 133—*Jurisdiction—Claim on substantial ground—Order directing party to establish claim in Civil Court, illegal.*

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Where the Magistrate finds that the claim of right set up is based on substantial grounds, he has no jurisdiction to make an order directing that party to establish his claim in a Civil Court. *Peary Lal Mullick v. Surendra Kishore Miller*.

21 Cr. L. J. 87 :
54 I. C. 487 : 24 C. W. N. 247 :
A. I. R. 1920 Cal. 176.

———S. 133—*Jurisdiction—Encroachment, removal of—Long user of party, effect of.*

A long user by a person of what is claimed to be a part of the public way may be taken as a *bona fide* assertion of claim ousting the jurisdiction of the Criminal Court to pass summary order under S. 133. *Vice versa* a long user by the public of a place as a part of a public road raises a presumption of relinquishment by the owner thereof of his right over it. *Janki Ram v. Sankhi Panjara*.

29 Cr. L. J. 422 :
108 I. C. 559 : 10 A. I. Cr. R. 124 :
9 P. L. T. 587 : A. I. R. 1928 Pat. 268.

———S. 133—*Jurisdiction—Magistrate issuing rule whether competent to make it absolute on report of another Magistrate.*

A Magistrate who issues a conditional Rule under S. 133 can make the Rule absolute upon the evidence recorded and report submitted to him by another Magistrate to whom he had referred the matter under the last paragraph of cl. (1) of S. 133. *Chandrika Koeri v. Budhu Dusadh*.

24 Cr. L. J. 690 :
73 I. C. 802 : 2 P. L. R. 21 Cr.

———Ss. 133, 139—*Jurisdiction—Mere existence of reliable evidence in support of denial of right, whether sufficient to stop hands of Magistrate.*

In a proceedings under S. 133, what S. 139-A requires is that the Magistrate should be satisfied that there is reliable evidence in support of the denial of the public right. If he finds that, he has to stop his hands and leave the matter for the Civil Court to decide.

40 Cr. L. J. 837 :
184 I. C. 47 : 18 Pat. 76 :
20 P. L. T. 748 : 6 B. R. 6 : 12 R. P. 212 :
A. I. R. 1929 Pat. 460.

———S. 133—*Jurisdiction—Municipal license.*

Although a Magistrate has jurisdiction to pass order under S. 133 regulating conduct of trade by a person to whom a Municipal license has been granted, it is generally inexpedient that he should pass such orders as these matters are left to the control of Municipal Board. *Lalman v. Beshambhar Nath*.

33 Cr. L. J. 524 :
137 I. C. 626 : 1932 A. L. J. 49 :
L. R. 13 All. 23 Cr. : I. R. 1922 All. 349 :
54 All. 359 : A. I. R. 1932 All. 159.

———S. 133—*Jurisdiction—Obstruction of public way—Defendant setting up title—Magistrate, jurisdiction of, if ousted—Discretion of Magistrate to require party to assert his claim by civil suit—Power of Magistrate to continue the proceedings on failure to do so.*

In proceedings under S. 133, arising out of an alleged obstruction of a public way, if a claim of right is set up, the Magistrate's jurisdiction

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is not ousted even the claim is made in good faith. If he considers it to be made in good faith, he can, in his discretion, allow a reasonable time to assert claim in Civil Court within time and if he does not go to civil Court or fails there, the Magistrate can continue the proceedings. *Ram Sagar Mondal v. Alek Noskar*.

23 Cr. L. J. 353 :
67 I. C. 177 : 26 C. W. N. 442 :
49 Cal. 482 : 35 C. L. J. 247.

—S. 133—Jurisdiction—'Removal of trade,' meaning of—Restoration of status quo.

A Magistrate has no power while stopping a brick-kiln under the second paragraph of S. 133 to order the opposite party to fill up the pits made by him. The "removal" of a trade or occupation within that paragraph cannot be construed to mean the restoration of status quo by filling up the pits. *Bhagat Ram v. Emperor*.

30 Cr. L. J. 561 :
116 I. C. 21 : I. R. 1929 All. 501 :
1929 A. L. J. 177 : 51 All. 489 :
A. I. R. 1929 All. 111.

—S. 133—Jurisdiction—Verdict, whether can be split up.

A Magistrate is not entitled to split up a verdict in order to give himself jurisdiction to deal with the matter under S. 133 of the Cr. P. C. *Rahimuddi Jamadar v. Emperor*.

26 Cr. L. J. 517 :
85 I. C. 357 : 40 C. L. J. 297 :
A. I. R. 1925 Cal. 399.

—Ss. 133, 137—Jurisdiction—Conditional order under S. 133—Enquiry referred to another Magistrate—Final order passed by First Magistrate—Illegality—Consent of parties, effect of.

A Magistrate making an order under S. 133, can direct the party to appear before himself or before some other Magistrate of the First or Second Class at a certain time and place to be fixed by the Court. If he orders the party to appear before himself, he can not refer the matter for enquiry to other Magistrate and then pass the final order on the report submitted by that Magistrate. Under S. 137 he himself is to take evidence as in a summons case. The failure to act thus, vitiates the final order and even the consent of the parties cannot cure the illegality. *In re : Kariyappa Mingappa*.

23 Cr. L. J. 587 :
68 I. C. 619 : 24 Bom. L. R. 807 :
A. I. R. 1922 Bom. 384.

—Ss. 133, 137—Jurisdiction—Order absolute to remove obstruction—Magistrate competent to pass order.

Some villagers complained of obstruction to a public way. Sub-Divisional Officer referred the matter to one of his subordinates, suggesting proceedings under S. 133. Judging from the facing sheet the matter was first taken up as a revenue proceeding. Months afterwards the Township Officer took evidence. He submitted this evidence to the Sub-Divisional Officer, who drew up a conditional order under S. 133 directing not only the removal of the fence complained of, but also the house which did not obstruct the footpath. This order was headed as being

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a proceeding of the Sub-Divisional Magistrate, but was filed with the previous revenue proceeding. The applicant was called on to show cause before the Township Magistrate of Kyauktan why the order should not be set aside. He appeared and showed cause. The only evidence taken was that of witnesses called by the applicant. No notice was given to the original complainants. The Magistrate submitted the evidence to the Sub-Divisional Magistrate with a report and the latter Magistrate then made the conditional order absolute: *Held*, that S. 137 of the Code (1) contemplates that the order absolute should be made by the Magistrate to whom a case is referred under S. 133; and that even if the Sub-Divisional Magistrate had jurisdiction to make the order absolute, his order that the applicant should remove his house was *ultra vires*, as it was not based upon the house being built upon the public way, but it was avowedly made because the applicant, if he was allowed to live there, would be able to interfere with people along the way, that is, the order was based on the applicant—not his house—being a public nuisance. *Moung Shwe Ye v. Moung Pyu*.

1 Cr. L. J. 669 :
10 Bur. L. R. 130.

—Ss. 133, 137—Jurisdiction—Order for removal of nuisance—Application for enforcement made to successor of Magistrate—Jurisdiction to go behind order.

In dealing with an application to enforce an order under S. 137 made by his predecessor, a Magistrate acts in excess of his powers, and without jurisdiction in going behind that order, and coming to a decision as to its legality. *Kiran Chandra v. Ramesh Chandra*.

24 Cr. L. J. 317 :
72 I. C. 77 : 27 C. W. N. 459 :
A. I. R. 1923 Cal. 589.

—Ss. 133, 139-A—Jurisdiction—Proceedings under S. 133—Magistrate deputing subordinate to make enquiry under S. 139-A—Proceedings, validity of.

A Magistrate has no jurisdiction to depute an inquiry under S. 139-A, to a subordinate Magistrate. *Inasaddar Ali v. Isimulla*.

31 Cr. L. J. 673 :
124 I. C. 491 : 50 C. L. J. 291 :
34 C. W. N. 228 : 57 Cal. 66 :
A. I. R. 1929 Cal. 813.

—Ss. 133, 139-A—Jurisdiction—Public right of way blocked by creating building—Evidence under S. 139-A to prove that no right of way existed—Magistrate must leave matter for decision of competent Civil Court.

Where an application is made to a Magistrate that a certain person has erected a building and blocked a public right of way, and such a person produces evidence under the provisions of S. 139-A, to prove that no right of way existed, the contention of such person is not frivolous or unsupported by evidence and the matter can be decided by a competent Civil Court. The Magistrate must stay proceedings under S. 139-A and has no jurisdiction until the

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decision of Civil Court. *Kundan Lal v. Emperor*.

40 Cr. L. J. 375 (a) :

180 I. C. 495 : 11 R. A. 465 : 1939 A. W. R. 71 :

A. I. R. 1939 All. 187.

———Ss. 133, 556—*Jurisdiction—Magistrate issuing notice as Chairman of Local Board—Case should not be tried by him.*

It is undesirable that a Magistrate should act in a case which he has extra-judicially investigated, and in which, he subsequently initiates proceedings under the Criminal Law. Therefore, where a Magistrate as the Chairman of Local Board issued notice calling upon the petitioner to remove obstruction, and the petitioner submitted a representation which proved infructuous and subsequently the Magistrate initiated proceedings against the petitioner under S. 133 : *Held*, that the concern of the Magistrate with the case is not merely in a public capacity so as to take the case out of S. 556. *Janki Dass v. Emperor*, 5 A. L. J. 357; A. W. N. 1908 95; 7 Cr. L. J. 393, referred to. *Rajani Kanta Panja v. Emperor*.

11 Cr. L. J. 2 :

4 I. C. 437 : 10 C. L. J. 484.

———S. 133—*Jury—Absence of one juror while investigation—Report of other Jurors should not be acted upon—Procedure.*

In a proceeding under S. 133, only four out of the five Jurors were present at the time of the investigation : *Held*, that the Magistrate should not act upon their report but should appoint a fresh Jury. *Dassya v. Nibaran Chandra Ghose*.

21 Cr. L. J. 448 :

56 I. C. 240 : 31 C. L. J. 871 :

24 C. W. N. 928 : A. I. R. 1920 Cal. 161.

———S. 133—*Jury—Appointment of—Procedure.*

Where in a proceeding under S. 133, a Magistrate appointed the nominees of the two parties with a Foreman, appointed by himself, to constitute a Jury : *Held*, that the Jury was not constituted legally and was incapable of making a legally binding award. *Khem Chand v. Emperor*.

28 Cr. L. J. 1036 :

106 I. C. 220 : 9 A. I. Cr. R. 202 :

A. I. R. 1928 Lah. 187.

———S. 133—*Jury—Bona fide claim to property—Civil action.*

Obiter.—If the Jury decided that the order was reasonable and proper, the appellant would not be estopped from bringing a civil suit to establish his right to exclusive enjoyment of the land. *Ah Yway v. Ma Gyi*.

15 Cr. L. J. 259 :

23 I. C. 467 : 7 Bur. L. T. 23 :

A. I. R. 1914 L. Bur. 31.

———S. 133—*Jury—Failure to return verdict—Procedure.*

Where a person against whom a conditional order is made, obtains the appointment of a Jury, but the Jury, for any reason, does not return a verdict within the time fixed by the Magistrate, the latter must inquire into the matter before he passes a final order. *Ajodhya Tewari v. Emperor*.

24 Cr. L. J. 583 :

73 I. C. 327 : 4 P. L. T. 13 :

1 P. L. R. 22 Cr. : A. I. R. 1923 Pat. 141.

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———S. 133—*Jury.*

It is open to a person against whom an order under S. 133 has been made absolute, to elect to have the matter tried by a Jury even after the enquiry under S. 133-A has been finished by the Magistrate. *Shamji Tricunddas Bhatia v. Ram Moje*.

34 Cr. L. J. 532 :

143 I. C. 178 : 56 C. L. J. 249 :

A. I. R. 1933 Cal. 318.

———S. 133—*Jury—Nomination of jurors—Principle to be observed by Magistrates.*

Magistrate can address any inquiry to the person who first comes forward to draw his attention to the existence of an alleged public nuisance, to ascertain names of respectable and independent residents of the neighbourhood who would serve on the jury but it would be highly improper on his part to appoint the friends or supporters of the person at whose instance the proceedings are being taken. However, in all proceedings initiated under S. 133, the Magistrate is to act purely in the interests of the public and should be on his guard against any tendency to use the section as a substitute for litigation in Civil Courts in order to the settlement of a private dispute. *Farzand Ali v. Hakim Ali*.

16 Cr. L. J. 40 :

26 I. C. 632 : 12 A. L. J. 1214 : 37 All. 26 :

A. I. R. 1914 All. 491.

———S. 133—*Jury—Obstruction—Duty of Magistrate.*

Under S. 133, the duty of determining whether the site of an obstruction is a public place or public way, is cast on the Magistrate, and under no circumstances can it be left to the Jury. *Khushi Ram v. Emperor*.

24 Cr. L. J. 457 :

72 I. C. 617 : 4 Lah. 224 : 5 L. L. J. 420 :

A. I. R. 1923 Lah. 525.

———S. 133—*Jury—Obstruction to public way—Procedure.*

Where at the request of a person upon whom a notice has been served, a jury is appointed under S. 138, Cr. P. C., the jury can decide as to the validity of an objection that the way alleged to have been obstructed is not a public way. The Magistrate cannot decide whether such an objection is *bona fide* before referring it to the jury : *Held*, also, that there is no special procedure laid down to be adopted by a jury appointed under S. 138 in coming to a finding on the questions submitted to them : *Held*, also, that a person who has applied for a jury under S. 138 is bound by the verdict of the jury, and cannot afterwards raise such a plea as that the obstruction was caused in the exercise of *bona fide* claim of right. *Emperor v. Ram Bilas*.

8 Cr. L. J. 1 :

28 A. W. N. 151 : 30 All. 364 :

5 A. L. J. 488.

———S. 133—*Jury—Procedure.*

In proceedings under S. 133, before the appointment of the Jury, there ought to be a preliminary enquiry contemplated by S. 139-A. *Digamber Ram Singh v. Emperor*.

35 Cr. L. J. 54 :

146 I. C. 406 : 6 R. P. 261 :

A. I. R. 1933 Pat. 676.

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—S. 133—Jury—Question of private ownership left to jury.

Where the question as to the public nature or private ownership of the locus of an obstruction is left to a Jury under Chapter X the order of the Magistrate referring the determination of such a question to the Jury is bad and should be quashed. *Khushi Ram v. Emperor*.

24 Cr. L. J. 457 :

72 I. C. 617 : 4 Lah. 224 : 5 L. L. J. 420 :

A. I. R. 1923 Lah. 525.

—S. 133—Jury—Right of party to claim.

The procedure prescribed by S. 133 confers on the person called on to submit to it, the right to claim a Jury and generally provides for ascertainment of right as well as for the actual removal of the obstruction. *Emperor v. Abdul Satar*.

5 Cr. L. J. 97 :

9 Bom. L. R. 30.

—Ss. 133, 135, 141—Jury—Proceedings for removal of public nuisance—Failure to return verdict—Procedure.

Where a person against whom a conditional order under S. 133 is made, obtains the appointment of a Jury but the Jury fails to return a verdict within the time fixed by the Magistrate, the latter has jurisdiction to make the order absolute under S. 141. Where, however, the Jury fails to perform its duty through no fault of the person against whom a conditional order has been passed, he should be allowed to revert to the other alternative given him by S. 135 and to show cause against the conditional order. *Jiblal Teli v. Gena Sahu*.

24 Cr. R. J. 492 :

72 I. C. 950 : 4 P. L. T. 15 :

1 P. L. T. 164 Cr. : A. I. R. 1922 Pat. 229.

—Ss. 133, 138—Jury—Conditional order for removal of obstruction—Matter thereafter referred to Jury of three persons—Reference, validity of.

A Magistrate made a conditional order under S. 133 for the removal of an obstruction. He referred the matter, on the application of the parties, to a Jury of three, instead of a Jury of five persons: *Held*, that his order, based on the report of the majority of that jury cannot be regarded as a good order. *Ajit Shaikh v. Jamatulla Tarafdar*.

22 Cr. L. J. 511 (a) :

62 I. C. 335 : A. I. R. 1922 Lah. 137.

—S. 133, 138—Jury—Omission to nominate half the Jury—Validity of trial—Irregularity in constitution of Jury, whether mere irregularity.

Obiter.—The nomination of a Jury is a nomination of the Court which has to try the case, and irregularity with regard to that matter, is an irregularity which goes to the root of the proceedings. *Mahadeo Lal v. Hossaini Pandey*.

31 Cr. L. J. 53 :

120 I. C. 289 : A. I. R. 1930 Pat. 199.

—Ss. 133, 138, 139—Jury—Obstruction to foot-path—Duty of Magistrate—Claim of right to foot-path—Good faith.

A Magistrate in a proceeding in respect of an obstruction to a foot-path under Chap. X before referring the matter to the Jury, is to decide himself whether claim of right to the land in question is in good faith, and whether the pathway is public and it is only on deciding that there was no such claim that any matter

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can be referred to the Jury. *Dualatram v. Baishnab Charan*. 10 C. W. N. 845 : 4 Cr. L. J. 42, followed: *Dharam Mandal v. Gossain Das*.

11 Cr. L. J. 305 :

6 I. C. 271 : 14 C. W. N. 544.

—Ss. 133, 138, 140—Jury—Conditional order of Magistrate, reference of, to Jury—Order absolute on Jury's decision—Subsequent revocation of order whether ultra vires.

Application to a Magistrate for removal of the embankment of a tank constructed by the plaintiff on the ground that it obstructed the passage of water and endangered the houses in the village. The Magistrate made a conditional order directing the removal and it was referred to a Jury under S. 138. The Jury proposed that the water should flow out through the tank, that the banks of the tank on the north and south should be cut and that there should be sluices on each bank of the tank. They recommended by each party deposit of Rs. 400 to ensure the carrying out of the direction, which was accepted. The Magistrate adopting this report made the conditional, order absolute. Subsequently, on inspection the Magistrate thought the making of a culvert unnecessary and directed the refund of the money; plaintiff however, had made the culvert in the mean-time. He sued defendant for specific performance of the contract to construct the sluice or for damages in the alternative: *Held*, that the report of the Jury did not amount to a contract and could not be made the basis of an action in the Civil Court for specific performance or damages; the order directing refund of the deposit was not *ultra vires* and could not be questioned in a Civil Court; the order absolute under S. 139 (1), could only be enforced in the manner provided in clause (2) of S. 140. *Seonarain Taxari v. Sakhi Chand Sahu*.

18 Cr. L. J. 305 :

38 I. C. 417 : A. I. R. 1916 All. 264.

—Ss. 133, 138, 140 and 141—Jury failing to return the verdict—Appointment of a fresh Jury—Magistrate's discretion.

In a proceeding under S. 133, the Jury appointed under S. 138 failed to return the verdict on account of certain causes. The petitioner prayed for the appointment of a fresh Jury but the Magistrate refused and under S. 141, made his original order absolute: *Held*, that the Magistrate in so doing did not exercise a proper discretion. He ought to have appointed a fresh Jury. *Shib Chandra Gossain v. Hriday Chandra Dass*.

8 Cr. L. J. 233 :

12 C. W. N. 1047.

—Ss. 133, 134—Mode of service of notice.

Where an order under S. 133 has been communicated to those concerned, it is immaterial that the method in which it was served on them is not strictly in accordance with the provisions of S. 134. *Khushi Ram v. Emperor*.

24 Cr. L. J. 457 :

72 I. C. 617 : 4 Lah. 224 : 5 L. L. J. 420 :

A. I. R. 1923 Lah. 525.

—S. 133—Nuisance.

A man cannot carry on a trade or occupation that is injurious to the health or physical com-

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forts of his neighbours or of the public merely on the ground that there may be some part of the community which is not affected. *Raghunandan Prasad v. Emperor*.

33 Cr. L. J. 331 :
136 I. C. 621 : L. R. 12 All. 108 :
1931 A. L. J. 912 : 53 All. 706 :
I. R. 1932 All. 237 : A. I. R. 1931 All. 433.

—S. 133—Nuisance—Bandh owned by proprietor of one village—Passage of channel closed by owner of bandh—Inundation of fields of another village—Offence, nature of Penal Code (Act XLV of 1860), S. 268—Order under S. 133, Cr. P. C., whether justified.

A bandh constructed by the owner of one village had the effect of closing the passage of water from that village to a channel with the result that the fields of another village became water-logged and the crops were destroyed: Held, that the erection amounted to a public nuisance within the meaning of S. 268, Penal Code, to justify a Magistrate in passing an order under S. 133, Cr. P. C. *Bhagwan Bakhsh Singh v. Emperor*.

28 Cr. L. J. 203 :
99 I. C. 939 : 4 O. W. N. 75 :
[7 A. I. Cr. R. 440 : A. I. R. 1927 Oudh 122.

—S. 133—Nuisance—Branch of tree 15½ feet above road—Inquiry under section, nature of.

Having regard to the normal traffic of a country road, a branch of a tree 15½ feet above the level of the road, cannot be called an unlawful obstruction within the meaning of S. 133. S. 133 deals with the condition of things at the time when the inquiry is held. *Gokul v. Emperor*.

26 Cr. L. J. 104 :
83 I. C. 664 : 22 A. L. J. 436 :
A. I. 1924 All. 667 : L. R. 5 All. 84 Cr.

—S. 133—Nuisance—Cause shown—Magistrate to take evidence as in summons case.

If the respondent shows cause against the order passed against him under S. 133, the Magistrate is to take evidence in the matter as in a summons case. *Achchru v. Emperor*.

31 Cr. L. J. 880 :
125 I. C. 613 : 11 Lah. 247 :
31 P. L. R. 503 : A. I. R. 1930 Lah. 662.

—S. 133—Nuisance—Complaint against several persons—Evidence against particular wrong-doers, necessity of.

It is not admissible to assume that even if a nuisance is proved but not as against any particular party complained of as causing it, an order prohibiting such nuisance can be issued against all parties against whom complaints are made. Where nuisance is complained of against two persons, it is necessary to prove substantially, before an order could be made against either, or both of them that either or both of them caused the nuisance. *Deshi Sugar Mill v. Tupsu Kohar*.

28 Cr. L. J. 317 :
100 I. C. 541 : 8 P. L. T. 392 :
A. I. R. 1926 Pat. 506.

—S. 133—Nuisance—Contamination of river water by Industrial Concern—Order prohibiting discharge, whether can be passed.

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An order prohibiting the discharge into a river of an effluent which is injurious to the health of the community which has right to the use of the water in such stream, can be made under the second paragraph of S. 133 (1). *Deshi Sugar Mills v. Tupsu Kohar*. 28 Cr. L. J. 317 :
100 I. C. 541 : 8 P. L. J. 302 :
A. I. R. 1926 Pat. 506.

—S. 133—Nuisance—Erection of bund—Obstruction.

To obstruct by erection of a bund, the right of the public to cross the bed of a river easily and on foot constitutes public nuisance. *Zafar Nawab v. Emperor*.
2 Cr. L. J. 762 :
I. L. R. 32 Cal. 930.

—S. 133—Nuisance.

Held, that the noise of the mill caused discomfort to the residents of the locality and amounted to nuisance. *Munnalal Brahmin v. Shridhar Rao Lele*.

36 Cr. L. J. 591 (1) :
154 I. C. 365 (a) : 17 P. L. J. 54 :
7 R. N. 163 (1) : A. I. R. 1934 Nag. 193 (1).

—S. 133—Nuisance—Magistrate, duties of.

The party against whom an order under S. 133 is directed, is under no necessity of contending that the property in dispute is his private land, but it is for the Magistrate to inquire whether that in fact, is the contention of the party or not. *Mahadeo Lal v. Hussaini Pandey*.

31 Cr. L. J. 53 :
120 I. C. 289 : A. I. R. 1930 Pat. 199.

—S. 133—Nuisance—Magistrate in previous proceedings regulating working of mill—Orders complied with—Further working, not nuisance for fresh proceedings—Fresh complaint—Remedy.

The working of flour mills working under a licence from a Municipality as regulated by the order of a Magistrate in previous proceedings under S. 133, cannot be described in law as a nuisance for the purposes of fresh proceedings. Where a fresh complaint is made, the Magistrate should leave the complainant to move either the Municipal Board or to seek his redress in the Civil Court. *Kedar Nath v. Satish Chandra*.

41 Cr. L. J. 99 :
184 I. C. 757 : 1939 C. W. N. 966 :
1939 O. L. R. 653 : 15 Luck. 140 :
12 R. O. 143 : A. I. R. 1940 Oudh 75.

—S. 133—Object and Scope—Nuisance—Jurisdiction of Civil Court.

The object of the procedure under Chapter X is for the Magistrate to make speedy orders and deal speedily with cases of public nuisance and it is for this reason that the jurisdiction of the Civil Code is barred under S. 133, sub-s. (2). *In re : Rangubai Gururao*.

22 Cr. L. J. 605 :
62 I. C. 877 : 23 Bom. L. R. 844 :
A. I. R. 1921 Bom. 29.

—S. 133—Nuisance—Old obstruction—Proceeding under S. 133, whether can be taken.

S. 133 is not to be employed to avoid the necessity of filing a civil suit in regard to a construction which has been in existence for a

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long number of years. *Ghurahu Das v. Shakalraj Das*.

27 Cr. L. J. 27 :

91 I. C. 59 : L. R. 6 All. 190 Cr. :

24 A. L. J. 112 : A. I. R. 1926 All. 157.

———S. 133—Nuisance—Obstruction to public path—Bona fide claim of right—Jurisdiction.

If under S. 133 for the purpose of compelling the removal of an obstruction from a public way, a *bona fide* question as to the way being public is raised, there is no jurisdiction to make an order under the section, and the question be left to Civil Court. The claim must be *bona fide* and not a mere pretence and it is for the Magistrate to say whether the claim is *bona fide* or not. *Chandrika Kheri v. Budhu Dusadh*.

24 Cr. L. J. 690 :

73 I. C. 802 : 2 P. L. R. 21 Cr.

———S. 133—Nuisance—Public nuisance by trade—Dispute between parties, whether trade should be stopped or not—Evidence proving trade to be nuisance—Magistrate ordering trade to be stopped and giving adequate reasons why its regulation was not proper.

In proceedings under S. 133, the only dispute was whether the trade which was being carried out by one of the parties and which had become a public nuisance should be ordered to be stopped. There was no dispute that it should be regulated. The trading party were insisting that their trade was not a nuisance. Evidence proved the existence of injurious nuisance. The Magistrate ordered the trade to be stopped and gave explanation why conditional order for regulating the trade was not passed : *Held*, that the Magistrate could adopt either of the courses provided in S. 133 and as he had exercised his discretion in a proper and legal manner it was not within the province of a Court of Revision to impose some condition, for regulating the trade. *Maksood Ali v. President, Union Board, Garhwa*.

40 Cr. L. J. 516 :

180 I. C. 852 : 17 Pat. 669 : 20 P. L. T. 288 :

5 B. R. 505 : 11 R. P. 249 (2) :

A. I. R. 1939 Pat. 183.

———S. 133—Nuisance.

Section deals only with occupations or foods which are themselves injurious to health. It has no application to a case of scrambling for passengers in competition between two rival Steamer Companies. *Calcutta Steam Navigation Co., Ltd. v. Emperor*.

32 Cr. L. J. 235 :

129 I. C. 106 : 35 C. W. N. 115 :

58 Cal. 854 : I. R. 1931 Cal. 122 :

A. I. R. 1930 Cal. 757.

———S. 133—Nuisance.

There is no unconditional right to abate a public nuisance. Aggrieved persons must resort to procedure prescribed. *Gujjala Narasimhulu v. Nagar Sahib*.

35 Cr. L. J. 437 :

147 I. C. 553 :

1933 M. W. N. 905 : 66 M. L. J. 31 :

38 L. W. 996 : 57 Mad. 351 : 6 R. M. 376 :

A. I. R. 1934 Mad. 95.

———S. 133—Nuisance.

When latrine is constructed on private place in a person's own land, S. 133

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does not apply. If it is a nuisance, owner should be directed to remove it and not to demolish it. *Shri Ram v. Emperor*.

37 Cr. L. J. 347 (2) :

159 I. C. 198 : 1935 A. W. R. 1004 :

L. R. 17 All. 8 Cr. : 8 R. A. 407 :

A. I. R. 1935 All. 926.

———S. 133—Nuisance—Brick-kiln—Question of fact.

The question whether a brick-kiln is a public nuisance or not in the place where it is erected, is not a question of law. *Dulichand v. Emperor*.

31 Cr. L. J. 302 :

121 I. C. 560 : 51 All. 1025 :

A. I. R. 1929 All. 833.

———Ss. 133, 137—Nuisance—Enquiry—Procedure—Order passed as result of local inspection, legality of.

Where in a proceeding under S. 133, the opposite party shows cause, the Magistrate should, under S. 137 hold an enquiry as in summons cases. The consent of the parties to have the case decided upon the local inspection does not dispense with the necessity of holding a regular trial under S. 137. *Biru Thakur v. Gokhul Raut*.

20 Cr. L. J. 217 :

49 I. C. 777 : A. I. R. 1919 Pat. 172.

———Ss. 133, 137—Nuisance—In determining whether final order under S. 137 is legal—Court is concerned only with evidence given at enquiry.

A Court in an enquiry for nuisance is concerned with the evidence as given at the inquiry. Any information or *ex parte* statements, on which the conditional orders were passed, are not relevant for the purpose of determining whether the final order under S. 137 was a legal and proper one. Nor can a final order under S. 137 be legally based on the result of a local inspection by the Magistrate. *Rameshwar Narayan Agarwal v. Emperor*.

40 Cr. L. J. 444 :

180 I. C. 511 : 41 Bom. L. R. 84 :

11 R. B. 301 : A. I. R. 1939 Bom. 92.

———Ss. 133, 137—Nuisance—Procedure—Magistrate, duty of.

Where in a proceeding under S. 133, of the Cr. P. C., a person to whom notice is issued appears to show cause, it is the duty of the Magistrate to go into the evidence and to give a judicial decision before making the preliminary order final. *Ismail v. Bunda*.

27 Cr. L. J. 864 :

95 I. C. 944 : 20 A. L. J. 657 :

A. I. R. 1922 All. 265.

———Ss. 133, 137, 139-A—Nuisance—Denial of public right—Procedure.

Where in a proceeding under S. 133 in respect of a drain the accused denies that the drain is a public one, the Magistrate must proceed under S. 139-A. The provisions of S. 139-A are imperative, and until the provisions have been complied with, the Magistrate has no jurisdiction to take evidence under S. 137. *Raghunath Upadhia v. Emperor*.

26 Cr. L. J. 873 :

86 I. C. 809 : 23 A. L. J. 187 :

A. I. R. 1925 All. 311.

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—Ss. 133, 137 (1), 439-B — *Nuisance—Magistrate's duty to record evidence—Decision on local inspection, legality of.*

A Magistrate cannot make an order under S. 133 absolute without recording evidence and simply on the basis of a local inspection made by him. If a Magistrate makes use of knowledge derived from a local inspection without affording the accused an opportunity to cross-examine or to explain the point against him, he acts with material irregularity sufficient to vitiate the trial. *Tirkha v. Nanak.*

28 Cr. L. J. 291 :
100 I. C. 371 : L. R. 8 All. 59 Cr. :
25 A. L. J. 377 :
7 A. I. Cr. R. 391 : 49 All. 475 :
A. I. R. 1927 All. 350.

—Ss. 133, 436, 438—*Nuisance, proceeding relating to—Further inquiry, order of, whether can be made—Reference to High Court.*

Proceedings under S. 133 are not covered by S. 436 and a Sessions Judge has, therefore, no power to order further inquiry. He has power, however, in a proper case to make a reference to the High Court under S. 438. *Prithipal v. Emperor.*

26 Cr. L. J. 1251 :
88 I. C. 995 : 2 O. W. N. 549 :
A. I. R. 1925 Oudh 736.

—S. 133—*Obstruction—Conditional order, what should state.*

When against a number of persons, it is alleged that various unlawful obstructions have been caused upon a public way, the order should state accurately, with regard to each person, the specific obstruction made which he is to remove, unless it is alleged that all the persons are jointly responsible for all the obstructions mentioned as an order under S. 133 should not be vague and indefinite or ambiguous, but must be such that the persons to whom it is directed may be able to learn from its terms what is that they are to do for the purpose of complying with it. *Raimohan Karmokar v. Emperor.*

17 Cr. L. J. 409 :
35 I. C. 969 : 20 C. W. N. 1171 :
A. I. R. 1917 Cal. 207.

—S. 133—*Obstruction encroachment, extent of, how ascertained.*

The extent of encroachment should be ascertained by relaying the map on the ground or otherwise. *Bhagat Pershad v. Ramrup Karmokar.*

16 Cr. L. J. 160 :
27 I. C. 224 : 24 C. L. J. 116 :
A. I. R. 1915 Cal. 402.

—S. 133—*Obstruction—Magistrate, power of.*

Under S. 133, cl. 2, a Magistrate has only the power to order the removal of an obstruction. *Rahimuddi Jamadar v. Emperor.*

26 Cr. L. J. 517 :
85 I. C. 357 : 40 Cr. L. J. 297 :
A. I. R. 1925 Cal. 399.

—S. 133—*Obstruction—Obstruction to public way—Power to order removal—Fact that public have enough room to pass, is not sufficient excuse.*

Where a *chabutra* has been unlawfully erected

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over a public way, an order can be passed under S. 133, for its removal. The fact that in the particular case the public may have lot of room to go along the road without needing to walk upon that particular site, has nothing whatever to do with the case. *Sallu Mall v. Emperor.*

32 Cr. L. J. 160 :
128 I. C. 604 : I. R. 1931 All. 76 :
A. I. R. 1930 All. 751.

—S. 133—*Obstruction—Order directing removal—Particulars.*

An order under S. 133, directing the demolition of a portion of a structure must definitely point out and mark off how much of the structure should be removed. *Emperor v. Jhon Lal.*

26 Cr. L. J. 731 : 86 I. C. 219 : 23 A. L. J. 43 :
L. R. 6 All. 86 Cr. : A. I. R. 1925 All. 310.

—S. 133—*Obstruction—Road recently constructed—Obstruction is recent even though trees may have been old—Road constructed long ago—Trees standing alongside for number of years do not constitute new obstruction.*

On a road recently constructed, the obstruction caused by the branches of the trees alongside can be held to be a recent one even if the trees be in existence for a number of years. If, however, the road was constructed several years ago, it cannot be said that the trees alongside the road for a number of years constitute a new obstruction. *Consolidation Co-operative Society v. Har Gobind.*

40 Cr. L. J. 758 :
183 I. C. 292 : 12 R. L. 106 :
A. I. R. 1939 Lah. 276.

—S. 133—*Obstruction—Removal of encroachment—No finding as to extent of encroachment or bona fides of claim—Order, whether—Proper.*

In a proceeding under S. 133, an order was passed for the removal of a house which was said to represent an encroachment but without any finding as to the extent of the encroachment or as to the claim not being made in good faith : *Held*, that the order could not be sustained. *Bhagat Pershad v. Ramrup Karmokar.*

16 Cr. L. J. 160 :
27 I. C. 224 : 24 C. L. J. 116 :
A. I. R. 1915 Cal. 402.

—S. 133—*Obstruction.*

Ss. 133, 135, 137 and 139—Owner of land putting up turnstiles in his land, thereby obstructing alleged pathway—Application under S. 133—Procedure to be followed by Magistrate explained. *Ram Kali v. Kirpa Shankar.*

35 Cr. L. J. 4 :
146 I. C. 327 : 55 All. 866 : 6 R. A. 288 :
A. I. R. 1933 All. 615.

—S. 133—*Obstruction—Water-course leading to public tank—Catchment area, cutting of.*

In the centre of a catchment area there was a water-course flowing into a public tank. The water flowing through the water-course was carried away by the petitioners to their own village tank, by building a *bund* and cutting a new channel and by cutting down a portion to the old *bund* of the catchment area : *Held*, that the act amounted to an obstruction and it was,

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therefore, competent to a Magistrate acting under S. 133 to direct the restoration of the embankment, closing up of the new channel and the removal of obstructions to the free flow. *Ramaswami Chettiar v. Ramanathan Chettiar*.

27 Cr. L. J. 105 :
91 I. C. 537 : 1925 M. W. N. 663 :
22 L. W. 470 : A. I. R. 1926 Mad. 165.

———Ss. 133, 139-A—Obstruction to public way—Magistrate, whether bound to examine all witnesses produced—Power to stay proceedings on production of Record of Rights.

In a proceeding under S. 133, it is not the duty of the Magistrate to satisfy himself that the party against whom the proceedings were initiated has succeeded. He has only to see that that party has succeeded in proceeding before him evidence which does not seem to be unreliable. The Record of Rights is a very valuable piece of evidence if it happens to be in favour of the second party and proceedings can be stayed without examining all the witnesses produced. *Satis Chandra Sen v. Krishna Kumar Das*.

32 Cr. L. J. 189 :
128 I. C. 810 : 34 C. W. N. 957 :
I. R. 1931 Cal. 106 : A. I. R. 1931 Cal. 2.

———Ss. 133, 139-A (2)—Obstruction—Public Right—Denial of such right—Duty by Magistrate to stay proceedings till decision of Civil Court.

In proceedings under S. 133 when the defendant denies the existence of a public right, the proper procedure for a Magistrate to employ would be under S. 139-A (2) of the Code, to stay proceedings until the matter of the existence of such right has been decided by a competent Civil Court. *Munna Tewari v. Chandrabali*.

29 Cr. L. J. 661 :
110 I. C. 213 : 10 A. I. Cr. R. 201 :
50 All. 871 : 26 A. L. J. 1285 :
A. I. R. 1928 All. 627.

———Ss. 133, 139-A, 537—Obstruction—Public river—River public but obstruction in private land—S. 139-A, applicability of—Omission to ask whether party denies public right is mere irregularity.

If on a notice under S. 133, a party admits that the river which he is said to have obstructed is a public river and does not deny a public right over it but says that he has not put up an obstruction on the public river but has built upon his own lands, S. 139-A does not apply. Even if S. 139-A is applicable, there is no necessity for putting a question to the party whether he denies the existence of any public right and omission to ask such a question is at the most only an irregularity which is covered by S. 537. *Rajani Kanta Ray v. Ibrahim Sarkar*.

31 Cr. L. J. 973 :
126 I. C. 205 : 33 C. W. N. 748 :
57 Cal. 252 : A. I. R. 1929 Cal. 507.

———Ss. 133 to 143—Obstruction case—U. P. Village Panchayat Act—Procedure.

In a case where the question to be determined is whether any unlawful obstruction has or has not been made over a public pathway or other public place, he should follow the procedure laid down by Ss. 133 to 143, Cr. P. C. *Kadhari v. Emperor*.

27 Cr. L. J. 276 :
92 I. C. 451 : L. R. 6 All. 216 Cr :
24 A. L. J. 162 : A. I. R. 1926 All. 193.

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———S. 133—Procedure.

A Magistrate has no power to make an order under S. 133, without first questioning the party against whom notice has been issued whether he denies the existence of a public right and, if he denies such right, without coming to a finding as to whether there is reliable evidence in support of the denial. *Hamid Ali v. Emperor*.

32 Cr. L. J. 250 :
129 I. C. 222 : I. R. 1931 Lah. 158 ;
A. I. R. 1930 Lah. 1046.

———S. 133—Procedure.

An order under S. 133 cannot be passed merely on the personal opinion of the Magistrate. He must take evidence as in a summons case, and it is only when this has been done, that the Magistrate can make the conditional order absolute. *Khair Din v. Wasan Singh*.

37 Cr. L. J. 70 :
159 I. C. 374 : 8 R. L. 381 :
A. I. R. 1935 Lah. 28.

———S. 133—Application under—Magistrate ordering opposite party to remove obstruction or to appear to show cause—Party appearing—Magistrate cannot send case to other Magistrate for disposal.

Where upon an application under S. 133, the Magistrate after recording some evidence, orders the opposite party to remove the obstruction by certain date or to appear before him to show cause against the removal of obstruction and the party appears before him, the Magistrate must himself proceed with the case and has no power at such stage to send the case for disposal to another Magistrate. *Umrao Singh v. Kamteer Lal*.

39 Cr. L. J. 603 :
175 I. C. 517 : 10 R. L. 733 :
A. I. R. 1938 Lah. 323.

———S. 133—Procedure—Before appointment of Jury,

A Magistrate before the appointment of a Jury in a proceeding under S. 133, in respect of a way, must decide on evidence whether the way in question is or is not a public way, and whether the claim to the contrary is or is not a claim in good faith. On conclusion that the way is a public way and the claim is a pretext to oust the Magistrate's jurisdiction, he may appoint a Jury if the person desires the appointment of a Jury in order that Jury may determine whether conditional order made is reasonable and proper. *Durlav Chandra v. Bhuvan Chandra Das*.

22 Cr. L. J. 459 :
61 I. C. 843.

———S. 133—Procedure—Bona fide dispute.

A Magistrate must deal with an alleged public way under S. 133 even though the public character of the way is disputed. The summary powers are primarily intended to be exercised in cases where there is no question that the way is one vested in the public, and when that is seriously disputed and its decision becomes a difficult matter of mixed fact and law, a Magistrate has jurisdiction to exercise his discretion by declining to decide it, and sending the parties to a Civil Court. *Wahid Khan v. Abdullah Khan*.

24 Cr. L. J. 817 :
74 I. C. 849 : 21 A. L. J. 529 : 45 All. 656
A. I. R. 1924 All. 1.

Cr. P. CODE (1898), S. 133**—S. 133—Procedure.**

Causing overflow of water into other lands by raising level of one's own land—S. 133 does not apply—Civil proceedings is the proper remedy. *B. S. Corbel v. Sonaula Basunia*.

34 Cr. L. J. 679 (1) :
144 I. C. 75 : I. R. 1932 Cal. 496 :
A. I. R. 1933 Cal. 150.

—S. 133—Procedure—Conditional order for removal of encroachment—Person served with notice under S. 139-A, appearing and producing evidence to show that there was no encroachment—Magistrate, if can proceed under S. 137 or S. 138.

Where, a conditional order under S. 133, for the removal of an encroachment on a public way is passed by a Magistrate, and a person who was served with a notice of this order appears before the Magistrate under S. 139-A, and produces evidence to show that he has not committed any encroachment, the Magistrate cannot proceed to make his order absolute but must either stay the proceedings or proceed under S. 138 or S. 139, according as he finds the evidence reliable or unreliable. *Chhedilal v. Emperor*.

40 Cr. L. J. 286 :
179 I. C. 970 : 1938 A. L. J. 1145 :
11 R. A. 399 : 1938 A. W. R. 841 :
A. I. R. 1939 All. 116.

—S. 133—Procedure.

Conditional order passed under S. 133—Opposite party appearing and denying right—Procedure to be followed stated. *Mahabir Prasad Bhagwandin v. Pitamber Prasad*.

35 Cr. L. J. 145 :
146 I. C. 601 : 29 N. L. R. 361 : 6 R. N. 91.

—S. 133—Procedure—Encroachment—Notice to show cause—Absence of evidence on either side—Order cannot be made absolute.

Where a person against whom notice under S. 133 has been issued shows cause, the Magistrate must hear the evidence in support of the preliminary order before calling on the person against whom notice has been issued. If no evidence is produced in support of the preliminary order, the order cannot be made absolute merely because the person against whom proceedings have been taken also fails to produce evidence. *Bechan Teli v. Emperor*.

26 Cr. L. J. 905 :
86 I. C. 969 : L. R. 6 All. 80 Cr. & 183 Cr. :
47 All. 341 : A. I. R. 1925 All. 614.

—S. 133—Procedure.

Finding that there is no reliable evidence in support of demand of right of way—Magistrate must proceed under Ss. 137 or 138. He can stay proceedings only if he finds affirmatively that there is evidence in support of denial. *Misra Pandey v. Emperor*.

35 Cr. L. J. 488 :
147 I. C. 824 : 14 P. L. T. 778 :
6 R. P. 382 : A. I. R. 1934 Pat. 145 (1).

—S. 133—Procedure.

If the person who alleges that a public pathway has been obstructed is unable to show that a public pathway exists, the Magistrate is certainly neither required nor entitled to act as if it had been found that

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a public pathway did exist. *Harisadhan Chaudhry v. Tek Narain Singh*. 36 Cr. L. J. 367 :
153 I. C. 471 : 15 P. L. T. 386 :
7 R. P. 344 : A. I. R. 1934 Pat. 438.

—S. 133—Procedure.

In a proceeding under S. 133 upon the opposite party's appearance, the Magistrate should forthwith ask him as to whether he denies the existence of any public right in respect of the way, etc.; and it is only after the question contained in S. 139-A has been decided that he should if he decides to go on with the case at all, proceed under S. 137, to take evidence. *Raghunandan v. Shew Nandan*.

33 Cr. L. J. 618 :
138 I. C. 556 : L. R. 13 All. 130 Cr. :
1932 A. L. J. 339 : I. R. 1932 All. 943 :
A. I. R. 1932 All. 366.

—S. 133—Procedure—Jury, appointment of—Verdict—Disposal of case by Second Class Magistrate after verdict, transfer for—Jurisdiction of First Class Magistrate appointing Jury.

A Magistrate who sends a notice under S. 133 and directs a party to appear before another Magistrate is alone competent to deal with the matter on receiving the verdict of the Jury empanelled under S. 138 and cannot transfer it for disposal by a Second Class Magistrate. *Angappa Mudali v. Ramapuram Perumal Chetty*.

20 Cr. L. J. 761 :
53 I. C. 489 : 37 M. L. J. 343 :
10 L. W. 297 : 1919 M. W. N. 696 :
43 Mad. 316 : A. I. R. 1920 Mad. 378.

—S. 133—Procedure—Nuisance—Inquiry—Order based on oral inquiry, legality of.

The procedure to be followed in an inquiry under Chap. XI is that provided for summons case, and the Magistrate is bound to record the evidence produced by the parties. An order based on an oral inquiry is illegal and liable to be set aside. *Man Chand v. Emperor*.

24 Cr. L. J. 615 :
73 I. C. 503.

—S. 133—Procedure—Obstruction—Defence raising question of title.

When under S. 133 the person called upon to show cause raises a question of title, the trying Magistrate is to decide if the question is raised *bona fide*. The trying Magistrate is not to decide whether the title set up does not exist. *Emperor v. Dost Muhammad*.

2 Cr. L. J. 517 :
25 A. W. N. 202 : 2 A. L. J. 599 :
I. L. R. 28 All. 62.

—S. 133—Procedure.

Obstruction to public right—Denial of right—Procedure to be followed stated—Order should not be made absolute without inquiry and recording finding under S. 139-A. *Uma Kanta Chatterjee v. Kalipada Chowdhury*.

35 Cr. L. J. 89 :
146 I. C. 558 : 37 C. W. N. 823 :
6 R. C. 232 (2) : A. I. R. 1933 Cal. 790.

—S. 133—Procedure—Order for removal of certain buildings—Bona fide question of title—Procedure—Jury—Misdirection.

In proceedings under S. 133, a question of title

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was raised, but the Magistrate instead of first satisfying himself as to the *bona fides* of the claim and determining whether the parties should be referred to a Civil Court, referred the following question to a jury:—"Is there a public right of way at the points where stand the buildings whose removal has been ordered": *Held*, that this was not a proper reference to the jury, all that the jury could try was whether the Magistrate's order was reasonable and proper. *Matukdhari Tewari v. Hari Madhab Das*,
2 Cr. L. J. 11 :
9 C. W. N. 72.

—S. 133—*Procedure—Order preventing obstruction to public way—Denial of public way by respondent—Procedure—Evidence—Stay of proceedings.*

When an order is made under S. 133 preventing obstruction to the public in the use of a way, the Magistrate shall question the respondent as to whether he denies the existence of public right. If the respondent does, the Magistrate shall, before proceeding under S. 137 or S. 138, inquire into the matter. If the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until it has been decided by a Civil Court. But if he decides that there is no such evidence, he shall proceed as laid down in S. 137 or 138. *Ude Singh v. Mohammada*,
29 Cr. L. J. 698 :

110 I. C. 330 : 10 A. I. Cr. R. 398 :
10 Lah. 151 : A. I. R. 1928 Lah. 856.

—S. 133—*Procedure—Order proceeding on grounds not covered by notice, legality of.*

An order under S. 133 which proceeds on grounds not covered by the notice issued to the accused is illegal, *Gokal Chand v. Emperor*,
21 Cr. L. J. 462 :

56 I. C. 446 : 1 Lah. 163 :
A. I. R. 1920 Lah. 250.

—S. 133—*Procedure—Person to whom order is addressed must be first questioned—Inquiry under Ss. 139 and 138 should then follow and the Prosecution is to lead evidence.*

The procedure under Chap. X, is constantly causing difficulty to the Courts. It is to be observed that when an order under S. 133 is made with reference to an obstruction in a public way, and the person appears before the Magistrate, the Magistrate must, before inquiry under Ss. 137 and 138 question the person whether he denies the public right. At this stage it is for the person so proceeded against to adduce evidence in support of his denial and for the Magistrate to make a finding whether a public right is denied or not, and if it is denied, whether there is reliable evidence in support. If the right of way is not denied or if there is no reliable evidence, the Magistrate should then proceed under Ss. 137 and 138, and in this inquiry, Crown is to lead evidence and the person proceeded against to answer it. *Emperor v. Raghunandan Saran Das*,
38 Cr. L. J. 29 :

165 I. C. 942 : 17 P. L. T. 791 :
3 B. R. 107 : 9 R. P. 234 :
A. I. R. 1936 Pat. 639.

—S. 133—*Procedure—Proceedings under S. 133 are valid only if encroachment is recent.*

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If the encroachment is held by the Magistrate to be a recent one, proceedings under Chap. X, would be perfectly valid. If, however, it is discovered that the obstruction is an old one, proceedings under Chap. X would not be justified. *Nanumal v. Emperor*,
40 Cr. L. J. 933 :

184 I. C. 352 : 41 P. L. R. 515 :
12 R. L. 211 : A. I. R. 1939 Lah. 452.

—S. 133—*Procedure.*

Proceedings under S. 133—Enquiry under S. 139-A—Local inspection—Jury under S. 135-B—Applicants against whom proceedings started and their jurors absenting on date fixed and also on adjourned date—Provisional order confirmed without notice to applicants is legal. *Pyare Lal v. Dwarka Prosad*,
36 Cr. L. J. 1472 :

158 I. C. 759 : 1935 A. W. R. 1134 :
1935 A. L. J. 1089 : 8 R. A. 337 :
A. I. R. 1936 All. 65.

—S. 133—*Procedure.*

Provisional order to remove obstruction from public way—Party denying public way at place of obstruction—Map showing that place belonged to his wife produced—On previous occasion under similar proceeding, Magistrate holding no public way existed : *Held*, Magistrate should stay proceeding till matter was decided by Civil Court. *Emperor v. Batuk*,
37 Cr. L. J. 365 :

160 I. C. 889 : 1936 A. W. R. 195 :
1936 A. L. J. 76 : 8 R. A. 670 (1) :
A. I. R. 1936 All. 1421.

—S. 133—*Procedure—Public path, obstruction of—Claim, that path is private.*

Where in a proceeding regarding an alleged obstruction to a public path, a claim is made that the path is private, the Magistrate should first inquire whether the claim is a *bona fide*; when the claim is not *bona fide*, he should take proceedings under the Chapter. If the claim is *bona fide*, the parties be left to proceed in Civil Court, and if the parties do not go to the Civil Court, within a reasonable time, he may proceed again. *Lakshman Chandra Ghose v. Bilash Roy Agarwala*,
22 Cr. L. J. 351 :
61 I. C. 175.

—S. 133—*Procedure—Question of title raised—Magistrate, power of.*

Per Sharfuddin, J. (Teunon, J. dubitante)—When a person showing cause under S. 133, raises a question of title, the Magistrate must decide the question. If the claim set up is a mere pretence, he should pass final orders and make the rule absolute, but if it is *bona fide*, he should stay his hand and refer the party to Civil Court. If the party within a reasonable time does not have recourse to Civil Court, the Magistrate may make the rule absolute. *Manipur Dey v. Bidhu Bhushan Sarkar*,
15 Cr. L. J. 698 :

26 I. C. 146 : 18 C. W. N. 1086 :
42 Cal. 158 : A. I. R. 1915 Cal. 168.

—S. 133—*Procedure—Respective duties of the Magistrate and of the Jury.*

Before appointment of a Jury, the Magistrate should determine the question in proceedings

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under S. 133, which gives him jurisdiction, namely, whether the pathway in which the obstruction is erected was in fact a public pathway or not. Where the Magistrate referred the whole case to the Jury and the Jury returned a verdict that the order was a proper order but that the road was a private road: *Held*, it was incumbent upon the Magistrate to determine the latter point and not to leave it to the Jury. *Ramanath Laskar v. Jaladhar Shaha*, 3 Cr. L. J. 331 : 3 C. L. J. 360.

———S. 133—*Procedure—Various obstructions by several persons—Order, what it must contain.*

It is essential that the order issued under the section should state accurately with regard to each person, the specific obstruction made by him which he is required to remove, unless it is alleged that all the persons are jointly responsible for all the obstructions mentioned.

Khem Chand v. Emperor, 28 Cr. L. J. 1036 : 106 I. C. 220 : 9 A. I. Cr. R. 202 : A. I. R. 1928 Lah. 187.

———S. 133—*Procedure.*

When the accused appears to show cause against a notice under S. 133, the Magistrate should take evidence as in a summons case. Omission makes the order illegal. *Emperor v. Mool Chand*, 32 Cr. L. J. 1165 :

132 I. C. 800 : 8 C. W. N. 651 : I. R. 1931 Oudh 352 : A. I. R. 1931 Oudh 397.

———S. 133—*Bona fide dispute—Procedure—Jurisdiction.*

Per *Daniels, J.*—It is not correct to say that a Magistrate has no jurisdiction to proceed under Chapter X in a case where a *bona fide* dispute as to title is raised. On objection being taken by the defendant to the proceeding under S. 135 (b) of the Code, all that the Magistrate has to decide is whether his conditional order, is reasonable and proper or not. *Wahid Khan v. Abdullah Khan*, 24 Cr. L. J. 817 :

74 I. C. 849 : 21 A. L. J. 529 : 45 All. 666 : A. I. R. 1924 All. 1.

———Ss. 133, 135—*Procedure—Magistrate making conditional rule, whether can refer case for disposal to another Magistrate.*

Sub-Divisional Officer making a conditional rule under S. 133 calling upon the person, complained against to appear before himself can refer the matter to another Magistrate subordinate to him for disposal. But only when the person against whom the notice is issued appears and demands a Jury under S. 135, that the matter must be disposed of by the Magistrate issuing the conditional rule, and not by any other Magistrate to whom the case might have been referred for inquiry. *Jagroshan Bharthi v. Madan Pandi*, 28 Cr. L. J. 910 :

105 I. C. 238 : 8 P. L. T. 452 : 6 Pat. 428 : 8 A. I. Cr. R. 306 : A. I. R. 1927 Pat. 265.

———Ss. 133, 135, 137—*Procedure—Notice to accused—Appearance.*

Where a Magistrate issues a notice to an accused under S. 133, he can make it absolute under S. 135 only if the accused does not appear

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and protest against it. Where the accused appears and protests against it, the Magistrate should proceed under S. 137 as if the case were a summons case. *Jassi v. Emperor*.

25 Cr. L. J. 266 : 76 I. C. 826 : 20 A. L. J. 692 : A. I. R. 1922 All. 325.

———Ss. 133, 137—*Procedure—Nuisance—Conditional order—Objection—Magistrate's duty.*

Where a Magistrate made a conditional order under S. 133 to remove any unlawful obstructions from a way used by the public and the opposite party showed cause: *Held*, that the provisions of S. 137 (1) must be observed, the Magistrate should take evidence in the matter as in a summons case and not at once drop the proceedings. It is open to the Magistrate to consider evidence and consider whether there is an answer to the case against the opposite party or whether this is not a proper case where the parties should be referred to the Civil Court for determining a matter which the Magistrate considers that he cannot decide. *Sarojbasini Debi v. Sripathi Charan*.

16 Cr. L. J. 415 : 28 I. C. 799 : 19 C. W. N. 332 : 42 Cal. 702 : A. I. R. 1916 Cal. 106.

———Ss. 133, 137—*Procedure—Nuisance—Order directing plot of land to be vacated—Title, question of.*

Where a person in proceedings under S. 133 sets up a title to a plot of land which he is required to vacate, the Court must proceed in accordance with the provisions of S. 137 and cannot make a summary order in the matter. *Abdul Karim v. Emperor*, 28 Cr. L. J. 294 :

100 I. C. 374 : L. R. 8 All. 58 Cr. : 7 A. I. Cr. Rang. 389 : 49 All. 453 : 25 A. L. J. 424 : A. I. R. 1927 All. 384.

———Ss. 133, 137—*Procedure—Order to show cause—Who should start proceedings and produce evidence.*

When the person against whom a conditional order is made under S. 133, appears to show cause and moves the Magistrate to set aside or modify the order, he is not to show that the order was not justified, nor to produce his evidence first. The words of S. 137, "shall take evidence in the matter as in a summons case" do not mean that he is to start the proceedings and produce evidence to meet a case which he never heard. He is entitled to hear the evidence, as in a summons case, produced by the opposite party, and then produce his own evidence. Therefore, where a Magistrate called upon the person proceeded against to produce his evidence first and considering that evidence made the conditional order absolute, his order was set aside as illegal. *Srinath Roy v. Ainaddi Halder*, 24 C. 395 : 1 C. W. N. 217, referred to. *Hingu v. Emperor*, 10 Cr. L. J. 297 :

3 I. C. 482 : 6 A. L. J. 685.

———Ss. 133, 137, 139—*Procedure—Order under S. 133 for obstructing public way—Public right of way denied—Proceedings under S. 139—A should be taken before proceedings under S. 137.*

Where a conditional order under S. 133 is passed against a person for obstructing a public

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way, and in an enquiry such a person denies the public right of way, proceedings under S. 139-A should be taken before the proceedings under S. 137. *Ata Muhammad v. Abdul Rahman*.

38 Cr. L. J. 1056 :
171 I. C. 279 : 39 P. L. R. 484 : 10 R. L. 181 :
A. I. R. 1937 Lah. 676.

—Ss. 132, 137—*Procedure—Order without taking evidence—Waiver by party.*

In a case under S. 133, if the party shows cause, the Court is to apply the provisions of S. 137, the language of which is mandatory, and the Magistrate is to take evidence, even if the party agrees to abide by the decision of the Magistrate based not upon evidence legally received, but upon information gathered upon local enquiry, for no waiver can confer on the Magistrate authority to act in a manner not prescribed by the Legislature. *Upendra Nath Mandal v. Rampal*.

11 Cr. L. J. 1 :
4 I. C. 436 : 10 C. L. J. 482.

—Ss. 133, 137, 138, 139-A—*Procedure—Obstruction to public right—Denial of public right.*

In a proceeding under S. 133 when there is a denial of the existence of the public right, it is the duty of the Magistrate to inquire into the matter and to come to a conclusion under the provisions of S. 139-A of the Code, and on the result of this conclusion, must depend the question whether to stay proceedings or to proceed under S. 137 or 138 of the Code. *Rahanaddy Patwary v. Hasan Ali Jamadar*.

27 Cr. L. J. 878 :
96 I. C. 126 : 30 C. W. N. 648.

—Ss. 133, 137, 139-A—*Procedure—Opposite party denying existence of public right—Proper way for the Magistrate to proceed.*

On a preliminary order under S. 133, the opposite party contends that the place is his private possession and thus denies the right of the public, the Magistrate must follow the procedure prescribed in S. 139-A introduced by the amending Act of 1923 and decide whether the evidence of denial of public right is reliable and sufficient to support the case. If there is any reliable evidence, the Magistrate has to refer the parties to go to the Civil Court. If he instead of proceeding as above, proceeds to conduct an inquiry straightway under S. 137 and taking evidence on both the sides passes an order, such order is totally without jurisdiction and is liable to be set aside. *Govinda Goundan v. Ayi Goundan*.

40 Cr. L. J. 813 :
183 I. C. 567 : 49 L. W. 476 :
1939 M. W. N. 409 : 1939 I. M. L. J. 649 :
12 R. M. 316 : I. L. R. 1939 Mad. 1030 :
A. I. R. 1939 Mad. 465.

—Ss. 133, 138—*Procedure—Right, claim for, set up—Magistrate, duty of.*

Before any proceeding can be taken under S. 133 or, at all events, before reference can be made to a Jury, it is incumbent on the Magistrate when a claim for right is set up, to determine whether that claim is *bona fide* or not, and whether the road or pathway is a public pathway or not. It is not open to the Magistrate to leave decision of that question to

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a Jury appointed under S. 138. *Imrat Ali v. Amjad Ali*.
18 Cr. L. J. 452 :
9 I. C. 292 : 2 P. L. J. 67 : 3 P. L. W. 404 :
A. I. R. 1916 Pat. 171.

—Ss. 133, 139-A—*Procedure—Enquiry—Stages in enquiry—Decision of question of title.*

There are two distinct stages in any enquiry under Chap. X. The first stage is prescribed by S. 139-A, and when that section has been complied with and there is no reliable evidence of the denial of the alleged public right by the persons against whom the conditional order is issued, the Magistrate should commence the second stage of the enquiry as provided by S. 137. A Magistrate is to make an enquiry of title upon weighing evidence produced on both sides. A Magistrate is required under S. 139-A to hold an enquiry merely to satisfy himself if, there is or is not some *prima facie* evidence in support of the denial. In this part of the enquiry it is open to him to allow the witnesses, produced by the person denying the public right, to be cross-examined, but he cannot allow the opposite party to produce definite evidence to the contrary and then proceed to weigh the evidence to decide finally whether the alleged public right does or does not exist. *Chunni v. Emperor*.

40 Cr. L. J. 143 :
178 I. C. 742 : 1938 A. L. J. 1013 :
11 R. All. 335 : 1938 A. W. R. 640 :
A. I. R. 1938 All. 653.

—Ss. 133, 139-A—*Procedure—Obstruction to public right—Denial of public right—Jurisdiction of Magistrate.*

A Magistrate in a case under S. 133 is to determine whether any public right exists, and if the party denies that there is any public right, the Magistrate has to determine whether that denial is *bona fide*. When the denial is a mere pretence, he can make his order absolute. If the denial is *bona fide*, his jurisdiction is ousted. *Thakur Sao v. Abdul Aziz*.

27 Cr. L. J. 9 :
91 I. C. 44 : 4 Pat. 783 : 7 P. L. T. 136 :
A. I. R. 1926 Pat. 170.

—Ss. 133, 139-A—*Procedure—Public nuisance—Denial of public right.*

When a person ordered to remove a public nuisance denies the existence of any public right, the Court has not to see whether the denial is *bona fide* or not. The Magistrate has to see under S. 139-A whether there is any reliable evidence in support. If no material is produced before the Court suggesting any reliable evidence, it will proceed with the inquiry under S. 137. If there is some reliable evidence, it will, in its discretion, stay the proceeding till the matter is determined in the Civil Court. The Magistrate is left an absolute discretion as to how far he will go or upon what materials he will act. *Manohar Singh v. Emperor*.

30 Cr. L. J. 670 :
116 I. C. 786 : I. R. 1929 All. 610 :
129 A. L. J. 385 : 109 A. I. R. 1929 All. 220.

—Ss. 133, 139-A—*Procedure—Public nuisance—Duty of Magistrate to follow procedure. Conditional order, necessity of—Denial of right—Stay of proceedings pending decision of Civil Court.*

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A Magistrate who commences proceedings under S. 133, is bound to follow the procedure prescribed by Code. He cannot proceed with the enquiry without issuing a conditional order and if he finds that the alleged public right is denied and there is reliable evidence in support of such denial, he is to stay the proceedings until the matter of such right has been decided by Civil Court without directing any particular party to have recourse to such Courts. *Brahman Water Mills Co. v. Mangladha Mal.*

29 Cr. L. J. 530 :
109 I. C. 354 : 9 L. L. J. 522 :
A. I. R. 1928 Lah. 95.

———Ss. 133, 139-A—*Procedure—Public nuisance proceedings—Duty of Magistrate—Procedure to be followed.*

Where a person appears on receipt of a notice under S. 133, the first duty of the Magistrate is to question him whether he denies the existence of the public right; the Magistrate must stay his hand if any reliable evidence is adduced to indicate that there is no public right. *Matabbar Molla v. Golam Panjaton.*

32 Cr. L. J. 33 (a) :
127 I. C. 762 : 57 Cal. 368 :
A. I. R. 1930 Cal. 890.

———Ss. 133, 139-A (2)—*Procedure—Obstruction of public drain—Settlement Record, showing ownership of accused—Stay of proceedings.*

Under S. 133 in proceedings relating to an encroachment and obstruction of a public drain, when the person against whom the proceedings are taken produces the Settlement Record to show that the land in dispute belongs to him, the Magistrate ought to stay the proceedings under S. 139-A (2) and leave the parties to have the matter decided in the Civil Court. *Debendra Nath v. Chairman, Local Board, Asansol.*

25 Cr. L. J. 1080 :
81 I. C. 904 : A. I. R. 1925 Cal. 268.

———Ss. 133, 139-A (2)—*Procedure—Public nuisance—Denial of public right—Duty of Magistrate to stay proceedings—Dismissal of application, legality of.*

The procedure to be adopted by a Magistrate where he finds in proceedings under S. 133 that there is reliable evidence to show that the place from which the alleged unlawful obstruction or nuisance is to be removed is not a public place, is not to dismiss the application and refer the parties to the Civil Court but to stay the proceedings before him under S. 139-A (2) of the Code until the matter of the existence of the alleged public right is decided. *Debi Dayal v. Manao.*

29 Cr. L. J. 244 :
107 I. C. 333 : 5 O. W. N. 78 : 9 A. I. Cr. 539 :
A. I. R. 1927 Oudh 632.

———Ss. 133, 139 (1), 140 (1)—*Procedure—Inquiry in proceeding under S. 133—Bona fide claim of right set up—Procedure.*

Complaint was made to a Magistrate that public rights in a channel had been interfered with. The Magistrate took proceedings under S. 133, and on conclusion that the channel in question was a public channel passed, orders under Ss. 139 (1) and 140 (1): *Held*, that the Magistrate need not

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inquire whether the party had a *bona fide* claim and to refer the parties to the Civil Court if the claim of right set up was *bona fide*, although in normal cases, that course is a wise and proper one. *Fakir Mullik v. Emperor.*

19 Cr. L. J. 947 :
47 I. C. 671 : 28 C. L. J. 211 :
A. I. R. 1918 Cal. 40.

———Ss. 133, 140—*Procedure—Encroachment on public road—Jury, appointment of—Verdict, failure to return.*

Where in a proceeding under S. 133 of the Cr. P. C. a jury is appointed but fails to return verdict within the time, the Magistrate may pass order as he thinks fit and it must be executed in the same manner as a final order under S. 140. *Shyam Sundar Sinha v. Emperor.*

27 Cr. L. J. 981 :
96 I. C. 945 : 24 A. L. J. 165 : L. R. 7 All. 5 Cr. :
A. I. R. 1926 All. 658.

———Ss. 133 and 140—*Order directing accused to protect his well—Failure to obey—Notice under S. 140—Punishment for disobedience.*

A Magistrate made an order directing the accused to protect his well as being dangerous to the public. The accused disobeyed: *Held*, that no notice under S. 140 was necessary. Whenever the time fixed in the order under S. 133 has been allowed to pass without compliance with the order or protest against it, the liability to the punishment attaches at once to that person and may be enforced irrespective of S. 140. *In re: Aluvala Guruviah.*

8 Cr. L. J. 151 :
3 M. L. J. 403 : 31 Mad. 280 : 18 M. L. J. 216.

———Ss. 133, 141—*Procedure—Encroachment on public road—Jury, appointment of—Verdict, failure to return—Final order passed by Magistrate, legality of.*

Where on the failure of the Jury to return a verdict, the Magistrate inspected the spot and called for a report from the Police and thereafter confirmed his original order: *Held*, that the final order passed by the Magistrate was perfectly legal. *Shyam Sundar Sinha v. Emperor.*

27 Cr. L. J. 981 :
96 I. C. 945 : 24 A. L. J. 165 :
L. R. 7 All. 5 Cr. : A. I. R. 1926 All. 658.

———Ss. 133, 147—*Procedure—Proceedings entirely different.*

The procedure under S. 147 should be as under. S. 145 which includes the filing of written statements, taking of evidence and, if necessary, local investigation. Proceedings under S. 133 are under an entirely different Chapter of the Code. *Abdul Rackman Mia v. Safar Ali.*

12 Cr. L. J. 43 (b) :
9 I. C. 262 : 15 C. W. N. 667.

———S. 133—*Public place—Encroachment on public way—No inconvenience—Order absolute, whether to be passed.*

Where it is found that a public road has been encroached upon, a Magistrate should not refuse to make a conditional rule under S. 138 absolute on the mere ground that the encroach-

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ment does not cause any inconvenience. *Jagroshan Bharthi v. Madan Pande.*

28 Cr. L. J. 910 :
105 I. C. 238 : 8 P. L. T. 452 : 6 Pat. 428 :
8 A. I. Cr. R. 306 : A. I. R. 1927 Pat. 265.

—S. 133—Public place—Encroachment on public way—Rights of public.

The public has a right to the use of every inch of the public path or way and nobody has a right to encroach upon any portion of it. No length of user can justify an encroachment upon a public way. *Jagroshan Bharthi v. Madan Pande.*

28 Cr. L. J. 910 :
105 I. C. 238 : 8 P. L. T. 452 : 6 Pat. 428 :
8 A. I. Cr. R. 306 : A. I. R. 1927 Pat. 265.

—S. 133—Public place—Obstruction, removal of—Magistrate, power of.

S. 133 empowers a Magistrate to order the removal of an obstruction from any public place, and before the section can be applied, there must be a finding that the obstruction is on a way which may be lawfully used by the public or on a public place. *Churaman v. Emperor.*

15 Cr. L. J. 724 :
26 I. C. 172 : 12 A. L. J. 1224 :
A. I. R. 1914 All. 214.

—S. 133—Public place—Obstruction to Railway land, whether public place.

The obstruction under S. 133 must be an unlawful obstruction on any way which is or may be lawfully used by the public or on any public place. There is no warrant that Railway land is necessarily a public place, especially Railway land which is outside the Railway fencing at a Railway Station. *Rangi Sah v. B. N. W. Railway Co.*

24 Cr. L. J. 855 :
74 I. C. 1047 : 4 P. L. T. 402 :
A. I. R. 1923 Pat. 540.

—S. 133—Public place—Public way, what is.

The fact that the residents of a particular village have a right to take cattle across a field is not sufficient to constitute a public right of way. *Jhunnu Singh v. Emperor.*

4 Cr. L. J. 65 :
26 A. W. N. 190.

—S. 133—Scope.

An order under S. 133 binds the person against whom the order is passed and nobody else. *Ram Sahai v. Uttama Debi.*

36 Cr. L. J. 144 :
152 I. C. 737 : 4 A. W. R. 935 :
1935 A. L. J. 18 : L. R. 15 All. 185 Cr. :
7 R. A. 371 : A. I. R. 1935 All. 79.

—S. 133—Scope—Diversion—Proceedings under S. 133, are competent.

A water-course carrying water to a public tank is a public water-course and interference with it justifies proceedings under S. 133. *Ramaswami Chettiar v. Rama Nathan Chettiar.*

27 Cr. L. J. 105 :
91 I. C. 537 : 1925 M. W. N. 663 :
22 L. W. 470 : A. I. R. 1926 Mad. 165.

—S. 133—Scope—Evidence by one and decision by other Judge.

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Per Shah, J.—Evidence by one Magistrate and decision thereon by another is not warranted by law. *In re : Kariyappa Ningappa.*

23 Cr. L. J. 587 :
68 I. C. 619 : 24 Bom. L. R. 807 :
A. I. R. 1922 Bom. 384.

—S. 133—Scope—Lawful trade whether can be prohibited—Manner of carrying on trade, whether can be restricted.

S. 133 relates to an existing state of affairs. Clause (3) of S. 133 deals only with occupations or trades injurious to health or physical comfort and has nothing to do with trades which are innocuous, but in the course of which the manager, or prier of them commits a public nuisance. The provisions of Chapter X should be worked so as not to become themselves a nuisance to the community, although every man is so bound to use his property that it may not work legal damage to his neighbour, yet no one has a right to interfere with a free and full enjoyment by another of his property except on clear and absolute proof that such use is producing such legal damage and, therefore, a lawful and necessary trade such as the manufacture of bricks should not be interfered with unless it is injurious to the health, or physical comfort of the community. *Gokal Chand v. Emperor.*

21 Cr. L. J. 462 :
56 I. C. 446 : 1 Lah. 163 :
A. I. R. 1920 Lah. 258.

—S. 133—Scope—Local inspection.

An order passed merely as the result of a local inspection is not proper and cannot stand. *Emperor v. Kanhaiya Lal.*

22 Cr. L. J. 765 :
64 I. C. 285 : 24 O. C. 267 :
A. I. R. 1921 Oudh 147.

—S. 133—Scope—Nuisance—Claim of title bona fide—Power of Magistrate to stay proceedings pending the determination in the Civil Court—Prima facie case for exercise of jurisdiction.

Certain acts of applicant were complained of as a nuisance. The applicant raised the question of title claiming the property as his own. The Magistrate being of opinion that the claim, though not strictly made out, was a *bona fide*, one stayed proceedings, and opportunity was given to establish his claim in a Civil Court : *Held*, that the Magistrate's action was in strict accordance with the principles laid, *Belat Ali v. Abdur Rahim.*

1 Cr. L. J. 70 :
8 C. W. N. 143.

—S. 133—Scope—Obstruction—Initial order may be modified.

S. 133 contemplates that in suitable cases the order initially made may be modified and the modified order may be allowed to stand. *Emperor v. Jhau Lal.*

26 Cr. L. J. 731 :
86 I. C. 219 : 23 A. L. J. 43 :
L. R. 6 All. 86 Cr. : A. I. R. 1925 All. 310.

—S. 133—Scope—Power under S. 133, how to be used.

The provisions of S. 133 should be sparingly used as any order passed under the section

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cannot be questioned in any Civil Court. *Mampur Deh v. Bidhu Bhusan Sarkar*.

15 Cr. L. J. 698 :
26 I. C. 146 : 18 C. W. N. 1086 :
42 Cal. 158 : A. I. R. 1915 Cal. 168.

———S. 133—Scope—Private person, if can insist that Magistrate shall pass orders under S. 133.

No private person has a right to insist that a Magistrate shall pass orders under S. 133. Whether such orders should be passed is a matter of discretion. If he does not choose to interfere, the party aggrieved has his normal remedy in the Civil Court. *Sibte Husain v. Emperor*.

39 Cr. L. J. 148 :
172 I. C. 642 : 1937 A. L. J. 903 :
1937 A. W. R. 866 : 10 R. A. 406 :
A. I. R. 1937 All. 785.

———S. 133—Scope—Private right.

Disputes relating to a private right of way should not be decided in the Criminal Courts. *Wahid Khan v. Abdulla Khan*.

24 Cr. L. J. 817 :
74 I. C. 849 : 21 A. L. J. 529 :
45 All. 656 : A. I. R. 1924 All. 1.

———S. 133—Scope—Quaere—Magistrate, whether can continue with two proceedings under S. 133 side by side with regard practically to same subject-matter.

Quaere.—It is doubtful if a Magistrate can continue with two proceedings under S. 133 side by side with regard to practically the same subject-matter, because the danger is that by this procedure a Magistrate may get a chance of reviewing an order which he had already passed. *Kalyan Mul Mathur v. Emperor*.

37 Cr. L. J. 1159 :
165 I. C. 542 : 3 B. R. 69 : 9 R. P. 186 :
A. I. R. 1936 Pat. 577.

———S. 133—Scope—Reference.

Sub-s. (2) of S. 133 does not appear to favour the reference of parties. *Ram Sagar Mondal v. Alek Noskar*.

23 Cr. L. J. 353 :
67 I. C. 177 : 26 C. W. N. 442 :
49 Cal. 682 : 35 C. L. J. 247.

———S. 133—Scope.

S. K. Ghose, J.—By amendment in para. 3 scope is widened. Now it applies to cases of trades which become injurious by reason of the conduct of them. *Calcutta Steam Navigation Co., Ltd. v. Emperor*.

32 Cr. L. J. 235 :
129 I. C. 106 : 35 C. W. N. 115 :
I. R. 1931 Cal. 122 : 58 Cal. 854 :
A. I. R. 1930 Cal. 757.

———S. 133—Scope.

S. 133 contemplates only an inquiry as to the existence or non-existence of the obstruction and not an inquiry into a disputed question of title. *Mohammad Ashrafuddin v. Kareem Buksh*.

15 Cr. L. J. 515 :
24 I. C. 603 : 19 C. L. J. 631 :
18 C. W. N. 1148 : A. I. R. 1915 Cal. 113.

———S. 133—Scope.

S. 133 does not permit the removal of the construction of a proposed cesspool on the

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ground that it may prove a nuisance in the future. *Rambharose v. Sundarlal*.

35 Cr. L. J. 1414 :
151 I. C. 754 : 17 N. L. J. 158 :
7 R. N. 65 : A. I. R. 1934 Nag. 230.

———S. 133—Scope.

S. 133 is not intended for the removal of long-standing obstructions but for unlawful obstructions lately built on public places. *Consolidation Co-operative Society v. Har Gobind*.

40 Cr. L. J. 758 :
183 I. C. 292 : 12 R. L. 106 :
A. I. R. 1939 Lah. 276.

———S. 133—Scope—Way “is or may be lawfully used by the public.”

It is not necessary in order to give jurisdiction to the Magistrate under S. 133 that the way should be one which is generally used by the public. All that the section requires is that the way should be one which is or may be lawfully used by the public. *Hariday Chandra Das v. Shib Chandra Goswami*.

10 Cr. L. J. 210 :
3 I. C. 7.

———S. 133, 139-A—Scope—Road, public or private—Production of evidence in favour of road being private—Dismissal of complaint—Civil Court holding it as a public road.

Where in a complaint under S. 133 there is evidence to support the plea that the road is a private road, the Magistrate may dismiss the application. If the Civil Court then decides it as a public road and the party alleging it to be a private road offers obstruction, proceedings can then be taken under S. 133. *Bram Chetan Das v. Jasbir Singh*.

30 Cr. L. J. 360 :
114 I. C. 782 : 5 O. W. N. 85 :
I. R. 1929 Oudh 190 : A. I. R. 1929 Oudh 190.

———Ss. 133, 140—Scope—Nuisance proceedings—Death of party—Abetment—Magistrate's power to continue proceedings against successor.

As soon as a person against whom an order has been made under S. 133 dies, the order ceases to have further effect and a Magistrate is not entitled to act under S. 140 (2). *Jugal Kishore v. Emperor*.

29 Cr. L. J. 445 :
108 I. C. 565 : 26 A. L. J. 405 :
L. R. 9 All. 64 Cr. : 9 A. I. Cr. R. 435 :
A. I. R. 1928 All. 300.

———S. 134.

See Cr. P. C., S. 144.

———S. 134—Service of order.

It is only if the order cannot be served in the manner provided for service of summons, that the publication of a proclamation under sub-s. 2, S. 134, may be resorted to. *Abdul Jabbar Sarkar v. Emperor*.

36 Cr. L. J. 736 :
155 I. C. 416 (a) : 39 C. W. N. 141 :
60 C. L. J. 474 : 7 R. C. 585 :
A. I. R. 1935 Cal. 251.

———S. 135.

See Cr. P. C., S. 141.

———S. 135—Purpose of S. 135.

The purpose of S. 135 is clear. The persons against whom conditional order has been passed under S. 133, must either obey the order or show cause why the order should not have

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been made. They can be heard once in their defence, but they cannot be heard twice. *Jethanand v. Shikarpur Municipality*.

41 Cr. L. J. 364 :
186 I. C. 723 : 1939 Kar. 179 :
12 R. S. 213 : A. I. R. 1940 Sind 24.

—S. 135—Rights of party under.

The section gives the person against whom an order under S. 133 is passed, the right to show cause or to apply for a Jury; an application for both these reliefs cannot be made.

✓ *Kishori Lal v. Emperor*. 10 Cr. L. J. 494 :
4 I. C. 72 : 13 C. W. N. 367.

—S. 135—Scope—Application to show cause and for a Jury—Both not to be granted.

S. 135 gives the person, against whom an order under S. 133 is passed, the right to show cause or to apply for a Jury: an application for both these reliefs cannot be made. In the former alternative, the Magistrate is bound to take action under S. 137; and in the second alternative, the Magistrate is bound to take action under S. 138. *Kishori Lal v. Emperor*.

10 Cr. L. J. 494 :
4 I. C. 72 : 13 C. W. N. 367.

—S. 135—Scope.

Seemle: After a Jury has failed to perform their duty through no fault of the person against whom a conditional order has been passed, that person may be allowed to revert to the other alternative given him by S. 135. *Kishori Lal v. Emperor*.

10 Cr. L. J. 494 :
4 I. C. 72 : 13 C. W. N. 367.

—S. 135 (1).

See Motor Vehicles Act, 1914.

—S. 135-B

See Cr. P. Code, 1898, S. 133.

—S. 136—Evidence—Procedure on setting aside order—Recording of.

Where an order absolute under S. 136 passed *ex parte* is set aside by the Magistrate on the appearance of the opposite party, the Magistrate must proceed to record evidence as provided by S. 137 and it is only after the provisions of that section have been complied with that the Magistrate is competent to make the order absolute or to drop the proceedings. *Ramsaran Koeri v. Ramlagan Ahir*.

19 Cr. L. J. 214 :
43 I. C. 790 : 4 P. L. W. 50.
A. I. R. 1917 Pat. 124.

—S. 136—Procedure—Order absolute, *ex parte*, setting aside of.

There is no express section providing for the revision of an order made absolute under S. 136 upon the ground of the party not being able to attend on the date fixed. On general principles, the Magistrate might set aside the order passed by him under S. 136 *ex parte* and restore the case to the pending file. *Ramsaran Koeri v. Ramlagan Ahir*.

19 Cr. L. J. 214 :
43 I. C. 790 : 4 P. L. W. 50 :
A. I. R. 1917 Pat. 124.

—S. 137.

See also (i) Cr. P. C., S. 133.
(ii) Cr. P. C., S. 139-A.

Cr. P. CODE (1898), S. 137

—S. 137—*Applicability—Flour mill causing inconvenience to two neighbours—They only complaining—No evidence that nuisance was caused to any other person—Nuisance not public nuisance—Order under S. 137, not justified—Even if nuisance was public nuisance, case was not of prohibiting mill but of regulating it.*

A flour mill caused vibrations to the premises of two neighbours and caused inconvenience and they alone filed complaint regarding nuisance. There was no evidence to show that nuisance was caused to anybody else by the mill: *Held*, that the working of the mill engine did not amount to a public nuisance. Any damage or inconvenience caused to the complainant's premises by the working of the engine must be regarded as a private nuisance and order under S. 137, was not justified: *Held*, further, that even if persons other than complainants were injured in their health or physical comfort by the mill, still it was not a case for prohibiting the mill but for regulating it. *Rameshwar Narayan Agarwal v. Emperor*.

40 Cr. L. J. 444 :
180 I. C. 511 : 41 Bom. L. R. 84 :
11 R. B. 301 : A. I. R. 1939 Bom. 92.

—S. 137—Burden of Proof—Complaint for nuisance—Conditional order under S. 133 served—Burden of proving nuisance.

A person on whom conditional order is made and who is required to show cause against the same, has to show cause in matters complained of, and the complainant has to make out a *prima facie* case. He has to produce before the Court legal evidence as in a summons case to justify a finding that what is complained of amounts to a public nuisance. The burden of proof is not on the person served with conditional order. *Rameshwar Narayan Agarwal v. Emperor*.

40 Cr. L. J. 444 :
180 I. C. 511 : 41 Bom. L. R. 84 :
11 R. B. 301 : A. I. R. 1929 Bom. 92.

—S. 137—Failure of jury to try case through no fault of persons choosing jury trial—Claim that their case should be heard as summons case—Magistrate, duty of.

Where persons have, in good faith, chosen a trial by jury, and through no fault of their own, their chosen Tribunal fails to hear and try their case, they cannot claim, then, that they are entitled that their case should be heard by the Magistrate as a summons case under S. 137 (1) but the Magistrate would clearly desire, in such circumstances, that they should be given an opportunity briefly to state their case. *Jetha Nand v. Shikarpur Municipality*.

41 Cr. L. J. 364 :
186 I. C. 723 : 1939 Kar. 179 : 12 R. S. 213 :
A. I. R. 1940 Sind 24.

—S. 137—Procedure.

The words of the section "shall take evidence in the matter as in a summons case" do not mean that the person showing cause is to produce evidence first to meet a case which he never heard. Opposite party's evidence he can hear as in a summons case and then may produce his evidence if so advised. *Hingu v. Emperor*.

10 Cr. L. J. 297 :
3 I. C. 482 : 6 A. L. J. 685.

Cr. P. CODE (1898), S. 137

———S. 137.

Notice under S. 133—Evidence produced under S. 139-A—Magistrate finding that there is no reliable evidence in support of denial must proceed under S. 137—Civil suit for declaration: *Held*, application for stay should not be granted. *Kalika Prasad v. Shyam Kishore Singh*.

35 Cr. L. J. 1445 (2) :
151 I. C. 897 : 1934 A. L. J. 342 :
4 A. W. R. 561 : 7 R. A. 236 :
A. I. R. 1934 All. 131.

———S. 137—Object.

S. 137 contemplates that the order absolute should be made by the Magistrate to whom a case is referred under S. 133. *Maung Shwe Ye v. Maung Pyu*.

1 Cr. L. J. 669 :
10 Bur. L. R. 130.

———S. 137—Opponent, right of, to reasonable opportunity to show cause.

Reasonable opportunity is to be given to the opposite party to show cause as contemplated by S. 135, cl. (b), and to adduce evidence as prescribed by S. 137 (1) before making the order absolute. *Rai Mohan Karmokar v. Emperor*.

17 Cr. L. J. 409 :
35 I. C. 469 : 20 C. W. N. 1171 :
A. I. R. 1917 Cal. 207.

———S. 137—Order for removal of obstruction—No finding as to bona fides of claim set up—Order, validity of.

Before making an order under S. 137 for the removal of an obstruction, the Magistrate should record a clear finding as to the bona fides of the claim set up by the party. In the absence of such a finding, the order cannot be sustained. *Emperor v. Asiruddin Sarkar*.

22 Cr. L. J. 524 :
62 I. C. 412 : 34 C. L. J. 172 :
A. I. R. 1921 Cal. 118.

———S. 137—Procedure.

In proceedings under S. 137, a Magistrate should proceed as in a summons case. *Sita Ram v. Emperor*.

18 Cr. L. J. 888 :
41 I. C. 1000 : 32 P. R. 1917 Cr :
43 P. W. R. 1917 Cr. : A. I. R. 1917 Lah. 243.

———S. 137—Procedure—Nuisance proceedings—Imperative duty of Magistrate to take evidence before making order absolute.

The provisions of S. 137 (1), are mandatory and before making a conditional order absolute under the section, it is imperative that evidence should be taken in the case as in a summons case. A Magistrate cannot, without recording evidence on the point, act on his own opinion and decide, whether a particular erection cause an obstruction to a public place or not. *Jagan Nath Prasad v. Emperor*.

28 Cr. L. J. 510 :
101 I. C. 894 : L. R. 8 All. 68 Cr :
7 A. I. Cr. 439.

———S. 137—Procedure—Proceedings under—Magistrate whether can act as arbitrator.

S. 137 is imperative and mandatory. Under that section a Magistrate cannot assume the role of an arbitrator, because the parties agree to his acting as such. Consent or waiver of the parties cannot invest a Magistrate with

Cr. P. CODE (1898), S. 137

jurisdiction which he does not possess. *Chandra Mandal v. Ram Mandal*. 18 Cr. L. J. 738 :
40 I. C. 738 : 25 C. L. J. 439 :
21 C. W. N. 926.

———S. 137—Procedure—Public nuisance—Person showing cause against order for removal of nuisance—Magistrate, duty of.

In an enquiry, a Magistrate should, as provided for by S. 137 proceed to take evidence in support of the order before the counter-petitioner is called on to produce his evidence to meet it. *In re : Dakshinamoorthi*.

18 Cr. L. J. 848 :
41 I. C. 672 : A. I. R. 1918 Mad. 984.

———S. 137—Procedure—Public nuisance—Property how to be dealt with—Enquiry obligatory—Magistrate, duty of.

No man can be permitted to deal with his property in a way as to cause public nuisance to others. In such cases, an enquiry is obligatory, and the Magistrate cannot make his conditional order absolute without taking such evidence as the parties may adduce as in a summons case. *Sant Sahai v. Lachman Singh*. 23 Cr. L. J. 250 :
66 I. C. 186 : 9 O. L. J. 64 :
1922 A. I. R. Oudh 29.

———S. 137—Procedure—Recording of Evidence—Claim of right, bona fides of.

Where under S. 137 a party appears and shows cause, alleging that what is claimed as a public pathway is not so, the Magistrate should record evidence on the matter of the complaint as in a summons case, and should, at the outset, enquire into the bona fides of the claim. *Chandra Mandal v. Ram Mandal*.

18 Cr. L. J. 738 :
40 I. C. 738 : 25 C. L. J. 439 : 21 C. W. N. 926 :
A. I. R. 1917 Cal. 800.

———S. 137—Procedure.

When a party had appeared and showed cause against the preliminary order passed under S. 133, this order should not, under S. 137, be made absolute merely on a local inspection in the course of which it does not appear that the party concerned had any opportunity of offering any evidence. *Ramchandra Lal v. Emperor*.

35 Cr. L. J. 1020 :
149 I. C. 839 : 15 O. L. J. 288 :
6 R. P. 667 : A. I. R. 1934 Pat. 316 (1).

———Ss. 137, 139-A—Procedure—Public nuisance—Duty to find whether there was reliable evidence in support of denial.

Before inquiry under S. 137, the Magistrate must comply with the provisions of S. 139-A of the Code. So where a Magistrate, without applying his mind to the question whether there was any reliable evidence in support of the denial of the public right, proceeded to try the question whether there was a public right or not it was held that the procedure adopted was irregular. *Dhananjay Pal v. Nagendra Sarkar Roy*.

31 Cr. L. J. 767 :
124 I. C. 832 : A. I. R. 1930 Cal 144.

———Ss. 137, 139-A, 133—Procedure—Order under S. 137 passed without inquiry enjoined

Cr. P. CODE (1898), S. 137

under S. 139-A (1), propriety of—Such order cannot stand.

In an application under S. 133, the opposite party claimed a public right. The Magistrate visited the spot and examined the witnesses for the party who had set the law in motion and examined the remaining witnesses later on. Then an *Amin* examined the alleged encroachment after comparison with the Survey Map and Record of Rights. The order was made absolute without any further proceedings: *Held*, that the order under S. 137 having been passed without making the inquiry enjoined under S. 139-A (1) could not stand. *In re: Narsingh Narain v. Rameshwar Singh*.

37 Cr. L. J. 846 (a) :
163 I. C. 402 : 17 P. L. T. 399 :
2 B. R. 595 (2) : 9 R. P. 1 (2) :
A. I. R. 1936 Pat. 360.

—S. 137 (3)—Procedure—Order not good as nuisance has abated—Order must be set aside by Appellate authority.

An order under S. 137 (3), is not like an order under S. 144 which spends itself in 60 days; and if the order under S. 137 (3) is not good by reason of the nuisance having abated and is allowed to remain in force, then in case of future proceedings, it is apt to be used against the party against whom such order is passed. Therefore, it must be set aside by the Appellate authority. *Kalyan Mul Mathur v. Emperor*.

37 Cr. L. J. 1159 :
165 I. C. 542 : 3 B. R. 69 :
9 R. P. 186 : A. I. R. 1936 Pat. 577.

—S. 137—Provision imperative—Making Order absolute relying on reports of Tahsildar and Health Officer, illegal.

Under S. 133 in respect of an alleged public nuisance, the respondents appeared and denied that their act amounted to a nuisance and the Magistrate, without examining the complainant or taking prosecution evidence in presence of the accused, examined some respondents and passed an order absolute on the strength of his inspection note and the reports of the Tahsildar and Health Officer: *Held*, that the procedure of the Magistrate was contrary to the imperative provisions of S. 137, and was illegal. *Achhru v. Emperor*.

31 Cr. L. J. 880 :
125 I. C. 613 : 11 Lah. 247 :
31 P. L. R. 503 : A. I. R. 1930 Lah. 662.

—S. 137—Provisions—Mandatory.

The provisions are mandatory and a Magistrate cannot disregard the obligations which the Act imposes. *Balchandra Parasad v. Emperor*.

18 Cr. L. J. 448 :
38 I. C. 1008 : 1 P. L. W. 292 :
A. I. R. 1917 Pat. 509.

—S. 137—Provisions—Mandatory.

The provisions of S. 137 are imperative. *Bhokra v. Tata Singh*.

28 Cr. L. J. 159 :
99 I. C. 415 : L. R. 8 All. 25 Cr :
7 A. I. Cr. R. 118 : 49 All. 270 :
25 A. L. J. 155 : A. I. R. 1927 All. 267.

—S. 137—Provisions—Mandatory.

The section is imperative in terms and a Magistrate has no discretion in the matter; he

Cr. P. CODE (1898), S. 138

is bound to take action which the section lays down. *Kishen Lal v. Emperor*.

10 Cr. L. J. 494 :
4 I. C. 72 : 13 C. W. N. 367.

—S. 137—Recording evidence—Public nuisances, proceedings relating to—Evidence, necessity of recording.

The provisions of S. 137 are imperative and a Magistrate is bound to record evidence as in a summons case in proceedings relating to public nuisance before making an order absolute under the section. *Attar Singh v. Hari Singh*.

28 Cr. L. J. 60 :
99 I. C. 92 : 8 Lah. L. J. 557 :
27 P. L. R. 764.

—S. 137—Sufficient ground—Title, dispute as to conditional order, propriety of.

Where there is a genuine dispute as to title suitable for decision by the Civil Court, that is a sufficient ground within the meaning of S. 137 for holding that a conditional order under S. 137 is not reasonable and proper. *Bhagwan Das v. Emperor*.

24 Cr. L. J. 635 :
73 I. C. 523 : A. I. R. 1923 Oudh 152.

—S. 137 (1)—Non-compliance with provision.

The failure of a Magistrate to follow the procedure enjoined by S. 137 (1), vitiates his order, and is not a mere irregularity of the nature contemplated by S. 537 (a) of the Code. *Tirkha v. Nanak*.

28 Cr. L. J. 291 :
100 I. C. 371 : L. R. 8 All. 59 Cr :
25 A. L. J. 377 : 7 A. I. Cr. R. 391 :
49 All. 475 : A. I. R. 1927 All. 350.

—S. 138.

See Cr. P. C., S. 133.

—S. 138—"Forthwith," in S. 138, meaning of.

The word 'forthwith' in S. 138 must be interpreted in a reasonable way. It means that the Magistrate shall appoint a Jury as soon as he reasonably can. *Khushi Ram v. Emperor*.

24 Cr. L. J. 457 :
72 I. C. 617 : 4 Lah. 224 : 5 L. L. J. 420 :
A. I. R. 1923 Lah. 525.

—S. 138—Jury—Nomination of.

If a Jury is appointed under S. 138, it is his duty as much as the duty of the party showing cause to nominate the Jury. *Sudhangshudhar Roy v. Rahim Pramanik*.

22 Cr. L. J. 577 :
62 I. C. 817.

—S. 138—Procedure—Appointment of—Five persons named as jurors—Report by four, one being ill—Whether report legal.

Five persons were appointed jurors in accordance with the provisions of S. 138. Of these persons only four jurors dealt with the case, one of them being ill and unable to attend. On the report of the four jurors, the conditional order was made absolute: *Held*, that, notwithstanding that the jury as a body can act by a majority, that act must be by a majority out of a jury of five people who investigated the case, and that in the present case the report was not legal and the order should be set aside. *Premotha Nath v. Basanta Kumar Bose*.

11 Cr. L. J. 402 :
6 I. C. 777.

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———S. 138—*Provision—Mandatory.*

The section is imperative in its terms and a Magistrate has no discretion in the matter, he is bound to take action which the section lays down. *Kishori Lal v. Emperor.*

10 Cr. L. J. 494 :
4 I. C. 72 : 13 C. W. N. 367.

———S. 138—*Scope—Filing of Civil suit, does not bar proceedings.*

The fact that a civil suit has been instituted on the matter in dispute, is no bar to proceedings under S. 138. *Shamji Tricunddas v. Ram Moye.*

34 Cr. L. J. 532 :
143 I. C. 178 : 56 C. L. J. 249 :
A. I. R. 1933 Cal. 318.

———Ss. 138 (1) (a), 537—*Appointment of Jury—Public nuisance—Constitution of Jury—Duty of Magistrate—Accepting complainant's nominees without exercising independent discretion—Legality of trial.*

In nominating the foreman and one-half of the remaining members of the Jury as required by S. 138, the Magistrate must exercise his own independent discretion and not appoint the nominees of the party making the complaint. Acceptance of the nominees without exercising independent discretion is an illegality which vitiates the trial and not a mere irregularity. *In re : V. R. Kothari.*

30 Cr. L. J. 785 :
117 I. C. 333 : 31 Bom. L. R. 79 :
I. R. 1929 Bom. 381 : A. I. R. 1929 Bom. 79.

———S. 138 (1), 139—*Procedure—Jurors perverse—Refusal to return verdict.*

Where a Jury or a majority of the Jurors, appointed under S. 138 (1) refuse perversely to return a verdict, the Magistrate should appoint a fresh Jury and decide the matter before him under S. 139 of the Code. *Girwar Lal v. Bansidhar.*

23 Cr. L. J. 276 :
66 I. C. 420 : 20 A. L. J. 472 : 44 All. 575 :
A. I. R. 1922 All. 297.

———S. 139.

See Patna High Court General Rules and Circular Orders.

———S. 139—*Jury—Finding—Inconsistency.*

A Magistrate cannot decline to act on the findings of the jury or a majority of them under S. 139, on the ground that it involved an inconsistency; if the finding is that the order of the Magistrate is reasonable and proper, the Magistrate must make the order absolute. *Hariday Chandra Das v. Shib Chandra Gosami.*

10 Cr. L. J. 210 :
3 I. C. 7.

———S. 139—*Applicability—Petition for removal for latrine near public well—No denial of existence of public right—Inquiry under S. 139, if feasible.*

Where an application is made for removal of a privy on the ground that its continuance near a public well would render the water of the well insanitary and unfit for use, and there is no denial of the existence of the public right in the well and the atmosphere surrounding it, an

Cr. P. CODE (1898), S. 139

inquiry under S. 139, is not feasible. *Mahabir Prasad v. Dhamshdhai Prasad Singh.*

163 I. C. 514 : 9 R. P. 24 :
2 B. R. 619 : A. I. R. 1936 Pat. 409.

———S. 139—*Procedure—Conviction under Indian Penal Code (Act XLV of 1860), S. 283, not conclusive.*

A Magistrate passing order under S. 139, Cr. P. C., cannot do so, relying merely upon a conviction of the person under S. 283, Penal Code, in respect of the same matter, but must follow the procedure laid down in S. 133 and the subsequent sections of the Cr. P. C. *Ramanath Laskar v. Jaladhar Shaha.*

3 Cr. L. J. 331 :
3 C. L. J. 360.

———S. 139—*Powers of Magistrate.*

It is not within the competence of the Magistrate to direct any particular party to obtain a declaration from the Civil Court. *Ram Sahai v. Uttama Debi.*

36 Cr. L. J. 144 :
152 I. C. 737 : 1935 A. L. J. 18 : 4 A. W. R. 935 :
L. R. 15 All. 185 Cr. : 7 R. A. 371 :
A. I. R. 1935 All. 79.

———S. 139—*Recommendation of Jury directing performance of acts by parties, whether contract between parties—Specific performance—Damages.*

The recommendation of a Jury made under S. 139, which has been adopted by the Magistrate, can only be enforced as provided for in clause 2 of the section, and cannot be specifically enforced in a Civil Court on the basis of a contract between the parties, nor will a suit for compensation lie for breach of the order. It does not constitute a contract between the parties, in the absence of evidence of a separate agreement entered into between the parties themselves. *Sheonarain Tewari v. Sakhi Chand Sahu.*

18 Cr. L. J. 305 :
38 I. C. 417 : A. I. R. 1916 Pat. 264.

———S. 139—*Scope.*

An order of a Magistrate rescinding an order absolute previously made under S. 139 is not *ultra vires* and cannot be called in question in a Civil Court. *Sheonarain Tewari v. Sakhi Chand Sahu.*

18 Cr. L. J. 305 :
38 I. C. 417 : A. I. R. 1916 Pat. 264.

———S. 139-A.

See also (i) Cr. P. C., S. 133.
(ii) Cr. P. C., Ss. 133, 135.
(iii) Cr. P. C., S. 137.

———S. 139-A—*Applicability.*

Case under Chap. X—Denial of existence of public right by defendant—Magistrate should stay proceedings until matter is decided by Civil Court. *Bishmath Singh v. Khurshed Ahmad.*

33 Cr. L. J. 809 :
139 I. C. 737 :
9 O. W. N. 141 : 7 Luck. 583 :
I. R. 1932 Oudh 380 : A. I. R. 1932 Oudh 118.

———S. 139-A—*Applicability.*

Effect of amendment considered—when there is reliable evidence of denial of right, person moving Court must go to Civil Court and not

Cr. P. CODE (1898), S. 139

person against whom order is made. *Kusha Mandal v. Emperor*. 35 Cr. L. J. 1374 :

151 I. C. 691 (b) : 38 C. W. N. 391 :

61 Cal. 390 : 59 C. L. J. 290 : 7 R. C. 161 :

A. I. R. 1934 Cal. 545.

—S. 139-A—Applicability.

It is only in cases where the Magistrate finds that there is no reliable evidence in support of the denial of the existence of the public right that he is empowered by S. 139-A, sub-s. (2) to proceed further in the matter. *Abdul Sayeed v. Damodar Prasad Tewari*.

36 Cr. L. J. 588 :

154 I. C. 871 : 16 P. L. T. 218 : 7 R. P. 499 :

A. I. R. 1935 Pat. 138.

—S. 139-A—Applicability.

Prayer for proceedings under S. 133—Petitioner's title denied and claimed in himself by opposite party—Extract from Partition Proceedings and Record of Rights, in support of such claim is sufficient for action under S. 139-A. *Sitaram Ray v. Badri Ray*.

36 Cr. L. J. 1051 :

156 I. C. 1006 : 16 P. L. T. 179 : 8 R. P. 55 :

A. I. R. 1935 Pat. 218 (2).

—S. 139-A—Applicability.

Questions of title are not intended to be decided in summary enquiries under S. 139-A, before a Magistrate. The duty of a Magistrate under S. 139-A is merely to see whether the denial of the right is frivolous or not. *Muhammad Khalil v. Emperor*.

37 Cr. L. J. 343 :

160 I. C. 854 : 1936 A. W. R. 182 :

1936 A. L. J. 75 : 8 R. A. 657 :

A. I. R. 1936 All. 356.

—S. 139-A—Applicability.

The object of S. 139-A was to substitute a test of whether there was any reliable evidence in support of the opposite party's claim for the test which the courts had gradually come to impose, whether the accused's claim was *bona fide*. *Raghunandan v. Shree Nandan*.

33 Cr. L. J. 618 :

138 I. C. 556 : L. R. 13 All. 130 Cr. :

1932 A. L. J. 339 : I. R. 1932 All. 443 :

A. I. R. 1932 All. 366.

—S. 139-A—Duty of Court—Reliable evidence, meaning of.

Under S. 139-A, the Magistrate, in an enquiry under S. 133 has to find if there is any *reliable evidence* in support of the denial of the party alleged to cause obstruction. By *reliable evidence* is meant that Magistrate should weigh the evidence and come to the conclusion, but the Magistrate should take the evidence as it stands. *Hari Kishan v. Kanshi Ram*.

29 Cr. L. J. 254 :

107 I. C. 485 : 9 A. I. Cr. R. 540 :

A. I. R. 1928 Lah. 664.

—S. 139-A—Evidence—"Reliable evidence" does not mean evidence which definitely establishes title.

Reliable evidence in the sense in which the term is used in S. 139-A means evidence on which it is possible for a competent Court to place reliance. It does not mean evidence which definitely establishes the title to the

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land because if that was the meaning of the term, it would be unnecessary in any case to refer the matter to the Civil Court at all. *Janardan Sarup v. Emperor*.

38 Cr. L. J. 200 :

166 I. C. 376 : 1936 A. L. J. 1285 :

9 R. A. 405 : 1936 A. W. R. 1058 :

A. I. R. 1937 All. 12.

—S. 139-A—Inquiry.

Passing an order under S. 137 without making an inquiry enjoined under S. 139-A (1) cannot stand. *In re : Nar Singh Narain v. Rameshwar Singh*.

37 Cr. L. J. 846 (a) :

163 I. C. 402 : 17 P. L. J. 399 :

2 B. R. 595 (2) : 9 R. P. I (2) :

A. I. R. 1936 Pat. 360.

—S. 139-A—Jury—Powers of.

Under S. 139-A the Jury is not competent to decide the existence of a public highway. *Digamber Ram Singh v. Emperor*.

35 Cr. L. J. 54 :

146 I. C. 406 : 6 R. P. 261 :

A. I. R. 1933 Pat. 676.

—S. 139-A—Object.

Per *Ross, J.*—The intent of S. 139-A (2) is that the Magistrate should neither encroach upon the jurisdiction of the Civil Court, nor fail to exercise his own jurisdiction. The criterion is that he should find evidence to support the denial which he can pronounce reliable. That is necessary and that is sufficient to oust his jurisdiction. *Thakur Sao v. Abdul Aziz*.

27 Cr. L. J. 9 :

91 I. C. 41 : 4 Pat. 783 : 7 P. L. T. 136 :

A. I. R. 1926 Pat. 170.

—S. 139-A—Procedure.

A Magistrate under Chap. X, makes only a summary enquiry into the matter in dispute and does not determine any question of title and indeed such a determination is to be deprecated. All that he has got to see under S. 139-A (2), is whether there is any reliable evidence in support of the denial of the person against whom the notice has been issued or whether his denial is only frivolous and if there is any reliable evidence, in support of such denial, the Magistrate shall stay the proceedings until a matter of existence of such right has been decided by a competent Civil Court, but if he finds that there is no such reliable evidence, he shall proceed as laid down in S. 137 or S. 138 as the case may require. *Cheddi Lal v. Emperor*.

40 Cr. L. J. 286 :

179 I. C. 970 : 1938 A. L. J. 1145 :

11 R. A. 399 : 1938 A. W. R. 841 :

A. I. R. 1939 All. 116.

—S. 139-A—Procedure.

Inquiry under S. 137. A Magistrate must comply with provisions of the section before making an inquiry under S. 137. *Dhananjay Pal v. Nagendra Sarkar Roy*. 31 Cr. L. J. 767 :

124 I. C. 832 : A. I. R. 1930 Cal. 144.

—S. 139-A—Procedure.

Magistrate may allow cross-examination of

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witnesses of second party. *Kishorimohan Pramanik v. Krishnabihari Basak*.

32 Cr. L. J. 1187 :
134 I. C. 574 (a) : 58 Cal. 461 :
I. R. 1931 Cal. 862 : A. I. R. 1931 Cal. 527.

—S. 139-A—Procedure.

Magistrate not stating whether evidence of one party is reliable—Absence of finding as to existence of public right. Order absolute cannot be made. *Abdul Sayeed v. Damodar Prasad Tewari*.

36 Cr. L. J. 588 :
154 I. C. 871 : 16 P. L. T. 218 :
7 R. P. 499 : A. I. R. 1935 Pat. 138.

—S. 139-A—Procedure—Obstruction—Objection to existence of public right, taken at late stage—Duty of Magistrate.

Under the provisions of S. 139-A on the appearance of the person against whom an order is made, a Magistrate is bound to question him as to whether he denies the existence of a public right and if he does so, the Magistrate must, before proceeding under S. 137 or S. 138, inquire into the matter. The Magistrate cannot refuse to inquire into the matter merely because objection was not taken until a late stage of the case. *Sadir A. Sobarali*.

26 Cr. L. J. 1168 :
88 I. C. 528 : 29 C. W. N. 649 :
A. I. R. 1925 Cal. 736.

—S. 139-A—Procedure—Obstruction of public way—Duty to question respondent whether he denies public right and to inquire if he denies.

Under S. 139-A, when an order is made under S. 133 for the purpose of preventing obstruction to the public in the use of a way, the Magistrate shall question the respondent as to whether he denies the existence of a public right in respect of the way. And if the respondent does so, the Magistrate shall, before proceeding under S. 137 or S. 138, inquire into the matter and if the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter has been decided by a Civil Court. *Manohar Lal v. Emperor*.

32 Cr. L. J. 621 :
130 I. C. 834 : 32 P. L. R. 11 :
A. I. R. 1931 Lah. 62.

—S. 139-A—Procedure—Power of Magistrate to direct to take proceedings in Civil Court and to dismiss application if no steps taken within certain time.

Under S. 139-A, the Magistrate has power to direct a party to take proceedings in the Civil Court and he has the power, though there is no special provision in the section to that effect, to dismiss the application on the right not being decided by a Civil Court on motion by a particular party within a certain time. *Risal Singh v. Baljit Singh*.

31 Cr. L. J. 1004 :
126 I. C. 352 : 51 All. 890 :
A. I. R. 1929 All. 709.

—S. 139-A—Procedure.

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—Question of title involved—Reliable evidence adduced—Proceedings must be stayed.

—*Sohan Lal v. District Board, Lucknow*.

33 Cr. L. J. 384 :
136 I. C. 839 (2) : 9 O. W. N. 115 :
I. R. 1932 Oudh 204 :
A. I. R. 1932 Oudh 120.

—Ss. 139-A, 140—Procedure.

The provisions of S. 139-A (1) are imperative, and no order under S. 140 can lawfully be passed without complying with those provisions. S. 139-A (2) does not authorise a Magistrate to look into the question of title and decide for himself whether the accused's case is or is not true. The Magistrate is to see whether there is any reliable evidence supporting his denial. If there is evidence, he will stay the proceedings until the matter is decided by a Civil Court. *Munna Lal v. Emperor*.

27 Cr. L. J. 473 :
93 I. C. 697 : 24 A. L. J. 361 :
L. R. 7 All. 73 Cr. : A. I. R. 1926 All. 390.

—S. 139-A (2)—Procedure—Denial of existence of public right proved—Magistrate, cannot order either side to bring Civil suit.

If the Magistrate finds any reliable evidence in support of the denial of the existence of a public right, he should stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court. The Magistrate is not empowered to order either side to bring a civil suit. *In re: Bihari*.

39 Cr. L. J. 791 (a) :
176 I. C. 755 : 11 R. N. 77 :
1938 N. L. J. 295 : A. I. R. 1938 Nag. 512.

—S. 139-A—Provisions mandatory—Omission to comply with S. 139-A, effect of.

Omission to comply with the provisions of S. 139-A, is an illegality which goes to the root of the case and cannot be waived by the accused. *Mahadco Lal v. Hossaini Pandey*.

31 Cr. L. J. 53 :
120 I. C. 289 : A. I. R. 1930 Pat. 199.

—S. 139-A—Provisions—Mandatory.

The mandatory provisions of S. 139-A cannot be waived and an order passed ignoring the provisions of the said section is *ultra vires*. *Hamid Ali v. Emperor*.

32 Cr. L. J. 250 :
129 I. C. 222 : I. R. 1931 Lah. 158 :
A. I. R. 1930 Lah. 1046.

—S. 139-A—Provisions, mandatory.

The provisions of S. 139-A, are mandatory. *Matabbar Molla v. Golam Panjaton*.

32 Cr. L. J. 33 (a) :
127 I. C. 762 : 57 Cal. 368 :
A. I. R. 1930 Cal. 890.

—S. 139-A—Scope—Any person complaining of construction, if can compel Magistrate to hold inquiry into rights of parties.

The provisions that an inquiry should be held under S. 139-A, are intended to protect the rights of a person against whom it is proposed to pass an order under S. 133. They are not intended to enable any person complaining of a construction to compel the Magistrate to hold

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an inquiry into the rights of the parties concerned. *Sibte Husain v. Emperor*.

39 Cr. L. J. 148 :
172 I. C. 642 : 1937 A. W. R. 866 :
1937 A. L. J. 903 : 10 R. A. 406 :
A. I. R. 1937 All. 785.

———S. 139-A— Scope— Question of title—
Duty of Magistrate.

It is not the duty of a Magistrate acting under Chapter X, to decide questions of title. Under S. 139-A, it is his duty to see that any claim to land alleged to be a public place or way is not frivolous. *Janardan Sarup v. Emperor*.

38 Cr. L. J. 200 :
166 I. C. 376 : 1936 A. L. J. 1285 :
9 R. A. 405 : 1936 A. W. R. 1058 :
A. I. R. 1937 All. 12.

———S. 139-A—Scope.

There is nothing in S. 139-A, which excludes the exercise of the Court's inherent powers under S. 540. *Kishorimohan Pramanik v. Krishnabihari Basak*.

32 Cr. L. J. 1187 :
134 I. C. 574 (a) : 58 Cal. 461 :
I. R. 1931 Cal. 862 :
A. I. R. 1931 Cal. 527.

———S. 139-A (2)—Scope.

Encroachment on public way—Old encroachment—Order for removal is legal. *Barkhandi v. Emperor*.

32 Cr. L. J. 1234 :
134 I. C. 783 : I. R. 1931 Lah. 991 :
A. I. R. 1931 Lah. 159.

———Ss. 139-A, 133 — Non-compliance—
Order for removal of encroachment—S. 139-A must
be complied with.

Where the Magistrate has not complied with the provisions of S. 139-A, by not holding an inquiry into the correctness of the denial of the public right before proceeding under S. 137 or S. 138 and has not asked the person against whom the proceedings are taken whether he wanted to adduce any evidence in support of his denial, the order under S. 133 for removal of encroachment is illegal and must be set aside. *Nanumal v. Emperor*.

40 Cr. L. J. 933 :
184 I. C. 352 : 41 P. L. R. 515 :
12 R. L. 211 : A. I. R. 1939 Lah. 452.

———S. 139-A (II)—Jurisdiction—Stay of
proceedings by Magistrate—Magistrate's power to
direct a particular party to go to Civil Court.

On stay of proceedings under S. 139-A (ii), the proceedings remain stayed until there is a decision by competent Civil Court and there is nothing in the new section which entitles the Magistrate to say which party is to file the suit. On passing an order of stay, the Magistrate ousts his own jurisdiction to decide the question of title including the onus of proof. *Hari Chand v. Durga Datt*.

28 Cr. L. J. 363 :
100 I. C. 971 : 7 A. I. Cr. R. 561 :
A. I. R. 1927 Lah. 227.

———Ss. 139-A, 137—Magistrate, meaning of
—Magistrate taking proceedings under S. 139-A,
if should be First Class Magistrate.

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The Magistrate mentioned in S. 139-A must be the Magistrate before whom a person is ordered to appear under the last sentence of S. 133 (1). He need not be a First Class Magistrate. *Ala Muhammad v. Abdul Rahman*.

38 Cr. L. J. 1056 :
171 I. C. 279 : 39 P. L. R. 484 :
10 R. L. 181 : A. I. R. 1937 Lah. 676.

———S. 139-A (1)—Magistrate — Meaning
of.

The words "the Magistrate" in S. 139 (1), refer to the Magistrate to whom application has to be made under S. 135 (b) to empanel a Jury and who, under S. 138 of the Code, does so empanel one. *Angappa Mudali v. Ramapuram Perumal Chethy*.

20 Cr. L. J. 761 :
53 I. C. 489 : 37 M. L. J. 343 :
10 L. W. 297 : 1919 M. W. N. 696 :
43 Mad. 316 : A. I. R. 1920 Mad. 378.

———S. 139-A (2)—Public nuisance—Denial of
right—Procedure to be followed by Magistrate.

In a proceeding under S. 139-A, when the Magistrate finds that there is reliable evidence in support of the denial by the defendant of the plaintiff's claim of public right, all he has to do is merely to stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court. *Rozan v. Emperor*.

31 Cr. L. J. 839 :
125 I. C. 452 : 1930 A. L. J. 815 :
A. I. R. 1930 All. 658.

———S. 140.

See Cr. P. C., 1898, S. 133.

———S. 140—Applicability—Public nuisance
—Denial of—Stay under S. 139 (2).

The provisions of S. 140 (1), do not apply to such stay and the Magistrate cannot compel either party to go to the Civil Court. *Rozan v. Emperor*.

31 Cr. L. J. 839 :
125 I. C. 452 : 1930 A. L. J. 815 :
A. I. R. 1930 All. 658.

———S. 140—Jurisdiction — Absolute order
under S. 140—Jurisdiction of Civil Court to
question such order.

There is no bar to an absolute order of Magistrate under S. 140 being questioned in a Civil Court. *Dulichand v. Emperor*.

31 Cr. L. J. 302 :
121 I. C. 560 : 51 All. 1025 :
A. I. R. 1929 All. 833.

———S. 140—Jurisdiction.

No order can be lawfully passed without first complying with the provisions of S. 139-A. *Munna Lal v. Emperor*.

27 Cr. L. J. 473 :
93 I. C. 697 : 24 A. L. J. 361 :
L. R. 7 All. 73 Cr. :
A. I. R. 1926 All. 390.

———S. 140—Notice under—Whether condition
precedent to punishment for disobeying order
under S. 133.

No notice is necessary before accused might be punished for the disobedience—The liability to punishment is attached at once and may be

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enforced irrespective of S. 140. *In re : Aluvala Gurusikh.* 8 Cr. L. J. 151 :

3 M. L. T. 403 : 31 Mad. 280 :
18 M. L. J. 216.

—S. 140—Scope—Order under—Suit in Civil Court to prevent Magistrate from carrying his order into effect, if maintainable.

If a Magistrate causes the act ordered to be performed, then that order cannot be questioned in the Civil Court, and no suit can be maintained in the Civil Court to prevent the Magistrate from carrying his order into effect. It would be mere trifling with the Act to hold that the Civil Court can give relief to the petitioners against the order of the Magistrate when the Act says that no suit in respect of anything done by him shall lie. *Kidar Nath v. Satish Chandra.*

41 Cr. L. J. 99 :

184 I. C. 754 : O. W. N. 1939 966 :

O. L. R. 1939 653 : 15 L. W. R. 140 :

12 R. O. 143 : A. I. R. 1940 Oudh 75.

—S. 140—Words—Movable property—meaning of.

The expression 'movable property,' the subject of distress and sale, in the section means tangible or corporeal movable property and does not include debts and choses in action. It may, however, include negotiable instruments, bonds and the title-deeds. *Secretary of State v. Sangammal.*

18 Cr. L. J. 1 :

36 I. C. 83 : 4 L. W. 613 : M. W. N. 1917 105 :

A. I. R. 1917 Mad. 748.

—Ss. 140, 514—Words—Distress, meaning of.

The word 'distress' in Ss. 140 and 514 of the Code is used only with reference to tangible movable property. *Secretary of State v. Sangammal.*

18 Cr. L. J. 1 :

36 I. C. 83 : 4 L. W. 613 : M. W. N. 1917 105 :

A. I. R. 1917 Mad. 748.

—S. 140 (1).

See Criminal Procedure Code, 1898, S. 139.

—S. 140 (1)—Nature.

Sub-s. 1 of S. 140 is mandatory and Magistrate cannot refuse to issue notice as required by the sub-section. *Bankabihari Ray v. Emperor.*

32 Cr. L. J. 1243 :

134 I. C. 918 : 58 Cal. 1088 : 35 C. W. N. 571 :

I. R. 1931 Cal. 918 :

A. I. R. 1931 Cal. 787.

—S. 141—Discretion, meaning of—Magistrate, power of—Persons choosing to be heard by jury—Failure of jury to function—Further inquiry is not necessary if there is material for passing reasonable order under S. 141.

In S. 141, Cr. P. C., the word "discretion" is used in relation to the extension of time within which the jury is to give their verdict. It is not used in relation to the order passed by the Magistrate. The Magistrate has a discretion under S. 141 as to the order he should pass and that discretion means a judicial discretion. The Magistrate cannot, under that section, pass an arbitrary or capricious or whimsical order. The order passed must be a reasoned order. Where the persons against whom an order under S. 133 is passed have chosen to be heard by a jury,

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on failure of the jury to function, the Magistrate is not required to hold a further inquiry if he has before him material upon which he can pass a reasonable order under S. 141. *Jetha Nand v. Shikarpur Municipality.*

41 Cr. L. J. 364 :

186 I. C. 723 : Kar. 1939 179 : 12 R. S. 213 :

A. I. R. 1943 Sind 24.

—S. 141—Jury failing in duty—Order made absolute without taking evidence—When legal.

Where a jury appointed under S. 138 failed to perform their duty, and the petitioners did not ask the Magistrate to take further action or to examine further witnesses, the Magistrate was justified in making the order absolute under S. 141 without taking evidence under S. 137. *Kishori Lal v. Emperor.*

10 Cr. L. J. 494 :

4 I. C. 72 : 13 C. W. N. 367.

—S. 142.

See Criminal Procedure Code, 1898, S. 133.

—S. 142—Limited scope.

The serious injury or the imminent danger covered by S. 142 refers to the injury or danger emanating from those things themselves which are specified in S. 133 and consequently S. 142 is limited in its scope. *Mohammad Ashraf v. Emperor.*

39 Cr. L. J. 13 :

171 I. C. 941 : I. L. R. 1937 Lah. 303 :

39 P. L. R. 863 : 10 R. L. 250 :

A. I. R. 1937 Lah. 101.

—Ss. 142, 133—Scope of—Order under S. 142, when can be passed.

S. 142, Cr. P. C. is not an independent section but is controlled by S. 133, Cr. P. C. A reference to S. 133, Cr. P. C. shows that the section is confined to certain matters which are specifically mentioned therein and cannot be brought into play to govern or control other matters which are quite extraneous to it. *Mohammad Ashraf v. Emperor.*

39 Cr. L. J. 13 :

171 I. C. 941 : I. L. R. 1937 Lah. 303 :

39 P. L. R. 863 : 10 R. L. 250 :

A. I. R. 1937 Lah. 101.

—Ss. 142, 133, 137—Magistrate making order under S. 142 can make final order under S. 137.

A Magistrate passing an order under S. 142 is entitled to proceed with the case and make a final order under S. 137. *Rebati Mohan Bose v. Chottal Chandra Sen.*

38 Cr. L. J. 173 :

166 I. C. 221 : 63 C. L. J. 5 :

9 R. C. 490 (1) : A. I. R. 1936 Cal. 692.

—S. 143.

See Penal Code, S. 203.

—S. 143—Application of.

In order that action can be taken under S. 143, the nuisance must be a public nuisance, as defined in the I. P. C., or any special or local law." but that does not exclude the conclusion that the nuisance, repetition of which may be forbidden under S. 143, must be a nuisance which has been made a subject of action under S. 133 and the following sections. S. 143 does not stand alone but is supplementary to the

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sections which precede it. *Emperor v. Suleman Yusuf Kumbhar*. 41 Cr. L. J. 727 : 189 I. C. 353 : Kar. 1940 425 : 13 R. S. 27 : A. I. R. 1940 Sind 124.

—S. 143.

Order without drawing up proceedings without taking evidence, etc., is illegal. *Jogendra Lal Pal v. Sheikh Anju*. 36 Cr. L. J. 591 (2) : 154 I. C. 663 : 38 C. W. N. 1070 : 7 R. C. 517 (2) : A. I. R. 1935 Cal. 108 (2).

—S. 143.

Party complained against must have a right of defence on merits. *Jagdish Narain v. Dhanushdhari Prasad*. 36 Cr. L. J. 187 : 153 I. C. 708 : 15 P. L. T. 253 : 7 R. P. 232 (2) : A. I. R. 1934 Pat. 305.

—S. 143—Scope of.

No order can be passed under S. 143 against a person who was not a party in any earlier proceedings when orders under S. 133 were passed. *Ram Sahai v. Uttma Debi*.

36 Cr. L. J. 144 : 152 I. C. 737 : A. L. J. 1935 18 : 4 A. W. R. 935 : L. R. 15 All. 185 Cr. 7 R. A. 371 : A. I. R. 1935 All. 79.

—S. 144.

- Applicability.
- Breach of Peace.
- Cow Sacrifice.
- Delegation of powers.
- Disobedience.
- Dispute about land.
- Dispute concerning Conduct of Prayers in Mosque.
- Dispute likely to be settled in Civil Court.
- Dispute not *bona fide*.
- Dispute of civil nature.
- Dispute regarding Trusteeship of temple procedure.
- Dispute relating to immovable property.
- Duty of Magistrate.
- Emergency.
- Ex parte* order.
- Injunction.
- Interpretation.
- Jurisdiction.
- Knowledge of order.
- Magistrate's duty.
- Mandatory order.
- Miscellaneous.
- Nature of order.
- Nature of proceeding.
- Notice.
- Nuisance.
- Order.
- Procedure.
- Procession.
- Revision.
- Scope.
- Suspension of order.
- Time-expired order.
- Validity order.

—S. 144.

- See also (i) Cr. P. C., 1898, S. 6.
(ii) Cr. P. C., 1898, S. 107.
(iii) Cr. P. C., 1898, S. 145.

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- (iv) Cr. P. C., 1898, S. 435.
- (v) Cr. P. C., 1898, S. 523.
- (vi) Penal Code, 1868, Ss. 96, 97, 188.
- (vii) Prosecution of Intimidation Ordinance, 1930, S. 11.

—S. 144—Action under, when to be taken—Nuisance—Remedy of complainant—Civil dispute—Duty of Court.

It is not proper that Criminal Courts should take upon themselves to decide what are really civil disputes. Action should be taken under S. 144 only in urgent cases of nuisance or apprehended danger and should not be taken at the instance of a party who can easily remedy the consequences of the act complained of and whose complaint is really of a civil nature. *Haji Ali v. Emperor*.

26 Cr. L. J. 560 : 85 I. C. 656 : A. I. R. 1925 All. 678.

—S. 144—Adi-Dravidas, rights of, to take out procession through locality of caste-Hindus—Order under S. 144, when can be made.

There can be no doubt that the Adi-Dravidas have a civil right to take a procession along all public streets, just as any other persons may have and the caste-residents have no right to object. Ordinarily those responsible for law and order should see that persons exercising their rights have the support of the Police and the Magistracy; but cases do, of course, arise where in the interests of public peace, persons should be prevented from exercising their rights. If the Adi-Dravidas, for example, are anxious to conduct a procession, not, to honour Sri Thiruvalluvar but in order to irritate and annoy the caste-residents of those streets, then the Magistrate would be justified in placing some restraint upon their processions. *Shanmuga Pandaram v. K. Ponnuswami Iyer*.

39 Cr. L. J. 886 : 177 I. C. 436 : 47 L. W. 741 : 1938 M. W. N. 606 : 1938 2 M. L. J. 160 : 11 R. M. 326 : A. I. R. 1938 Mad. 714.

—S. 144.

An order under S. 144 spends itself in 60 days and is not like an order under S. 137 (3) which remains in force even when the nuisance abates and is to be set aside by the Appellate authority. *Mul Mathur v. Emperor*. 37 Cr. L. J. 1159 :

165 I. C. 542 : 3 B. R. 69 : 9 R. P. 186 : A. I. R. 1936 Pat. 577.

—S. 144—Applicability—Dispute as to immovable property—Right doubtful—Order under S. 144, whether proper—Procedure—Notice to opposite party, whether necessary—Successive orders under S. 144, whether competent.

Where the right or possession of the parties is not free from doubt and there is a danger of disturbance of public tranquillity on account of both the parties asserting their right and possession over the lands in question, it is inequitable to take action under S. 144 to restrain one party as against the other, the virtual effect of which would be to usurp the functions of the Civil Court and to decide the right and title over the disputed land including the right of possession. Where the right of

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a party is clear and there is a threatened invasion of that right by another party, a temporary order under S. 144 might be useful and effective. Similarly, under S. 107 where parties are in the wrong, they can be bound down in order to prevent a breach of the peace. But where there is a doubt as to the right of the parties to be in possession of immovable property, the only effective remedy is that provided by S. 145 of the Code, under which if the Magistrate after due enquiry comes to the conclusion that one of the parties is in clear possession, he will uphold its possession until it is evicted in due course of law, and if on the other hand, the Magistrate finds it difficult to decide which of the parties is in actual possession, he has got a remedy to prevent a breach of the peace under S. 146 by attaching the subject-matter of the dispute. *Gouri Dutt v. Gobind Singh*.

20 Cr. L. J. 829 :
53 I. C. 829 : 1 P. L. T. 44 :
A. I. R. 1920 Pat. 496.

———S. 144—Applicability.

Possession of land disputed—Likelihood of breach of the peace—Magistrate may proceed either under S. 144 or S. 145 or S. 107. *Sheoraj Roy v. Chatter Roy*. 2 Cr. L. J. 769 : 10 C. W. N. 288 : I. L. R. 32 Cal. 966.

———Ss. 144, 145—Applicability of—Magistrate, duty of—Jurisdiction—Revision direct to High Court, Government of India Act, 1915 (5 & 6 Geo V. C. 61), S. 107.

S. 144 is applicable only to temporary orders in urgent cases of nuisance or apprehended danger; its provisions do not apply to cases where there is a dispute as to land for the settlement of which S. 145 provides the proper remedy. In a proceeding under S. 144 the Magistrate without taking any evidence and without considering the documents produced or which might have been produced by the parties, found in favour of the second party and made an order absolute as regards possessions. On revision : *Held*, that the order was without jurisdiction, and could not be sustained, inasmuch as action under S. 144 can only be taken after the Magistrate is satisfied that immediate prevention or speedy remedy is necessary, and when he is satisfied that it is so, he must state the material facts in the order. An order made by a Magistrate outside the scope of cl. (1) of S. 44 is revisable by the High Court in exercise of its power of superintendence under S. 107 of the Government of India Act, even though no application was in the first instance made to the District Magistrate. *Akal Mahton v. Mahabir Mahto*. 24 Cr. L. J. 947 : 75 I. C. 531 : 1 P. L. R. 223 Cr. : 5 P. L. T. 90 : A. I. R. 1924 Pat. 145.

———S. 144—Breach of peace.

Magistrate can legally issue an order prohibiting a land-holder from holding a *hat* on a particular spot in his own estate on particular days on the ground that such an order is likely to prevent a riot or affray. *Hansraj Prosad Singh*. 36 P. L. J. 1268 :

157 I. C. 760 : 1 B. R. 812 :
1 P. R. 161 (2) : 16 P. L. T. 624 :
A. I. R. 1935 Pat. 461.

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———S. 144—Breach of the peace—Apprehension of—Order restraining raiyats from reaping crops.

Where the object of an order, purporting to be under S. 144, is to prevent the *raiya*ts from reaping the crops they have sown, with a view to insure speedy payment of rent claimed to be due from them to Government or the Government farmer : and there is a remote apprehension that if they are allowed to reap, a breach of the peace might occur on their being prevented from reaping their crops : *Held*, that an order under S. 144 is not competent. *Isab Mondal v. Emperor*.

1 Cr. L. J. 248 :
8 C. W. N. 373.

———S. 144—Charter Act, 24 and 25 Vic. c. (1861), S. 15—Permanent injunction prohibiting taking of processions not allowed by law—Temporary emergencies only provided for—Power of High Court to interfere.

S. 144 relates only to the passing of provisional orders to tide over temporary emergencies and in cases where immediate prevention or speedy remedy is desirable. It does not authorise a Magistrate to prohibit a person or persons by a permanent injunction from taking processions throughout an indefinite future period along the streets of a particular town. S. 15 of the Charter Act empowers the High Court to prevent an evasion by the Magistracy of the law as laid down in S. 144. *Govinda Chetti v. Perumal Chetty*.

14 Cr. L. J. 589 :
21 I. C. 381 : 25 M. L. J. 379.

———Ss. 144, 145, 433, 439—Charter Act (24 and 25 Vic. c. 104) S. 15—Order under S. 145—Revision—Interference—Magistrate's power to appoint Receiver.

The High Court has no jurisdiction to interfere under Ss. 435 and 439 with orders passed under S. 145. The High Court will not interfere with orders passed under S. 145 even under S. 15 of the Charter Act except where the question of the Magistrate's jurisdiction is involved, or the High Court is satisfied that there has been gross miscarriage of justice. *Palani Chetty v. Rathina Chetty*.

15 Cr. L. J. 509 :
24 I. C. 597 : 26 M. L. J. 208 :
1914 M. W. N. 352 : A. I. R. 1915 Mad. 10.

———S. 144—Cow-sacrifice—General order.

Under S. 144 a District Magistrate can issue an order to the public generally, who in certain particular circumstances, cannot be individually addressed. Sub-s. (3) of the section is intended to extend rather than to limit the scope of the order so as to include therein even casual or frequent visitors from outside the limits of the particular locality within which the order is to have application. A general order issued by a District Magistrate to the effect that no person should sacrifice or cause to be sacrificed any cow or bullock within a certain specified boundary and period is a legal order. *Abdul Gafur v. Emperor*.

16 Cr. L. J. 190 :
27 I. C. 670 : 18 O. C. 70 :
A. I. R. 1915 Oudh 188.

Cr. P. CODE (1898), S. 144**—S. 144—Delegation of powers.**

It is competent for a Magistrate to depute another Magistrate to make an enquiry and submit a report though he cannot delegate his magisterial functions to another. *Francis Duke Cobridge Summer v. Jogendra Kumar*.

34 Cr. L. J. 334 :
142 I. C. 319 : I. R. 1933 Cal. 262 :
A. I. R. 1933 Cal 348.

—S. 144—Disobedience of order—Prosecution under S. 188, Penal Code.

Petitioners were ordered to be prosecuted under S. 188, Penal Code, for having disobeyed an order under S. 144, which directed them not to make any disturbance, over the opposite party's right of ferry by plying a ferry which was not the opposite party's ferry, at the site in question; *Held*, that as there was no suggestion that the petitioners were in any sense creating a disturbance, the prosecution must prove infructuous, and that the order directing the prosecution of the petitioners must, therefore, be set aside. *Sujal Bixwas v. Samiruddin Mandal*.

19 Cr. L. J. 739 :
46 I. C. 515 : 22 C. W. N. 599 :
A. I. R. 1919 Cal. 996.

—Ss. 144, 195—Disobedience of order under S. 144—Sanction for prosecution granted by District Magistrate—Order, whether administrative or judicial—Appeal, whether lies.

An order passed by a Magistrate under S. 144 is a judicial order and the authority issuing the order cannot be separated from the authority granting sanction for prosecution for disobedience of it. Where, therefore, a Magistrate grants sanction for prosecution for disobedience of an order under S. 144, he acts as a 'Court' within the meaning of S. 195, sub-s. 7 of the Code. A Sub-Magistrate having refused to accord sanction for prosecution of the petitioner for disobedience of his order passed under S. 144, the opposite party appealed to the District Magistrate who granted the sanction applied for. Against this latter order, the petitioner appealed to the Sessions Judge, who refused to interfere with the District Magistrate's order on the ground that it was passed administratively; *Held*, that the order of the District Magistrate was a judicial order against which an appeal lay to the Sessions Judge. *Arunachalam Pillai v. Ponnuswami Pillai*.

20 Cr. L. J. 28 :
48 I. C. 878 : 35 M. L. J. 454 :
8 L. W. 422 : 24 M. L. T. 396 :
42 Mad. 6 : 1908 M. W. N. 224 :
A. I. R. 1919 Mad. 610.

—S. 144—Dispute about land.

Where the dispute is with regard to possession of immovable property, a proceeding under S. 144 is a poor substitute for a proceeding under S. 145. *Puran Singh v. Ramjhari Kcer*.

36 Cr. L. J. 655 :
155 I. C. 88 : 7 R. P. 538 :
A. I. R. 1935 Pat. 224.

—Ss. 144, 145—Dispute about land—Proper action.

A Magistrate can proceed under S. 144 where one of the rival parties is found to be in actual

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possession of the land, but, except in case of grave emergency, S. 145 is the proper section under which to act. *Nga Po v. Mi Hmi Shacc Tha*.

18 Cr. L. J. 967 :
42 I. C. 327 : 3 U. B. R. (1917) 17 :
A. I. R. 1917 U. Bur. 5.

—Ss. 144, 145—Dispute about possession—Procedure—When order should not be passed under—Question of possession disputed—Proper procedure.

In a dispute regarding land when the question of possession is disputed between the parties, the proper procedure to be adopted by Magistrate is to pass an order under S. 145, deciding the question of possession on evidence, and not on order under S. 144. *Parkar Mahlon v. Ram Khelawan*.

5 Cr. L. J. 76 :
11 C. W. N. 271.

—Ss. 144, 145—Dispute as to land—Section, applicable.

S. 144 is applicable only to temporary orders in urgent cases of nuisance or apprehended danger. It is not applicable in cases where there is a dispute as to land for the settlement of which S. 145 provides the appropriate remedy. *Lachman Ram v. Dhiru Dusadh*.

19 Cr. L. J. 1002 :
48 I. C. 342 : A. I. R. 1918 Pat. 300.

—Ss. 144, 145—Dispute as to possession—Proper proceedings—Rent-decree, evidential value of.

A rent-decree passed against a person is to some extent evidence of possession in favour of that person, but it is not conclusive against one who was not a party to it. A Magistrate does not act without jurisdiction if, in a proceeding under S. 144, he passes an order on the strength of such a rent-decree when a breach of the peace is imminent. But before making the order final, he should convert the proceedings into one under S. 145 (unless the possession has already been determined by a Civil Court, or is undisputed), and determine the issue of possession once for all so as not to leave occasion for further dispute. *Nandkishore Sao v. Bikan Singh*.

23 Cr. L. J. 200 :
65 I. C. 856 : 3 P. L. T. 570 :
A. I. R. 1922 Pat. 557.

—Ss. 144, 145—Dispute as to possession of land—Duty of Magistrate to draw up proceedings under S. 145.

Where there is a dispute as to possession of land ordinarily, unless the facts are on the face of them quite clear, a proceeding should be drawn up under S. 145 for the purpose of investigating the question of actual possession to land. It is not proper to pass an *ex parte* order under S. 144, without any investigation. *Kishori Jha v. Anand Kishore Jha*.

31 Cr. L. J. 1005 :
126 I. C. 293 : 10 P. L. T. 862 :
A. I. R. 1930 Pat. 162.

—Ss. 144, 145—Dispute concerning land—Procedure.

In order to settle disputes between parties concerning land in respect of which there is an apprehension of a breach of the peace, the

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most appropriate method is by the institution of proceedings under S. 145. In such cases, S. 144 should not be resorted to. *Tarapada Bhattacharji v. Emperor*. 21 Cr. L. J. 241 :

55 I. C. 193 : I. P. L. T. 72 :
A. I. R. 1920 Pat. 176.

———**Ss. 144, 145—Dispute relating to land—Procedure—Jurisdiction of Magistrate—Order under S. 144, value of, as evidence of possession.**

S. 144 does not oust the jurisdiction of a Magistrate in cases of *bona fide* disputes as to possession of land. Where, however, S. 107 or S. 145 will meet the requirements of the case, S. 144 is not an appropriate remedy and if it is found that the danger was not so imminent that it could not be otherwise averted, an order under S. 144 will be without jurisdiction. Where it is clear upon the materials before the Magistrate that one party is in possession and that another whose claim to possession is a mere pretence is threatening to interfere with that possession, the Magistrate is entitled to resort to S. 144, if immediate provision of speedy remedy is desirable. Where in the course of a proceeding under S. 144 the Magistrate finds that there is a *bona fide* dispute of possession of land likely to cause a breach of the peace, he is bound immediately to take action under S. 145. The use of S. 144 is a suitable method of avoiding a breach of the peace only if it is clear upon a reading of the Police report that the claim of the party creating the disturbance is not a claim made in good faith. Any observation made in an order under S. 144 by the Magistrate as regards the possession of any of the parties must be treated simply as an incidental observation meant to enable the Magistrate to make an order under the section, and cannot have the force of an order under S. 145 and is of no use in a subsequent proceeding. *Munni Lal Sao v. Gatti Ahir*. 26 Cr. L. J. 1229 :

88 I. C. 845 : 3 Pat. L. R. 70 Cr :
6 P. L. T. 746 : A. I. R. 1925 Pat. 514.

———**S. 144—Dispute concerning conduct of prayers in mosque—Breach of peace—Order forbidding reading of prayers, whether proper—Procedure.**

In a dispute concerning the conduct of prayers in a mosque, there being an apprehension of a breach of the peace, the Magistrate drew up a proceeding under S. 144 and eventually recorded an order that "no man of either party will be allowed to read prayers in the mosque." Held, that the order was misconceived. The proper course was for the Magistrate to ascertain which party was in wrong and was interfering unnecessarily with the legal exercise of the legal powers of the other party, and to bind down that party restraining them from committing any act which may lead to a breach of the peace. *Mohammad Ismail v. Barkat Ali*.

24 Cr. L. J. 154 :
71 I. C. 506 : 26 C. W. N. 904 :
A. I. R. 1912 Cal. 483.

———**S. 144 (2)—Dispute likely to be settled in Civil Court—No apprehension of breach of peace—Proper order.**

An order of a Magistrate directing a party to open a channel in his own land is not an order

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of the kind contemplated by S. 144 (2). Where a dispute between the parties is likely to be settled by a Civil Court, before the cultivation season and there is no immediate apprehension of a breach of the peace, it is not a case for interference of the Magistrate under S. 144 (2). *Subramania Aiyar v. Muthu Ambalam*.

15 Cr. L. J. 291 :
23 I. C. 499 : A. I. R. 1914 Mad. 239.

———**S. 144—Dispute not bona fide—Duty of Magistrate.**

Although a Magistrate has the jurisdiction to pass an order under S. 144 in a case where one party is not acting in good faith but is merely setting up a pretence of claim it cannot be considered to be a good practice habitually to prejudge without evidence both the merits of the dispute and the question whether it is *bona fide*. *Jagrup Rumari v. Chokey Narain Singh*.

37 Cr. L. J. 95 :
159 I. C. 455 : 2 B. R. 83 :
8 R. P. 279.

———**Ss. 144, 561-A—Dispute of civil nature—Absence of urgency—Power of Magistrate to pass temporary order—Illegal order for delivery—High Court's power to order restitution of property.**

The scope of S. 144 is very limited and the powers vested in the Magistrate by that section ought to be exercised sparingly and only in urgent cases. Civil Courts alone have been vested by the Legislature with jurisdiction to decide disputes of a civil nature between private individuals and it is not permissible for a Magistrate, under the cover of an order under S. 144, to dispossess a particular individual from certain property and to direct delivery of possession of that property by an order under S. 144, when the object of the order is not to prevent obstruction, annoyance or injury, etc., "to any person lawfully employed." The High Court has jurisdiction on setting aside an illegal order passed by a Magistrate for delivery of property under S. 144, to direct that the property be delivered to the person who was originally in possession of it. *Hafizuddin v. Laborde*.

28 Cr. L. J. 991 :
105 I. C. 815 ; L. R. 8 All. 149 Cr. :
8 A. I. Cr. R. 362 : 26 A. L. J. 83 :
A. I. R. 1928 All. 14.

———**S. 144—Dispute regarding trusteeship of temple, procedure.**

Where there is a *bona fide* dispute as to the trusteeship of a temple between the parties, it is not a case for action under S. 144, Cr. P. C. *Vythialinga Mudaliar v. Ramanuja Mudaliar*.

30 Cr. L. J. 1010 :
119 I. C. 166 : I. R. 1929 Mad. 918 :
A. I. R. 1929 Mad. 845.

———**Ss. 144, 145—Dispute relating to immovable property—No bona fide dispute as to possession—Order under S. 144—Public peace.**

S. 144 applies to a case of dispute with regard to possession of immovable property, where there is no *bona fide* dispute as to actual possession and one party is merely trying to get into possession of property which is held by another.

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Private rights must give way to the necessity of preserving public peace. *Lachman Das v. Ramchhabila Missir*.

30 Cr. L. J. 510 :
115 I. C. 683 : I. R. 1929 Pat. 235 :
10 P. L. T. 542 : A. I. R. 1929 Pat. 415.

—S. 144—Duty of Magistrate.

Before a Magistrate can take action under S. 144, he must be of the opinion that immediate prevention or speedy remedy is necessary, and he must state the material facts in the order. *Motilal v. Emperor*.

33 Cr. L. J. 75 :
134 I. C. 1237 : 33 Bom. L. R. 1178 :
I. R. 1932 Bom. 21 : A. I. R. 1931 Bom. 513.

—S. 144—Duty of Magistrate.

It is always enough that the Magistrate adopts any proper method to meet the emergency if there happen to be several methods to choose from. *Haribar Singh v. Upendranath Basu*.

35 Cr. L. J. 1009 :
149 I. C. 959 (1) : 13 Pat. 76 : 6 R. P. 676 :
A. I. R. 1935 Pat. 308.

—S. 144—Duty of Magistrate.

Magistrate should inquire into relative rights of parties before making *ex parte* order under S. 144 absolute. *Ramnada Zamin Darasthanam Tahsildar v. Kadar Meera*.

33 Cr. L. J. 605 :
138 I. C. 354 : M. W. N. 1932 144 :
62 M. L. J. 392 : 35 L. W. 366 :
I. R. 1932 Mad. 566 : A. I. R. 1932 Mad. 294.

—S. 144—Duty of Magistrate—Order under S. 144.

Locality to which order is applied should be clearly defined. *Vasant B. Khale v. Emperor*.

36 Cr. L. J. 130 :
153 I. C. 701 : 36 Bom. L. R. 733 :
59 Bom. 27 : 7 R. B. 161 :
A. I. R. 1934 Bom. 375.

—S. 144 (1)—Emergency—Interference with exercise of private Rights.

Under exceptional circumstances the Criminal Court would be justified in cases of emergency on being satisfied as to the urgency of the situation, to make an order under S. 144 of the Code, which may have the effect of interfering with the private rights of individuals, even though such rights are being lawfully exercised. *Ganesh Chandra Khan v. Lalit Mohan Nayak*.

35 Cr. L. J. 1252 :
151 I. C. 183 : 38 C. W. N. 388 : 7 R. C. 83 :
A. I. R. 1934 Cal. 513.

—S. 144—Ex-parte order.

An *ex-parte* order cannot be made.

35 Cr. L. J. 881 :
148 I. C. 773 : 38 C. W. N. 556 : 6 R. C. 480 :
A. I. R. 1934 Cal. 393.

—S. 144—Ex-parte order—Emergency.

An *ex-parte* order should not be passed under S. 144 save in cases of emergency or where there is no time to serve notice. *Venkatroya Govindan v. Very Rev. N. Roudy*.

11 Cr. L. J. 449 :
7 I. C. 343.

—S. 144—Ex-parte order, grounds for—Magistrate, duty of.**Cr. P. CODE (1898), S. 144**

Phillips, J.—Under S. 144 it is not necessary for a Magistrate to record in his order his reasons for considering the occasion to be one of emergency. Per *Sadasiva Aiyar, J.*—In the case of *ex-parte* orders under S. 144 the record of the Magistrate should disclose the existence of emergency which called for such *ex-parte* order or that there was not sufficient time to serve notice on the party affected thereby. The material facts required to be set out under S. 144 include, in the case of an *ex-parte* order, the circumstances showing why the Magistrate was temporarily unable to prevent a breach of the peace by intending peace-breakers. *S. S. Venkataramana Aiyar v. Emperor*.

19 Cr. L. J. 56
43 I. C. 88 : 6 L. W. 456 : 22 M. L. T. 323 :
1917 M. W. N. 724 : A. I. R. 1919 Mad. 1004.

—S. 144—Ex-parte order.

Quære whether *ex-parte* order privately served on accused is 'promulgated.' *Chuni Lal Motilal v. Emperor*.

33 Cr. L. J. 829 :
139 I. C. 739 : 36 C. W. N. 792 :
I. R. 1932 Cal. 648 : A. I. R. 1932 Cal. 868.

—S. 144—Ex-parte order.

When *ex-parte* order under S. 144 is called in question, evidence should be recorded in the usual way by examination and cross-examination of witnesses. *Satyanarayana Choudhari v. Emperor*.

32 Cr. L. J. 744 :
131 I. C. 449 (2) : 1930 M. W. N. 841 :
60 M. L. J. 378 : 3 Mad. Cr. Cas. 395 :
33 L. W. 632 :
I. R. 1931 Mad. 513 : A. I. R. 1931 Mad. 236.

—S. 144—Expression of opinion as to title, value of.

Any expression of opinion on the question of possession in favour of one party or the other under S. 144 is not of a permanent nature. Such an order is passed in summary proceedings and cannot affect the real rights of the parties on the question of possession. *Sri Bhagwati Lal v. Bachu Pandey*.

41 Cr. L. J. 384 :
186 I. C. 806 : 6 B. R. 396 : 12 R. P. 554 :
A. I. R. 1940 Pat. 364.

—S. 144—Extension of period of two months by repeating order.

A Magistrate has no power to extend the period of two months prescribed by S. 144 by repeating the order on a subsequent date. *Thomson v. Emperor*.

11 Cr. L. J. 12 :
4 I. C. 590 : 13 C. W. N. 195 : 5 M. L. T. 96.

—S. 144—Fact that conviction is difficult to secure, if shows, that order itself was without jurisdiction.

It is necessary to distinguish carefully between the jurisdiction of the Magistrate to make an order under S. 144, and a possible practical difficulty in showing that it has been disobeyed. It does not follow that because it is difficult for the Crown to secure a conviction, that the order itself was made without jurisdiction. *Niharendu Dutt Majumdar v. Emperor*.

41 Cr. L. J. 105 :
184 I. C. 856 : I. L. R. 1939 2 Cal. 507 :
43 C. W. N. 1061 : 12 R. C. 318 :
A. I. R. 1939 Cal. 703.

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———S. 144—*Injunction*.

An order in the nature of an injunction under S. 144 should be clear and definite and free from any kind of ambiguity and if it is indefinite, it would not be right to prosecute anybody for disobeying it. *Ambika Nanda Maitra v. Benode Behari Sarkar*. 33 Cr. L. J. 518 :

137 I. C. 816 : 36 C. W. N. 248 :

I. R. 1932 Cal. 283 : A. I. R. 1932 Cal. 288.

———S. 144—*Interpretation* — “Annoyance”, meaning of.

The word ‘annoyance’ in S. 144 is not confined to physical annoyance. It may be either physical or mental. *Emperor v. Ganesh Vasudeo Mavlankar*. 32 Cr. L. J. 507 :

130 I. C. 396 : 33 Bom. L. R. 59 : 58 Bom. 322 :

I. R. 1931 Bom. 252 : A. I. R. 1931 Bom. 135.

———S. 144—*It must be shown that order was communicated to accused*.

Before it can be said that the accused had knowledge of the order, it must be shown that its terms were communicated to them. The Sub-Inspector merely giving his own interpretation of it, is quite a different thing. *Niharendar Dutt Majumdar v. Emperor*. 41 Cr. L. J. 105 :

184 I. C. 856 : I. L. R. 1939 2 Cal. 507 :

43 C. W. N. 1061 : 12 R. C. 318 :

A. I. R. 1939 Cal. 703.

———S. 144—*Jurisdiction*.

Sub-Divisional Magistrate on tour—Sending case under S. 144 to Deputy Magistrate—Deputy Magistrate passing order—Sub-Divisional Officer returned from tour on the morning of the date of order—Deputy Magistrate has jurisdiction to pass orders.

35 Cr. L. J. 881 :

148 I. C. 773 : 38 C. W. N. 556 : 6 R. C. 480 :

A. I. R. 1934 Cal. 393.

———S. 144—*Jurisdiction—Order for division of crops—Order by Magistrate, nature of*.

An order for division of crops does not come within the purview of S. 144. A Magistrate cannot assume the function of a Civil Court, nor can he pass an order of an irrevocable nature under the said section. *Umatal Fatima v. Nema Charan Banerjee*. 2 Cr. L. J. 168 :

I. L. R. 32 Cal. 154.

———S. 144—*Jurisdiction of Magistrate—Interlocutory orders—Rule issued by High Court—Seisin of case—Extension of time—Rival hats*.

A Magistrate cannot, by passing successive orders under S. 144, extend the operation of an order indirectly beyond the time limited by Sub-s. (5) of S. 144. Where the first and initial order passed by a Magistrate was in substance and form an order under Sub-s. (2) and forbade certain persons from establishing a hat at a certain place and gave a vague direction to them forbidding interference with the trade of another hat; *Held*, that the order was irregular and vague and could not stand. As long as an order under S. 144 has legal operation, no intermediate or interlocutory order not contemplated by Sub-s. (4) can be passed. When the High Court has issued a rule in any case, it takes full seisin of the case, and it is the High Court alone that can pass *ad interim* orders in the case. The

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Magistrate against whose order the Rule is issued has no such jurisdiction. The most appropriate section of the Code to deal with cases of rival hats which may cause a breach of the peace is S. 107, Cr. P. C. *Satish Chandra Roy v. Emperor*. 4 Cr. L. J. 433 :

11 C. W. N. 79.

———S. 144—*Jurisdiction of Magistrate to pass order—Imminent danger—Order, whether can be set aside after expiry of 2 months*.

The jurisdiction of a Magistrate to pass an order under S. 144 depends on the urgency of the case. A mere statement by the Magistrate that he considers the case to be urgent is not sufficient to give him jurisdiction, if the facts set out by him show that in reality there is no urgent necessity for action. A Magistrate, by an order under S. 144, directed the petitioner to remove an obstruction to a culvert through which drainage of the Railway menial quarters used to flow into his tank and the only fact set out indicating any imminent danger was that a rainfall of one inch in an hour would flood the menial quarters and compel their evacuation : *Held* (1) that this was an imminent danger of quite a different kind to that contemplated by S. 144; it was a danger to the inhabitants of a particular quarter who might be inconvenienced but was not a source of danger to public health ; (2) that the order under S. 144, should be set aside even though more than 2 months had expired since its passing, inasmuch as a prosecution of a petitioner under S. 188, Penal Code, for disobedience to the order had been instituted. *Chandra Nath Mukerjee v. Emperor*. 19 Cr. L. J. 951 :

47 I. C. 803 : 28 C. L. J. 483 :

23 C. W. N. 145 : A. I. R. 1919 Cal. 584.

———S. 144—*Jurisdiction to act—Conditions—Claim in good faith—Jurisdiction, whether ousted—Arbitrary order, validity of—Order based on no material—Revision*.

The rule that S. 144 ought not to be utilized in a dispute regarding the possession of land except against a party whose claim is not made in good faith is not a rule of jurisdiction but only of propriety to give the Magistrate jurisdiction under S. 144, all that is required is that he shall be of opinion that there is sufficient ground to proceed under the section, and that immediate prevention or speedy remedy is desirable and that the direction which he proposes to make is likely to prevent or tends to prevent a disturbance of the public tranquillity or a riot or an affray. In such circumstances, private rights must give way. An order under S. 144 cannot be impugned as without jurisdiction merely because it is arbitrary. The correct stand-point from which to view the propriety of an order under S. 144 is that of the Magistrate at the time when he passed it and in the light of the materials then before him. But an order without material is liable to be set aside by the High Court. *Radhe Das v. Jairam Mahto*.

31 Cr. L. J. 466 :

123 I. C. 73 : A. I. R. 1929 Pat. 714.

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———S. 144 (4)—*Jurisdiction to rescind or alter order, nature of.*

The jurisdiction of a Magistrate to rescind or alter an order made under S. 144 by himself or by any Magistrate subordinate to him or by his predecessor-in-office is neither Appellate nor Revisional Jurisdiction. It is a special jurisdiction conferred by a special provision in a Statute. *Saturhan Das v. Makhan Das.*

24 Cr. L. J. 331 :
72 I. C. 171 : 1 P. L. R. 53 Cr.

———S. 144—*Knowledge of order.*

Question whether a person has knowledge of order promulgated under S. 144 is a matter of evidence. Prosecution can only prove circumstances enabling Court to infer if accused knew of order or not. *Shander v. Emperor.*

36 Cr. L. J. 639 :
155 I. C. 185 : 1935 A. W. R. 590 : 7 R. A. 901 :
A. I. R. 1935 All. 552.

———S. 144—*Liberty of individual, respect for—Magistrate, duty of—Proper procedure—Vague and indefinite order.*

S. 144 is not intended to restrict the liberty of an individual if there is no apprehension of a breach of the peace on account of any act to be done by him. Thus if it is found that a man is doing that which he is legally entitled to do and that his neighbour chooses to take offence thereat and to create a disturbance in consequence, it is clear that the duty of the Magistrate is not to continue to deprive the first person of the exercise of his legal right but to restrain the second from illegally interfering with that exercise of legal right. An order under S. 144, merely reciting that in the opinion of the Magistrate there is sufficient ground for proceeding under that section, does not sufficiently comply with the requirements of the law. A vague and indefinite order which does not state any facts relating to the case or does not define the limits within which it is to operate is bad in law. *Blong v. Emperor.*

25 Cr. L. J. 1178 :
82 I. C. 42 : 1924 Pat. 262 : 6 P. L. T. 130 :
3 Pat. L. R. 41 Cr. : A. I. R. 1924 Pat. 767.

———S. 144—*Magistrate's action should be directed against wrong-doers rather than the wronged.*

Obiter.—Even in the case of an order in an emergency under S. 144, the Magistrate's action should be directed rather against the wrong-doers than the wronged, though the nature of the emergency may make it necessary for a time, in the public interest, to interfere with the lawful exercise of private rights. But, in any case, the authority of Magistrates should be exercised in defence of rights rather than in their suppression, in repression of illegal rather than in interference with lawful acts. *Jasoda Lalhraj v. Emperor.*

40 Cr. L. J. 703 :
182 I. C. 698 : 12 R. S. 31 : 1939 Kar. 662 :
A. I. R. 1939 Sind 167.

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persons who are prohibited. *Emperor v. Ganesh Vasudeo Maylankar.*

32 Cr. L. J. 507 :
130 I. C. 396 : 33 Bom. L. R. 59 :
55 Bom. 322 : I. R. 1931 Bom. 252 :
A. I. R. 1931 Bom. 135.

———S. 144 — *Magistrate's Jurisdiction to pass a prohibitory or mandatory order.*

Although a Magistrate acting under S. 144 is empowered to make an order prohibiting a person from holding a *hat* on certain specified days of the week, he cannot make a direction that the *hat* shall be held upon certain days. *Shamanand Das Paharaj v. Emperor.*

1 Cr. L. J. 778 :
8 C. W. N. 781 : I. L. R. 31 Cal. 990.

———Ss. 144, 134 — *Magistrate, when can direct public generally to abstain from certain acts—Nature of such order.*

In the circumstances set forth in sub-s. (1), a Magistrate may not only direct an individual to abstain from a certain act or acts but may also issue a similar direction to members of the public generally, provided in the latter case the prohibition is limited to occasions on which the members of the public may frequent or visit a particular place. In other words, it would not be legal to issue a general prohibition to the public to abstain from a certain act but an order to the public generally to abstain from a certain act on the occasions when they happened to visit a particular place would be valid. The language is also sufficiently wide to cover residents in a particular locality but, in either case, it is, of course, essential that the place covered by the order and also the act prohibited should be described with reasonable precision, whether such place be an entire district or a particular street in a town and whatever the nature of the prohibited act may be. *Abu Husain v. Emperor.*

41 Cr. L. J. 864 :
190 I. C. 228 : 44 C. W. N. 641 :
I. L. R. 1940 2 Cal. 110 : 13 R. C. 157 :
A. I. R. 1940 Cal. 358.

———Ss. 144, 195, 487—*Magistrate passing order under S. 144, cannot take cognizance of offence under S. 188, Penal Code—Proper procedure.*

A Magistrate passing an order under S. 144, cannot take cognizance of an offence under S. 188, Penal Code, for disobedience of his own order; he must make a complaint under S. 195. *Lakendra Lal Pat Choudhury v. Emperor.*

37 Cr. L. J. 936 :
164 I. C. 434 (2) : 61 C. L. J. 579 :
39 C. W. N. 1053 : 9 R. C. 207.

———S. 144—*Mandatory order, legality of.*

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particular things. A Magistrate cannot, therefore, make an order under S. 144, which in effect is not a direction to abstain from doing anything, but a direction upon a person to remove himself from the district and to do so by the next available train. *Emperor v. B. N. Sasmal*.

32 Cr. L. J. 592 :
130 I. C. 872 : 58 Cal. 1037 : 53 C. L. J. 175 :
I. R. 1931 Cal. 392 : A. I. R. 1931 Cal. 263.

—S. 144—Miscellaneous.

The period of sixty days referred to in S. 144, begins to run from the date on which the notices are issued. *Puran Singh v. Ramjhari Kuer*.

36 Cr. L. J. 655 :
155 I. C. 88 : 7 R. P. 538 : A. I. R. 1935 Pat. 224.

—S. 144—Miscellaneous — Prohibiting residence.

The Magistrate has no jurisdiction to pass an order on any person to abstain from residing in a place, where he is at the time the order is passed. *Thakin Ba Thoung v. Emperor*.

35 Cr. L. J. 1300 :
151 I. C. 211 : 12 Rang. 283 : 7 R. Rang. 57 :
A. I. R. 1934 Rang. 124.

—S. 144—Miscellaneous.

The question of injury to property as distinguished from danger to or safety of human life occupying the property, has got very little relevancy. *Ganesh Chandra Khan v. Lalit Mohan Nayak*.

35 Cr. L. J. 1252 :
151 I. C. 183 : 38 C. W. N. 388 : 7 R. C. 83 :
A. I. R. 1934 Cal. 513.

—S. 144 (4)—Nature of order contemplated.

While it is open to the superior Magistrate to alter the order passed by the Subordinate Magistrate, he cannot alter the party to be affected by the order. Where a Subordinate Magistrate allows a certain party to perform a certain festival on a certain day, it cannot be prohibited by the superior Magistrate on an application by another party under S. 144 (4), or, where a Subordinate Magistrate prohibits one party from doing a certain act, the superior Magistrate cannot, under S. 144 (4), prohibit the opposite party from doing that act. *Sevugan Chettiar v. Karuppan Chettiar*.

38 Cr. L. J. 864 :
170 I. C. 193 : 1937 M. W. N. 210 :
45 L. W. 337 : 10 R. M. 152 :
A. I. R. 1937 Mad. 487.

—S. 144 (5)—Nature of—Application for cancelling order—Duty of Magistrate.

The provision contained in S. 144 (5), is mandatory. Where an application is presented for cancelling the order, the applicant must be given an opportunity to support his application and it should not be dismissed summarily. *Thakin Aung Bala v. District Magistrate, Rangoon*.

49 Cr. L. J. 645 :
182 I. C. 23 : 1939 Rang. 294 : 11 R. Rang. 516 :
A. I. R. 1939 Rang. 181.

—S. 144—Nature of proceeding—Order prohibiting Prabhat Pheri.

An order by a District Magistrate under S. 144, prohibiting the holding of *Prabhat Pheris* (Morning Rounds) within a local area

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is a judicial and not an administrative order. In such a case, the Magistrate must keep an open mind and record at least a reasonable portion of the evidence essential for the judicial determination of the objections raised by the members of the public under S. 144 (5). *D. V. Belvi*.

32 Cr. L. J. 1144 :
134 I. C. 344 : 33 Bom. L. R. 673 :
I. R. 1931 Bom. 456 : A. I. R. 1931 Bom. 325.

—S. 144—Notice—Service—Onus.

Service of notice—Order under S. 144 against another—Burden of proof of want of service of notice of order is on this other person. *Aswini Kumar Dhara v. Emperor*.

32 Cr. L. J. 680 :
131 I. C. 271 : 53 C. L. J. 64 :
I. R. 1931 Cal. 447 : A. I. R. 1931 Cal. 262.

—Ss. 144—Nuisance—Temporary order—Nuisance, existence of, for length of time, whether can be treated as urgent case—Temporary order, withholding of, when not justified.

S. 144 merely provides for temporary orders in urgent cases of nuisance or apprehended danger, and ought to be applied with due regard to its scheme and purpose. Where a nuisance complained of has existed for a great length of time, practically without any complaint, the case cannot be treated as an urgent case of nuisance or apprehended danger, and cannot be treated fairly and properly as being with the special purpose of the section. The fact that a dispute demands a permanent injunction for its final settlement, is no ground for withholding a temporary order. *In re : Cawasjee Jahangir Readymoney*.

22 Cr. L. J. 521 :
62 I. C. 409 : 22 Bom. L. R. 157.

—S. 144—Nuisance or apprehended danger, urgent cases of—Immediate prevention—Speedy remedy—Magistrate, jurisdiction of, to take action.

Before a Magistrate can take action under S. 144, he must be of opinion that immediate prevention or speedy remedy of a nuisance or apprehended danger is necessary, and when he has made up his mind that it is so, he must state the material facts in the order. *Kharoo Lal Sajawal v. Shyam Lal*.

2 Cr. L. J. 215 :
1 C. L. J. 216 : I. L. R. 32 Cal. 935 :
9 C. W. N. 864.

—Ss. 144, 237, 403, 438, 537—Nuisance—Order under S. 144—Accused challaned under S. 291, Penal Code—Case withdrawn—Withdrawal, effect of—Accused subsequently proceeded against under Ss. 188, 290, Penal Code—Proceedings, validity of.

A District Magistrate issued an order to the public under S. 144 for prevention of public nuisance in a certain locality within his jurisdiction. The order had not the desired effect, as the nuisance was repeated, with the result that the Police challaned the accused and others before the City Magistrate, for an offence under S. 291, Penal Code. The case was not proceeded with, but after three or four adjournments, the Public Prosecutor, under instructions from the District Magistrate, withdrew it under S. 494, Cr. P. C. and, armed with a fresh sanction from him, filed a fresh complaint on the same facts before another Magistrate under Ss. 188 and 290 of the Penal Code : *Held*, that

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as the withdrawal of the charge under S. 201, Penal Code, amounted to an acquittal under S. 494 (b) of the Cr. P. C., that acquittal operated as a bar under S. 403, Cr.P.C. to subsequent proceedings under Ss. 188 and 200 of the Penal Code, as in the trial under S. 201, the accused could have been convicted under S. 188 thereof, though not under S. 201. *Emperor v. Mengraj Devi Das*. 23 Cr. L. J. 305 : 66 I. C. 657.

———**S. 144—Object of order—Prevention of pecuniary loss to a party—Remedy in Civil Court.**

S. 144 cannot apply to a case where the object of the order under the section appears to have been merely to prevent pecuniary loss to the opposite party. The proper remedy for the party aggrieved lies in the Civil Court. *Prayag Singh v. Empress*, 9 C. 103 and *Isab Mandal v. Emperor*, 8 C. W. N. 373, followed. *Ram Autar Sahu v. Kishnupat Ram*.

11 Cr. L. J. 11 :
4 I. C. 577 : 13 C. W. N. 188 :
5 M. L. T. 92.

———**S. 144—Order—Revision—Interference.**

In a proceeding under S. 144, it is *prima facie* for the Magistrate, to say whether an emergency exists or not and the High Court would not interfere lightly with the discretion of the Magistrate in such matters. *Emperor v. Ganesh Vasudeo Mavlanekar*. 32 Cr. L. J. 507 : 130 I. C. 396 : 33 Bom. L. R. 59 : 55 Bom. 322 : I. R. 1931 Bom. 252 : A. I. R. 1931 Bom. 135.

———**S. 144—Order, contents of—Temporary orders—No power to renew for further period except by notification of Government.**

S. 144 applies to all temporary orders in urgent cases of nuisance or apprehended danger and, except where specially extended by a notification of Government, no such order can remain in force for more than two months. Where an order itself does not set forth the material facts of the cases as required by law and no urgency is indicated, the order is without jurisdiction. Where an order purports to renew a previous order, it is in effect an extension and hence one passed without jurisdiction. *Gorunda Chetty v. Emperor*. 14 Cr. L. J. 658 : 21 I. C. 898 : 1913 M. W. N. 1003.

———**S. 144—Order directing or forbidding removal of idols in accordance with an alleged custom—Criminal Court's power to decide question of right or custom and to proceed to base order upon it.**

A person presented a petition under S. 144 alleging that he had the right, based upon long usage and custom, of compelling another person to bring certain idols admittedly in the possession and custody of such other to his place for the celebration of a festival. The Magistrate directed the person applied against to take the idols to the desired place : *Held*, that the order was illegal as there is no law which vests in a Criminal Court the power, to decide the question of right and to proceed to base its order under S. 144 upon it. *Kamal Narain Adhikari v. Raja Jotindra Mohan Roy*.

1 Cr. L. J. 251 :
8 C. W. N. 376.

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———**S. 144—Order directing Village Munsif to be in possession, legality of.**

Under S. 144 a Magistrate has power only to direct a party to the proceedings to do or abstain from doing a certain act and not to direct a Village Munsif to take possession of the property in dispute. *Bhaganathi Serrai v. Valayce*. 17 Cr. L. J. 190 : 33 I. C. 830 : 3 L. W. 498 : 1916 2 M. W. N. 88 : A. I. R. 1917 Mad. 629.

———**S. 144—Order, duration of—Subsequent order in similar terms, validity of—Order against public in general, when can be made.**

The period during which an order under S. 144 remains in force is two months only and it cannot be extended beyond that period by the Magistrate. To draw up an order practically in the terms in which a previous order has been passed merely adding to the number of the parties affected, amounts to an attempt to evade the provisions of cl. (6) of S. 144, and cannot be regarded as a separate order which can remain in force for a further period of two months from its date. Under cl. (3) of S. 144 an order can be issued to the public generally only when frequenting or visiting a particular place. An order under this class in so far as it directs the public in general to abstain from attending a particular place is bad since it is not until the public attend that place that the order can be binding on them. They cannot be forbidden by the order to do an act when the order cannot be addressed to them until after they have done that act. *Ashutosh Roy v. Harin Chandra Chattopadhyay*.

26 Cr. L. J. 874 :
86 I. C. 810 : 29 C. W. N. 411 :
A. I. R. 1925 Cal. 625.

———**S. 144—Orders in proceedings under, value of.**

Orders in proceedings under S. 144, cannot be taken as decisive of the rights of either of the parties, but the nature of the proceeding and its conclusion may be referred to when the history of the property is in question. *Jamuna Singh v. Zulmi Singh*. 39 Cr. L. J. 721 : 176 I. C. 260 : 11 R. P. 77 : 4 B. R. 690 : A. I. R. 1938 Pat. 455.

———**S. 144—Order prohibiting holding of meeting within certain area—Validity of.**

An order under S. 144, addressed to the public, forbidding them to hold meeting within a certain area is a definite order and does not contravene the provisions of S. 144. A distinction should not be drawn between a particular place and an area. *Niharendu Dutt Majumdar v. Emperor*. 41 Cr. L. J. 105 : 184 I. C. 856 : I. L. R. 1939 2 Cal. 507 : 43 C. W. N. 1051 : 12 R. C. 318 : A. I. R. 1939 Cal. 703.

———**S. 144—Order prohibiting melkaramdar from exercising his rights—Jurisdiction.**

An order prohibiting a *melkaramdar* from exercising certain acts as *melkaramdar* is valid under S. 144. If such an order includes certain rights properly belonging to the tenants, it would not be operative to prevent the tenants from exercising acts properly belonging to them,

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unless the order is specific and definite and is addressed to them. *In re : Mayyaru Ammal.*

15 Cr. L. J. 145 :
22 I. C. 721 : 1914 M. W. N. 169 :
28 M. L. J. 132 : A. I. R. 1914 Mad. 150.

—S. 144—Order prohibiting members of one community from exercising rights secured under decree, legality of—Duty of Magistrates to protect exercise of lawful rights.

Although in cases of sudden emergency it may be necessary to restrict a person from exercising a perfectly lawful right, it should not be necessary to prevent that person not only on a particular occasion in the near future but for all time from exercising that right merely because it would be too much trouble to the Magistrate to render him adequate protection against persons who intend to disobey the law. Orders under S. 144 are certainly not intended to be used as a means of depriving the citizens of lawful rights which have been declared by competent Courts. Where the Hindus of a place who have obtained a decree declaring their rights as against the Muhammadans to take possession with music outside a mosque on certain conditions, give reasonable notice to the authorities that they propose to take their procession, it is incumbent on the authorities to take such action as will protect their rights. Those who obstruct may have, if necessary, to be bound over to keep the peace or it may be necessary to introduce armed force to compel them to do so. *Sivapuram Venkata Subbayya v. Muhammad Falaudun Khaji.*

28 Cr. L. J. 509 :
101 I. C. 893 : 52 M. L. J. 651 :
8 A. I. Cr. R. 146 : A. I. R. 1927 Mad. 601.

—S. 144—Order restraining lawful exercise of rights, legality of.

Even though a person has an absolute right to use his property as he pleases, yet if the mode of enjoyment of this property, innocent and lawful as it might be, results or tends to result in a breach of the peace, a Magistrate has power to make an order under S. 144, restraining him temporarily from so using his property. *Ram Gopal Goenka v. Narayan Das Chandra.*

29 Cr. L. J. 423 :
108 I. C. 590 : 32 C. W. N. 613 :
47 C. L. J. 452 : 10 A. I. Cr. R. 82 :
55 Cal. 1077 : A. I. R. 1928 Cal. 446.

—S. 144—Order spending itself—Interference by High Court.

It is not the usual practice of the High Court to interfere with an order which has spent its force unless there are special reasons for such interference. *Rama Barik v. Emperor.*

41 Cr. L. J. 463 :
187 I. C. 511 : 6 B. R. 480 : 12 R. P. 637 :
A. I. R. 1940 Pat. 185.

—S. 144—Order to public.

Conditions under which such order can be passed stated—Public cannot be prohibited from putting national flags on private houses.

32 Cr. L. J. 763 :
131 I. C. 649 : 1930 M. W. N. 819 :
60 M. L. J. 370 : 33 L. W. 640 :
I. R. 1931 Mad. 553 :
3 Mad. Cr. Cas. 381 : A. I. R. 1931 Mad. 242.

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—S. 144—Order to public generally.

An order under S. 144 addressed to the public generally, must be limited under Sub-s. (3) to the public when frequenting or visiting a particular place. *In re : D. V. Belvi.*

32 Cr. L. J. 1144 :
134 I. C. 344 : 33 Bom. L. R. 673 :
I. R. 1931 Bom. 456 :
A. I. R. 1931 Bom. 325.

—S. 144—Order under—Breach of—Order withdrawn, effect of.

An order, made under S. 144 cannot operate for more than two months unless Govt. otherwise directs. When such an order is withdrawn on a particular date, the position is exactly the same as if the original order had been restricted to that date, and a person can, therefore, be charged with committing an offence against the order at the time when it was in operation. *Emperor v. Rajendrasing Ram Singh.*

41 Cr. L. J. 675 :
188 I. C. 744 : 42 Bom. L. R. 356 :
13 R. Pat. 35 : A. I. R. 1940 Bom. 195.

—S. 144—Order under—District Magistrate's power to rescind it—High Court, if can interfere.

It is within the competence of the District Magistrate to rescind any order under S. 144 of a Sub-Divisional Magistrate. He ought certainly to do so if the order is wrong and he may also always do so when he finds that the order is not required for immediate prevention of a breach of the peace. Beyond all question, the High Court will never reimpose an order under S. 144 which the District Magistrate who is responsible for the peace of his District, does not wish, and in his discretion, has rescinded. *Manu Khan v. Sunder Singh.*

15 P. L. T. 216 :
151 I. C. 835 : 7 R. P. 136 :
A. I. R. 1934 Pat. 313.

—S. 144—Order under—Effect.

An order under S. 144 does not establish possession. *Udit Narayan Patwari v. Emperor.*

39 Cr. L. J. 778 :
176 I. C. 715 : 19 P. L. T. 336 :
4 B. R. 750 : 11 R. P. 100 :
A. I. R. 1938 Pat. 369.

—S. 144—Order under—Extension, improper—Extension in face of injunction of Civil Court—Illegality—'Alter,' meaning of.

An order issued under S. 144, which is virtually an extension of a similar order already issued and which is in the nature of a permanent expedient is illegal especially when an injunction order of a Civil Court is pending. It is the duty of Criminal Courts to respect the opinions of Civil Courts and, in taking steps to preserve peace, to take action only against those who are infringing the rights of others and protect those who wish to exercise their right and not to prohibit the latter's enjoyment of rights. The word 'alter' in S. 144 (4), does not justify the substitution for or addition to the party against whom the original order is directed. *Murari Naicken v. Aiyasami Naicken.*

23 Cr. L. J. 689 :
69 I. C. 369 : 16 L. W. 452 :
1922 M. W. N. 612 : A. I. R. 1923 Mad. 15.

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———**S. 144—Order under, if revisable.**

An order of a Magistrate under S. 144 is merely administrative in character and is not the order of a Court and is, therefore, not liable to be revised by the High Court under S. 435. *Vedappan Servai v. Perianan Servai*.

30 Cr. L. J. 119 :
113 I. C. 279 : 28 L. W. 506 :
1928 M. W. N. 779 : 55 M. L. J. 621 :
I. R. 1929 Mad. 94 : 52 Mad. 69 :
A. I. R. 1928 Mad. 1108.

———**S. 144.**

Order under, legality of, whether can be questioned.

See Penal Code, 1860, S. 188.

———**S. 144—Order under—Magistrate, not bound to state grounds.**

A Magistrate has jurisdiction and is fully justified in passing an emergent order under S. 144, without setting out in the order the grounds of his action, where, on the facts reported by the Police and accepted by the Magistrate, there appears to be no doubt that a most serious riot is apprehended. *Bhupendra Mohan Pal Chaudhuri v. Chairman of Madaripur Municipality*.

18 Cr. L. J. 892 :
4 I. C. 1004 : A. I. R. 1917 Cal. 6.

———**S. 144—Order under.**

Mere speculative and distant likelihood of breach of peace is not sufficient. In passing order it should be shown that it was necessary in interests of public peace. *Satyanaarayana Choudhari v. Emperor*.

32 Cr. L. J. 744 :
131 I. C. 449 (2) : 1930 M. W. N. 841 :
60 M. L. J. 378 : 33 L. W. 632 :
I. R. 1931 Mad. 513 : A. I. R. 1931 Mad. 236.

———**S. 144—Order under—Court's order, requisites of.**

The Magistrate must satisfy himself that there is sufficient ground for proceeding under S. 144, and when he is so satisfied, he must set out the material facts of the case in his order. The failure to do so is fatal. *Thakin Aung Bala v. District Magistrate, Rangoon*.

40 Cr. L. J. 645 :
182 I. C. 23 : 1939 Rang. 294 :
11 R. Rang. 516 : A. I. R. 1929 Rang. 181.

———**S. 144—Order under—Revision—Interference.**

The High Court would rarely interfere in revision with an order under S. 144, when other remedies are open to the aggrieved party especially because the High Court is loath to reject the opinion of the Magistrate responsible for the peace of his locality that there is an emergency which justified his *ex-parte* order. *S. S. Venkataramana Aiyar v. Emperor*.

19 Cr. L. J. 56 :
43 I. C. 88 : 6 L. W. 456 : 22 M. L. T. 323 :
1917 M. W. N. 724 : A. I. R. 1919 Mad. 1004.

———**S. 144—Scope of—Order under S. 144 against public generally—Requirements of.**

The scope of an order passed under S. 144 against the public generally is narrower than that passed against an individual and served

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personally on him. Although the word "public" has not been used with the expression "particular place" in S. 144 (3) still the law intends not only that the particular place should be specified but also that it should be a place which is frequented or visited by the public. An order passed under S. 144 was addressed to the general public and was to the effect that nobody shall sacrifice a cow within a radius of a mile from certain villages : *Held*, that the order proclaimed was not in accordance with law. *Babu v. Emperor*.

41 Cr. L. J. 228 :
185 I. C. 745 : 1940 O. L. R. 43 :
1940 O. W. N. 118 : 15 Luck. 344 :
12 R. O. 278 : A. I. R. 1940 Oudh 241.

———**S. 144—Order under S. 144, directing person to do certain act—Legality of—Disobedience of such order—Whether offence under S. 188, Penal Code.**

The words "to abstain from a certain act" in S. 144 do not empower Magistrate to make a positive order requiring a person to do a particular thing. This order being without jurisdiction, the subsequent order summoning the person under S. 188, Penal Code, for disobeying the order under S. 144, is without jurisdiction. *Lokendra Lall Pal Chaudhury v. Emperor*.

37 Cr. L. J. 936 :
164 I. C. 434 (2) : 61 C. L. J. 579 :
39 C. W. N. 1053 : 9 R. C. 207.

———**S. 144—Order under—Superior Magistrate, if can rescind or alter order.**

S. 144 contains no provision which suggests that a superior Magistrate is prohibited from rescinding or altering an order merely because a subordinate Magistrate has done so or refused to do so. *In re : R. S. Srikantha Iyer*.

38 Cr. L. J. 582 :
168 I. C. 720 : 1937 M. W. N. 56 :
45 L. W. 249 : 9 R. M. 625 :
A. I. R. 1937 Mad. 311.

———**S. 144—Order under.**

To include amongst the class of persons prohibited "any other persons who are or may be concerned in the project", is too vague. *Emperor v. Ganesh Vasudeo Mavlanekar*.

32 Cr. L. J. 507 :
33 Bom. L. R. 59 : 55 Bom. 322 :
I. R. 1931 Bom. 252 :
130 I. C. 396 : A. I. R. 1931 Bom. 135.

———**S. 144—Order under, whether evidence of possession.**

Having regard to the peculiar jurisdiction conferred by S. 144, an order under that section, cannot be utilised in subsequent proceedings between the parties as substantive evidence of the possession of the successful party. *Gita Prasad Singh v. Emperor*.

25 Cr. L. J. 919 :
81 I. C. 535 : 1924 I Pat. 29 :
5 P. L. T. 656 : 3 Pat. L. R. 27 Cr :
A. I. R. 1925 Pat. 17.

———**Ss. 144, 107—Order prohibiting looting of hat within a certain area—Proper procedure.**

An order under S. 144, enjoining not to establish a rival market within a quarter of a mile of a certain market place is not a proper order under S. 144, Cr. P. C., as it does not mention any limits of time. The object of S. 144 is not

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that orders should be made proscribing the holding of *hats* indefinitely within a certain area for two months. The proper way of preventing a breach of the peace is to proceed under S. 107. *Bidhu Ranjan Mazumdar v. Ramesh Chandra Rai*. 5 Cr. L. J. 43 : 11 C. W. N. 223.

—Ss. 144, 145—Order under S. 144—Rescission or alteration—Proceeding under S. 145—Likelihood of breach of peace.

Although under S. 144 (4) it is open to any Magistrate to rescind or alter any order made under the section by himself or any Magistrate subordinate to him or by his predecessor-in-office that section does not cover a reversal of an order on grounds, which interfere with the discretionary power of the officer by whom such order was originally made; it comprises only the rescission or alteration of the order when the reason for its having been made no longer exists or has varied in such a manner as to make an alteration necessary as a corollary. Even though on proper grounds a Magistrate rescinds or alters an order made by another Magistrate under S. 144, it is not open to such Magistrate at all to direct that other Magistrate to initiate proceedings under S. 145. In order that proceedings should be legal under S. 145, the information upon which a Magistrate purports to act must be information, which is of a character which properly satisfies him that at the date when he draws up those proceedings there was an actual likelihood of a breach of the peace. *Chhedi Lal v. Mahabir Prasad*.

23 Cr. L. J. 27 :
64 I. C. 507 : 2 P. L. T. 650.

—Ss. 144, 145—Order under—Power of District Magistrate to set aside order and direct Magistrate to start proceedings under S. 145—Revision by High Court—Interference.

The proper course to be followed by a District Magistrate when he is of opinion that proceedings under S. 144 have been wrongly drawn up by a Subordinate Magistrate and that the right course would be to take action under S. 145, is to make a reference to the High Court under S. 438 of the Code. He has no power to order the subordinate Magistrate to draw up proceedings under S. 145. But proceedings drawn up by a Subordinate Magistrate under S. 145, will not be set aside in revision merely because they were drawn up under the instructions of the District Magistrate, if the proceedings are based upon a Police Report and show that the Subordinate Magistrate was satisfied from the report that there was likelihood of a breach of the peace. *Kedar Nath Sikdar v. Bijoy Mandal*.

31 Cr. L. J. 544 :
123 I. C. 647 : 23 C. W. N. 723 :
A. I. R. 1929 Cal. 751.

—Ss. 144, 145, 107, 436, 437—Order striking off proceedings under Ss. 144, 145 or 107—District Magistrate, whether can interfere—Revision.

Where a Magistrate refuses to take action under S. 144 or S. 145, holding the application to be frivolous and vexatious, the District Magistrate cannot revise it and direct Magis-

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trate to take action. *Rash Behari Singh v. Emperor*.

18 Cr. L. J. 488 :
39 I. C. 328 : 1 P. L. W. 258 :
A. I. R. 1916 Pat. 132.

—Ss. 144, 195 (1) (a), (6), (7)—Order under S. 144 whether by public servant or Court—Sanction by Magistrate for prosecution for disobedience of order—Revocation by Sessions Judge, legality of.

A Magistrate passing an order under S. 144, does so only as a 'public servant' and not as a 'Court' and S. 195 (1) is, therefore, inapplicable to a case where the Magistrate making the order sanctions the prosecution of persons disobeying it. An order sanctioning prosecution can be revoked by the District Magistrate and not by the Sessions Judge. *Nataraja Pillai v. Rangasami Pillai*.

24 Cr. L. J. 424 :
72 I. C. 530 : 44 M. L. J. 328 :
1923 M. W. N. 240 : 17 L. W. 409 :
32 M. L. T. 214 : 47 Mad. 56 ;
A. I. R. 1923 Mad. 473.

—Ss. 144, 435, as amended by Act XVIII of 1923—Order under S. 144, whether judicial—Revision to High Court under S. 435, whether lies—Omission of cl. (3) in S. 435, effect of—Revision after expiry of two months from date of order, whether permissible.

Orders under S. 144, which are in force only for 2 months, cannot be revised by the High Court after the lapse of the two months. Every act done by Magistrate in pursuance of the powers given to him by S. 36 and Sch. III, Cr. P. C., is done by him as a Court and urgent orders under S. 144, Cr. P. C., passed by a Magistrate are in their nature "judicial proceedings." The effect of the omission in the amending Act of 1923, of cl. 3 of S. 435 of the Code of 1898, is that the ban upon the High Court's powers of revision of orders under S. 145 under the earlier Act, has been removed and the High Court has no power to revise such orders under S. 435, Cr. P. C. itself. *Muthuswami Servaigaram v. Thangammal Ayyar*.

31 Cr. L. J. 324 :
123 I. C. 833 : 41 L. W. 16 :
58 M. L. J. 148 : 53 Mad. 320 :
1930 M. W. N. 82 : A. I. R. 1930 Mad. 242.

—Ss. 144, 435—Order under S. 144—Revision.

An order S. 144 is not liable to be revised by the High Court under S. 435 of the Code. *Suthadi Alaga Thevar v. G. A. Baker*.

30 Cr. L. J. 629 :
116 I. C. 137 : I. R. 1929 Mad. 521 :
1929 M. W. N. 694 : 55 M. L. J. 621.

—Ss. 144, 435, 439—Penal Code—Order under S. 144—Extension of period by Local Government, limits on.

The Local Government when extending the period during which an order under S. 144 is to remain in force, is not concerned with the reasons given by the Magistrate for the order, but with the actual order passed by him and if the local Government considers that there is danger to human life, health or safety or a likelihood of a riot or an affray in allowing the act which has been prohibited by the Magistrate, it is perfectly competent

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under cl. (5) of S. 144 to extend the period of the order, It is competent to the Local Government to extend the order so long as the danger which it apprehends continues to exist. The Local Government need not state reasons for such extension. *Bhure Mat v. Emperor*.

24 Cr. L. J. 689 :
73 I. C. 801 : 45 All. 520 :
A. I. R. 1923 All. 606.

———Ss. 144, 439—Order under—Revision—Interference.

In a proceeding to set aside an order of a Magistrate under S. 144, the High Court would not be justified in considering whether the opinion expressed by the Magistrate on the civil rights of the parties is right or wrong : what it has to consider is, whether the Magistrate's order was made with jurisdiction or not. *Chandra Nath Mukerjee v. Emperor*.

19 Cr. L. J. 951 :
47 I. C. 803 : 28 C. L. J. 483 :
23 C. W. N. 145 : A. I. R. 1919 Cal. 584.

———Ss. 144, 439—Order under S. 144—Revision after expiry of operation of order—Interference—Practice.

It is the practice of the Patna High Court not to interfere with an order under S. 144, the operation of which has expired. The High Court will not ordinarily interfere in such a case even though a complaint has been made against the petitioner and the petitioner is consequently concerned in the validity of the order. *Karan Singh v. Ram Kishun Lal*.

29 Cr. L. J. 465 :
109 I. C. 113 : 10 A. I. Cr. R. 200 :
A. I. R. 1928 Pat. 280.

———S. 144 (3)—Order directed to public at large—Operation not confined to particular place—Jurisdiction.

An order of a District Magistrate, purporting to have been passed under S. 144 is made without jurisdiction if its operation is not confined to a particular individual or to the public generally when frequenting or visiting a particular place. *Bhagubai Dwarkadas v. Emperor*.

16 Cr. L. J. 98 :
27 I. C. 146 : 16 Bom. L. R. 684 :
A. I. R. 1914 Bom. 198.

———S. 144 (3)—Order under cl. (3), when can be issued to general public.

It is clear from the terms of sub-cl. (3) of S. 144, that no order under S. 144 can be issued to the public generally except when "frequenting or visiting a place". *Sat Narain v. Emperor*.

41 Cr. L. J. 121 :
185 I. C. 172 : 1939 A. L. J. 1011 :
1939 A. W. R. 711 : 12 R. A. 307 :
I. L. R. 1939 All. 934 : A. I. R. 1939 All. 746.

———S. 144, cl. (4)—Order of Sub-Divisional Magistrate—District Magistrate's power to substitute another order.

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therefore, rescind the order passed by the learned Sub-Divisional Magistrate": *Hell*, that this did not amount to an attempt on the part of the District Magistrate to substitute an order of his own for that of the Sub-Divisional Magistrate but to merely rescinding the order of the Sub-Divisional Officer under S. 144 (4) which he had power to do. *Ramkishun v. Qamr-ud-Din*.

29 Cr. L. J. 478.
109 I. C. 126 : 10 A. I. Cr. R. 166.

———S. 144 (4)—Order passed by acting District Magistrate—Petition for rescission, by whom to be disposed of.

An order passed under S. 144 by a Joint Magistrate, while acting as a District Magistrate, can be rescinded or altered after his reversion by the then District Magistrate himself and the latter cannot transfer on application for rescission or alteration to the former. *Sundarsnam Aiyangar v. Elayavalli Srinivasachari*.

16 Cr. L. J. 74 :
26 I. C. 666 : A. I. R. 1916 Mad. 533.

———S. 144.

Persons convening a meeting to discuss religious matters are not doing anything unlawful. If owing to prevalence of ill-feeling between certain persons likely to attend meeting a breach of the peace is expected, the Magistrate should proceed under S. 144 and not under S. 107. *U Ba Nga Li v. Maung Kya Yan*.

18 Cr. L. J. 512 :
39 I. C. 480 : 2 U. B. R. 1916 157.

———S. 144—Powers conferred on Magistrates under S. 144, scope of—Duty of Magistrate.

S. 144 deals with urgent cases of nuisance and apprehended danger of the breach of the public peace. Where there is danger of the breach of the public peace apprehended, and in consequence thereof, an immediate prevention is necessary, Magistrate specially empowered in that behalf may issue instructions to individuals or the public in general to abstain from a certain act. The power thus conferred on the Magistrates is an extraordinary power. It enables them to suspend the lawful rights of the public if they think such a suspension will be in the interests of public peace and safety. The Magistrates, however, should bear in mind that every citizen has a right to ventilate his grievances either in public or in private and ask for redress. This right should not be curtailed so long as it is exercised in a lawful manner. It is an illegal assumption of power to issue an order under S. 144 on a pretended apprehension of the danger of the breach of the public peace. *Thakin Aung Bala v. District Magistrate, Rangoon*.

40 Cr. L. J. 645 :
182 I. C. 23 : 11 R. Rang. 516 :
1939 Rang. 294 : A. I. R. 1939 Rang. 181.

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under S. 188, Penal Code. *Prem Chand Singh Roy v. Dharamdas Singh Roy* 2 Cr. L. J. 166 : 9 C. W. N. 392.

———**S. 144—Procedure.**

An order passed under S. 144 without serving notice on the opposite party to show cause is liable to be set aside. *Gouri Dutt v. Govind Singh*. 20 Cr. L. J. 829 : 53 I. C. 829 : 1 P. L. T. 44 : A. I. R. 1920 Pat. 496.

———**S. 144—Procedure.**

Disobedience of order under S. 144—Conviction should be based on actual facts and Magistrate should not argue from the general to the particular. *Chunilall Motilall v. Emperor*. 33 Cr. L. J. 829 : 139 I. C. 739 : 36 C. W. N. 792 : I. R. 1932 Cal. 648 : A. I. R. 1932 Cal. 868.

———**S. 144—Procedure.**

Order under S. 144 should be in clear terms. *Sorab Shavaksha v. Emperor*.

36 Cr. L. J. 547 : 154 I. C. 637 : 36 Bom. L. R. 1129 : 7 R. B. 359 : A. I. R. 1935 Bom. 33.

———**S. 144—Procedure.**

Where an order purporting to be made under S. 144 directed the petitioner "not to commit any act that may likely induce a breach of the peace and not to take forcible possession of the village which is not in their possession : *Held*, that the order was indefinite and not in accordance with the terms of the section. *Bibee Kulsum v. Umatul Mehdi*.

4 Cr. L. J. 456 : 11 C. W. N. 121.

———**Ss. 144, 147, procedure under—Inquiry.**

Petitioners complained to a Magistrate that the opposite party was about to close a road over which the petitioners had a right of easement and that there was immediate danger of a breach of peace. Their application purported to be under Ss. 144 and 147. The Magistrate instead of calling for written statements of the parties and hearing evidence or holding any inquiry went over to the office of the opposite party and after obtaining some information passed an order declaring that the road belonged to the opposite party and they could deal with it in any manner they pleased : *Held*, that the procedure adopted by the Magistrate was wholly unwarranted by law and his order was subsequently illegal and must be set aside. *Narendra Nath v. East Indian Railway Company*.

25 Cr. L. J. 455 : 77 I. C. 807 : 5 P. L. T. 419 : 2 Pat. L. R. 209 Cr. : A. I. R. 1924 Pat. 717.

———**S. 144, cl. (3)—Procedure.**

Notice in wider terms than the order and following the terms of cl. (3), procedure, held unwarranted.

35 Cr. L. J. 881 : 148 I. C. 773 : 38 C. W. N. 556 : 6 R. C. 480 : A. I. R. 1934 Cal. 393.

———**S. 144—Proceeding under—Breach of the peace, apprehended—Power of a Criminal Court to take property in dispute into custody.**

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In proceedings under S. 144 an order that certain articles concerning which the parties were in dispute be removed into the custody of the Court and should remain there for two months or until the decision of a civil suit regarding the same which was then pending before the High Court is bad in law. *Leong Mow v. Tchuin Chun*. 8 Cr. L. J. 230 : 12 C. W. N. 1044.

———**S. 144—Proceedings under, nature of—Duties of Magistrate—Disturbance of public tranquillity apprehended by certain act—Magistrate can direct person to abstain from that act even if it is otherwise lawful.**

S. 144 does not require the Magistrate to uphold rights whether constitutional or otherwise or to hold a judicial inquiry into the rights of the parties involved. Once a Magistrate is of opinion that there is sufficient ground for proceeding under S. 144, or that there is 'apprehended danger' which can only be averted by directing a person to abstain from a certain act which may result in danger to human life or a disturbance of the public tranquillity or a riot or an affray, he is entitled to make an order directing that person or those persons to abstain from such act even though such act is otherwise lawful. *Gul Hassan Sahib v. Emperor*.

40 Cr. L. J. 832 : 183 I. C. 641 : 12 R. S. 67 : 1939 Kar. 751 : A. I. R. 1939 Sind 230.

———**S. 144—Proceedings under.**

Person against whom proceedings under S. 144 are instituted is entitled to copy of information received by Magistrate to show in revision that it was unfounded or insufficient.

32 Cr. L. J. 763 : 131 I. C. 649 : 1930 M. W. N. 819 : 60 M. L. J. 370 : 33 L. W. 640 : 3 Mad. Cr. Cas. 381 : I. R. 1931 Mad. 553 : A. I. R. 1931 Mad. 242.

———**S. 144—Proceedings under—Receiver, appointment of.**

A Magistrate has no power to appoint a Receiver in proceedings under S. 144, Cr. P. C. *Palani Chetty v. Rathina Chetty*.

15 Cr. L. J. 509 : 24 I. C. 597 : 26 M. L. J. 208 : 1914 M. W. N. 352 : A. I. R. 1915 Mad. 10.

———**S. 144—Proceeding under—Record, contents.**

In taking action under S. 144, the record of the Magistrate should show the authority under which he professes to act. *Shudamara-wara v. Emperor*.

24 Cr. L. J. 737 : 74 I. C. 65 : 1 Rang. 49 : 2 Bur. L. J. 22 : A. I. R. 1923 Rang. 146.

———**Ss. 144, 145—Proceedings, nature of—Disposal on local inspection and ex parte examination of witnesses, legality of—Bona fide dispute as to possession—Procedure.**

A proceeding under S. 144 is a judicial proceeding and a Magistrate cannot dispose of such proceeding by holding a local inspection and examining witnesses behind the back of the parties. Though a Magistrate may be

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justified in directing an immediate order under S. 144, when he apprehends a likelihood of a breach of the peace, he cannot uphold the possession of a party under the cloak of an order under S. 144, after receiving a report from the Police that there is a *bona fide* dispute as to possession. He is bound to start proceedings under S. 145, when he receives such a report. *Gobind Ram Marwari v. Basantilal Marwari*. 30 Cr. L. J. 302 :

114 I. C. 466 : 7 Pat. 269 : I. R. 1929 Pat. 46 :
11 P. L. T. 134 : A. I. R. 1929 Pat. 46.

—Ss. 144, 145—*Proceedings under S. 144, basis of—Jurisdiction—Revision—Interference.*

Where there is a dispute as to the possession of property between the parties, S. 145 is the proper section which would, in a proper enquiry, determine once for all the rights of possession of the party to the property in dispute : but in cases where the possession of the property is with any of the parties, it would be equally hard to institute a protracted enquiry under S. 145 against him. If the Magistrate is satisfied that one of the parties is in possession and that an imminent danger of a breach of the peace is impending; it is incumbent upon the Magistrate to maintain the party in possession and forbid the party who is not in possession by an order under S. 144. The question is one for the Magistrate to decide which party was in possession at that stage. If there is no material before the Magistrate, then the High Court can interfere upon the ground that there was no material before the Magistrate to decide possession in favour of one of the parties, and to take action against the other party under S. 144; but if there is material before the Magistrate, he is the only Judge as to whether the material is sufficient or not, and if upon the materials placed before him, he is satisfied that one of the parties is in possession, the order under S. 144 against the party interfering with his possession is not without jurisdiction at all. *Bansi Singh v. Emperor*.

19 Cr. L. J. 113 :
43 I. C. 401 : 3 P. L. W. 353 :
A. I. R. 1918 Pat. 228.

—Ss. 144, 145—*Proceedings under S. 144—District Magistrate, jurisdiction of, to direct substitution of proceedings under S. 145—Procedure.*

A District Magistrate setting aside an order by a Subordinate Magistrate under S. 144, has jurisdiction to direct him to substitute therefor a proceeding under S. 145. As the Superior Court, the District Magistrate can only recommend to the Magistrate concerned to draw up a proceeding under S. 145, if he is satisfied that the dispute is likely to cause a breach of the peace, and it is open to the Magistrate to look into the circumstances and to find out whether a proceeding under S. 145 should be instituted. *Tiloki Rai v. Emperor*. 23 Cr. L. J. 498 :
68 I. C. 34 : 2 P. L. T. 392.

—Ss. 144, 145—*Proceedings under S. 144 should not be substituted for proceedings under S. 145.*

If there is a dispute regarding possession of land likely to cause a breach of the peace, and

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requiring a definite decision regarding the possession of land, the normal procedure for the Magistrate to follow is that laid down in S. 145, unless the claim of one party is on the face of it a mere pretence so that it can be said that there is no real dispute. Though a Magistrate's powers under S. 144 are very wide, the Court must deprecate the habitual and unjustifiable use of S. 144 as a substitute for Ss. 107 and 145. *Damon Gope v. Hdnarain Singh*. 41 Cr. L. J. 907 :

190 I. C. 425 : 7 B. R. 54 : 13 R. P. 226 :
A. I. R. 1940 Pat. 382.

—Ss. 144, 145—*Proceedings under S. 144, when to be taken.*

A Court should not proceed under S. 144 where it will be better to draw up proceedings under S. 145. *Latifan v. Mohammad Ibrahim*.

28 Cr. L. J. 139 :
106 I. C. 223.

—Ss. 144—*Procession, right of—Obstruction—Order.*

The Magistrate should not take action under S. 144, merely because some Muhammadans who have no manner of interest or right object to the *Ram Lila* procession being taken out by some section of the Hindus even if the Hindus celebrate the festival only for the first time. *Jafar Husain v. Pearey Lal*. 36 Cr. L. J. 955 :
156 I. C. 595 : 1935 A. W. R. 674 :
1935 A. L. J. 821 : A. I. R. 1935 All. 575.

—S. 144—*Procession, stopping of.*

Where a Magistrate apprehends that with the force at his disposal, he cannot prevent a breach of the peace, he has jurisdiction to pass a temporary order under S. 144, stopping a procession. The fact that a procession is a luxury, is not a sufficient ground for passing an order under S. 144. *Arumuga Mudali v. S. E. Koo Perumal Swamy Chetty*. 15 Cr. L. J. 30 :
22 I. C. 174 : A. I. R. 1914 Mad. 138.

—S. 144—*Public peace, preservation of—Public and private rights, conflict between—Duty of Government.*

The first duty of Government is the preservation of life and property, and to secure this end, power is conferred by S. 144, on its officers to interfere, if necessary, with even the ordinary rights of members of the community. Even where one of the parties has obtained from a competent Civil Court a declaration of his rights, the authorities responsible for the preservation of the public peace are not bound to enforce the decree in all circumstances and at all costs, for where there is a conflict between public interest and a private right, the former must prevail. *In re : Viscanadha Rao*.

30 Cr. L. J. 31 :
112 I. C. 863 : 1928 M. W. N. 615 :
55 M. L. J. 442 : 28 L. W. 406 : 51 Mad. 1006 :
I. R. 1929 Mad. 71 : A. I. R. 1928 Mad. 1049.

—S. 144—*Repeated orders under S. 144, to avoid decision of dispute which may be dealt with under S. 145 or S. 107, if can be passed.*

A party against whom an order is passed in proceeding under S. 145 has to go to the Civil Court and cannot, unless he does so, be heard

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to repeat his claim in the Criminal Court. The position when an order is passed under S. 144 is quite different; such an order decides nothing about the respective rights of the parties and may be no more than an interference with private rights required in a temporary emergency. To repeat such an order on the ground of maintaining the *status quo* is to compel the unsuccessful party to resort to the Civil Court even though the Criminal Court may have done nothing to look into the rights of the parties, and further, indirectly to prolong the effect of the original order beyond the period of two months fixed in Sub-s. (6) of the section. Such a use of the section is altogether unwarrantable. It is not open to a Magistrate by passing repeated orders under S. 144, to avoid the decision of a dispute which may be appropriately dealt with under S. 145 or S. 107, and the power given by S. 144 is essentially an emergent power which has sometime to be passed in disregard of private rights. An order of that kind cannot possibly be allowed by repetition to spell a more or less permanent interference with private rights. *F. E. Chrestien v. Carter*. 40 Cr. L. J. 895 :

184 I. C. 240 : 20 P. L. T. 374 : 12 R. P. 232 :
6 B. R. 30 : A. I. R. 1939 Pat. 512.

———S. 144—*Restriction under S. 145, limits of—Delegation of power in this respect by Magistrate to another officer.*

In a country which enjoys liberty of the press, a person is entitled in his newspaper to publish any news, and make any comments, which he chooses, provided that he does not infringe any provision of law. A Magistrate acting under S. 144 may no doubt restrict that liberty. But he should only do so if the facts clearly make such restriction necessary in the public interest, and he should not impose any restriction which goes beyond the requirement of the case. Magistrate forbidding under S. 144 a newspaper from publishing certain news, must say in precise and definite language what it is that he is directing the person to abstain from doing by the order made under S. 144, and to say that he is to refrain from doing something which a third party does not approve is not an order which complies with the section. It is for the Magistrate himself, and not for the Public Relations Officer to say what is the character of the publication which is forbidden. The delegation of his discretion to another officer is illegal. *In re : Ardeshir Phirozshah Murzban*. 41 Cr. L. J. 319 :

186 I. C. 1477 : 41 Bom. L. R. 1253 :
12 R. B. 352 : A. I. R. 1940 Bom. 42.

———S. 144—*Revision.*

Belated application—Order ceasing to be in force—High Court should not interfere—Remedy of aggrieved party is a declaratory suit. *Abdul Samad v. Emperor*.

35 Cr. L. J. 472 :
147 I. C. 672 : 11 O. W. N. 74 : 6 R. O. 299 (1) :
A. I. R. 1934 Oudh 87 (1).

———S. 144—*Revision.*

Ex parte order under S. 144 (2)—Proper procedure is to apply under S. 144 (2) but when Magistrate postpones hearing, and matter has

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to be disposed of expeditiously, High Court may be approached direct. *Surendra Nath Kabashi v. Gostha Behari Kabashi*.

35 Cr. L. J. 541.
147 I. C. 1090 : 37 C. W. N. 962 : 6 R. C. 398 :
A. I. R. 1934 Cal. 139.

———S. 144—*Revision.*

High Court will never reimpose an order under S. 144 which the District Magistrate who is responsible for the peace of his District, does not wish, and in his discretion, has rescinded. —
Manu Khan v. Sunder Singh.

151 I. C. 835 : 15 P. L. T. 216 : 7 R. P. 136 :
A. I. R. 1934 Pat. 313.

———S. 144—*Revision—Interference—Preliminary notice, necessity of—Order without hearing opposite party.*

A final order under S. 144 passed without issuing any preliminary notice to the persons proceeded against and without hearing them is illegal, and is liable to be set aside in revision even though it has lapsed. *Dhanraj Bhagat v. Bhagat Narain Singh*. 26 Cr. L. J. 260 :

84 I. C. 324 : 2 Pat. L. R. 198 Cr. :
6 P. L. T. 253 : A. I. R. 1924 Pat. 703.

———S. 144—*Revision.*

Jurisdiction conferred by S. 144 (4) is a special Jurisdiction and cannot bar a revision to High Court. *Pitchai v. Muhammad Atham*.

33 Cr. L. J. 826 :
139 I. C. 773 : 1932 M. W. N. 726 :
36 L. W. 461 : 63 M. L. J. 594 : 56 Mad. 149 :
I. R. 1932 Mad. 793 : A. I. R. 1932 Mad. 720.

———S. 144—*Revision—Power of.*

The amendment introduced by the Act of 1932 has made the order of the Magistrate open to revision as to consider not merely the legality of such orders but their propriety as well. *Francis Duke Cobridge Sumner v. Jogendra Kumar*.

34 Cr. L. J. 334 :
142 I. C. 319 : I. R. 1933 Cal. 262 :
A. I. R. 1933 Cal. 348.

———S. 144—*Revision.*

Proceedings under S. 144 are subject to revision by High Court. 32 Cr. L. J. 763 :

131 I. C. 649 : 1930 M. W. N. 819 :
60 M. L. J. 370 : 33 L. W. 640 :
3 Mad. Cr. Cas. 381 : I. R. 1931 Mad. 553 :
A. I. R. 1931 Mad. 242.

———S. 144—*Revision after expiry of order—Remand for allowing party to show cause, legality of.*

If an order under S. 144 was made without jurisdiction, the High Court might be justified in setting it aside even after the expiry of the order; but if the Magistrate had jurisdiction to pass such an order, the case cannot be sent back for fresh disposal after the expiry of the order to permit the petitioners to show cause against the order. *Dabiruddin Mohammad v. Emperor*. 31 Cr. L. J. 804 :

125 I. C. 213 : A. I. R. 1930 Cal. 131.

———S. 144—*Revision.*

The High Court has power to consider under S. 435, whether a Magistrate has jurisdiction to

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pass an order under S. 144. *Thakin Ba Thoung v. Emperor*. 35 Cr. L. J. 1300 :

151 I. C. 211 : 12 Rang. 283 : 7 R. Rang. 58 :
A. I. R. 1935 Rang. 124.

—S. 144—Revision.

Where elements essential to action under S. 144 are shown to exist, the High Court in revision will respect opinion of the local authorities. When they do not exist, the High Court will not uphold blindly opinion of the local Magistrate because he has chosen to say that they do exist.

32 Cr. L. J. 763 :
131 I. C. 649 : 1930 M. W. N. 819 :
60 M. L. J. 370 : 33 L. W. 640 :
3 Mad. Cr. Cas. 381 : I. R. 1931 Mad. 553 :
A. I. R. 1931 Mad. 242.

—S. 144—Revision.

Where the order under S. 144 has spent its force by lapse of time, it is not the usual practice of the High Court to interfere with the order. *Hansraj Pritam Singh v. Abdul Gaffur*.

157 I. C. 760 : 1 B. R. 812 :
1 P. R. 161 (2) : 16 P. L. T. 624 :
36 P. L. J. 1268 : A. I. R. 1935 Pat. 461.

—Ss. 144, 147, 439—Revision—High Court, power of, to direct Subordinate Magistrate to take additional evidence—Order prohibiting use of public street, interference with—Sentimental caste objections, if to be considered.

Per *Sadasiva Aiyar and Philips, J.J.*—A High Court under S. 439, Cr. P. C. or under S. 15, Charter Act, has power to direct a Subordinate Magistrate to take additional evidence, but it must, on that evidence, come to an independent finding itself and not accept the one arrived at by the Magistrate. It is undesirable that orders passed under S. 147, Cr. P. C. should be interfered with in revision under S. 439, Cr. P. C. or S. 15, Charter Act, unless they are made without jurisdiction or are obviously unreasonable and unjust. Per *Sadasiva Aiyar, J.*—A Magistrate has jurisdiction under S. 147, Cr. P. C. to pass orders even against the right of passage through a public street. But he ought not to pass such a prohibitory order unless it is clearly proved that there is a right by custom or by grant or by Statute in one section of the public to prevent another section of the public from using the public street on particular occasions or for particular purposes, when such use is ordinarily and *prima facie* lawful. Sentimental caste objections to use of a public street should not be countenanced by Magistrates acting under S. 147, though they can, in emergent cases, pass temporary orders under S. 144 when the preservation of the peace is required. Even in such cases, the temporary nature of the order cannot be attempted to be changed by continued renewals. *Sudalaimathu Chettiar v. Enan Samban*. 16 Cr. L. J. 767 :
31 I. C. 367 : A. I. R. 1916 Mad. 775.

—Ss. 144, 435—Revision—Powers of High Court—Construction of order—Presumption—Duration of order—Order, whether might be addressed to public generally.

An order under S. 144 does not fall within the scope of S. 435 and can only be revised by High Court under S. 107, Government of

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India Act. But it is only in very rare cases that the High Court will interfere under that section. It would interfere only if very great miscarriage of justice would otherwise result. Where, an order under S. 144 specifies no time during which it is to be in force, the reasonable presumption is that the order would operate for two months and not for an indefinite time. Under S. 144 (3) an order may be directed to the public generally when frequenting or visiting a particular place, but it cannot be directed to the public indefinitely. An order addressed to "all and sundry" frequenting or visiting a particular temple merely means "all and sundry persons who frequent or visit that temple during the course of the two months next following the order." *Ponnappa Aiyangar v. Sri Vanamamalai*.

20 Cr. L. J. 755 :
53 I. C. 483 : 10 L. W. 480 :
1919 M. W. N. 872 : A. I. R. 1920 Mad. 847.

—Ss. 144 (4), (5), 436, 439—Revision after expiry of two months—Order prohibiting doing of certain act till decision by Civil Court—Injunction—Jurisdiction—"Alter," meaning of.

A High Court will not decline to revise an order, passed under S. 144, Cr. P. C., after the expiry of two months from the date of the order. It will examine the order to see whether it was passed with or without jurisdiction, and, if in its opinion it is a wrong order, it will express its views about it. An order under S. 144, Cr. P. C., which is indefinite as to time and which prohibits a party from doing a certain act until the question in dispute is settled by a Civil Court, is in effect a perpetual injunction, and is, therefore, without jurisdiction. The word "alter" in S. 144 (4) does not mean substituting the name of one party for that of the other. *Muthukumaraswami Nadar v. Muhammad Rozeher*. 23 Cr. L. J. 404 :
67 I. C. 500 : 30 M. L. T. 148 : 15 L. W. 423 :
42 M. L. J. 352 : 1922 M. W. N. 177 :
A. I. R. 1922 Mad. 76.

—S. 144—Second order under—Magistrate, jurisdiction of—Sub-Magistrate, powers of—High Court, power of, to interfere—Charter Act (21 & 25 Vict., c. 101), S. 15.

A Sub-Magistrate while he ought to give due and very great respect to the advice of his District Magistrate, ought to use his own judicial mind and come to his own conclusion whether a temporary and emergent order under S. 144 ought to be passed. The general "instructions" of a District Magistrate are not legally binding on the Sub-Magistrate in particular cases. Where a second order under S. 144 does not state that there has been again a temporary emergency and a continuing or existing insufficiency of the police force to protect the petitioners in the exercise of their right, it is illegal and liable to be set aside in revision. *Gorinda Chetti v. Perumal Chetti*.

16 Cr. L. J. 629 (b) :
30 I. C. 453 : 38 Mad. 489 :
A. I. R. 1916 Mad. 660.

—S. 144—Scope.

Action under S. 144 (2) can be taken only

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where immediate prevention or speedy remedy is desirable. *Surendra Nath Kahashi v. Gostha Behari Kahashi*. 35 Cr. L. J. 541 :

147 I. C. 1090 : 37 C. W. N. 962 :
6 R. C. 398 : A. I. R. 1934 Cal. 139.

———S. 144—Scope and object.

The section enables a Magistrate to make temporary orders, irrespective of the rights of the parties concerned. *Francis Duke Cobridge Sumner v. Jogendra Kumar*.

34 Cr. L. J. 334 :
142 I. C. 319 : I. R. 1933 Cal. 262 :
A. I. R. 1933 Cal. 348.

———S. 144—Scope.

S. 144 should not be used as a permanent expedient. *Rashbehari Singh v. Jagannarain Rai*.

19 Cr. L. J. 365 :
44 I. C. 589 : 3 P. L. J. 139 :
A. I. R. 1917 Pat. 154.

———S. 144—Scope.

Successive orders under S. 144 condemned. *Gouri Dutt v. Gobind Singh*. 20 Cr. L. J. 329 :

53 I. C. 829 : 1 P. L. T. 44 :
A. I. R. 1920 Pat. 496.

———S. 144—Scope and object.

Competition in trade, unless illegal methods are adopted, is not a wrongful act.

35 Cr. L. J. 1057 :
150 I. C. 118 : 14 P. L. T. 740 :
6 R. P. 712 : A. I. R. 1934 Pat. 104.

———S. 144—Scope and object.

Operation of orders under, should be kept within the narrowest possible limits—Locality to which the orders are applied should be clearly defined—'Particular place' meaning of, explained. *Qamr-ud-Din v. Emperor*.

36 Cr. L. J. 951 :
156 I. C. 526 : 37 P. L. R. 515 :
7 R. L. 913 : A. I. R. 1935 Lah. 679.

———S. 144—Scope and object—Private rights protection of.

The authority should ordinarily be exercised in defence of rights rather than in their suppression unless the Magistrate considers that the other action that he is competent to take is not likely to be effective. *Francis Duke Cobridge Sumner v. Jogendra Kumar*.

34 Cr. L. J. 334 :
142 I. C. 319 : I. R. 1933 Cal. 262 :
A. I. R. 1933 Cal. 348.

———S. 144—Scope and object.

Where an order under S. 144, directs the public to refrain from meeting on any road, thoroughfare or street situate within certain specified limits, the order cannot be construed as prohibiting the doing of those acts in public place like a temple or a graveyard. *Sorab Shavaksha v. Emperor*.

36 Cr. L. J. 547 :
154 I. C. 637 : 36 Bom. L. R. 1129 :
7 R. B. 359 : A. I. R. 1935 Bom. 33.

———S. 144—Scope and object.

Where S. 107 or S. 145 will meet the requirements of the case, S. 144 is not an appropriate remedy and if it is found that the

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danger was not so imminent that it could not be otherwise averted, an order under S. 144 will generally be held to have been made without jurisdiction. *Jagrup Kumari v. Chotey Narain Singh*.

37 Cr. L. J. 95 :
159 I. C. 455 : 2 B. R. 83 : 8 R. P. 279.

———S. 144—Scope of—Duty of Magistrates to protect civil rights of parties.

It is the obvious duty of the executive to uphold the civil rights declared by its own Civil Courts. Although the interests of the public peace are paramount, where a Magistrate must be aware that there will probably be a disturbance of a person's civil rights, it is his duty to exhaust every measure at his disposal to uphold declared civil rights before he abandons the attempt, and he should resort to S. 144 only if there is no time or opportunity for any other course. *Caddam Venkatasubba Reddi v. Emperor*.

28 Cr. L. J. 325 :
100 I. C. 709 : 52 M. L. J. 298 :
25 L. W. 375 : 7 A. I. Cr. R. 531 :
A. I. R. 1927 Mad. 368.

———S. 144—Scope of—Ex parte order, legality of—Holding hat on one's own property—Breach of peace—Proper procedure.

Every person is ordinarily entitled to exercise all rights of ownership on his property and the holding of a hat on one's own property is not in itself a wrongful act. Criminal Court assumes jurisdiction to interfere with this lawful exercise of a person's right of ownership, when such exercise in its ulterior consequences, and being directed primarily against the lawful exercise of another person's right of ownership, is likely to cause a breach of the peace. An order, prohibiting a party from ever holding a hat at any place on his own property is not competent under S. 144. It is not proper for a Magistrate to pass an *ex parte* order under S. 144, and, when its propriety or legality is challenged, to postpone the hearing of the matter from time to time until about the termination of the force of the order. Such matters ought to be disposed of quickly in order to avoid unnecessarily encroaching on the civil rights and liberties of the subject. *Banawari Lal Ram v. Pronab Krishna Majumdar*.

24 Cr. L. J. 164 :
71 I. C. 516 : 35 C. L. J. 397 :
C. W. N. 663 : A. I. R. 1922 Cal. 569.

———S. 144—Scope of—Immediate action, when justified.

The gravamen of the provisions of S. 144, consists in providing speedy remedy in cases of emergency and a Magistrate is justified in passing a *ex parte* order under Sub-s. (2) immediately on receiving a Police Report if he is satisfied that immediate action is necessary. An aggrieved party can move the Court for a rescission or alteration of the *ex parte* order under sub-s. (4). *Jang Bahadur v. Emperor*.

25 Cr. L. J. 433 :
77 I. C. 721 : 11 O. L. J. 54 :
A. I. R. 1924 Oudh 338.

———S. 144—Scope of—Magistrate's power to pass mandatory order—Person taking possession of land in dispute and erecting fence round it—Removal of fence.

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S. 144 does not authorize a Magistrate to pass any mandatory order. All that the Magistrate can do is to direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management. In other words, the section empowers a Magistrate to pass a restrictive order. Hence a Magistrate cannot direct a person who has taken possession of the disputed land and erected fence round it, to remove the fence. *Bimala Kanta Bagchi v. Sant Kumar Ghosh*.

40 Cr. L. J. 144 :
178 I. C. 945 : 19 P. L. T. 620 :
5 B. R. 169 : 11 R. P. 311 :
A. I. R. 1938 Pat. 610.

—S. 144—Scope of—Order under section, when may be rescinded—“Made under this section,” meaning of—“Alter or rescind,” meaning of—Possession, dispute as to—Remedy proper—Proceeding under S. 144—Magistrate, power of, to convert into inquiry under S. 145.

S. 144 (4) is not confined to cases where there has been a change of circumstances since the original order was made, and, although a Magistrate ought not to interfere with an order once made under the section unless very good reasons are disclosed for doing so, he may rescind such an order, if he is satisfied that it ought never to have been made. Per *Mullick, J.*—S. 144 is of general application and contains nothing which ousts the Magistrate's jurisdiction in cases of *bona fide* dispute as to possession of land. But where S. 107 or S. 145 will meet the requirements of the case, S. 144 is not an appropriate remedy, and ought not be used as a substitute for those sections. The words “alter or rescind” in S. 144 (4) empower a District Magistrate to modify or cancel an order under that section upon any ground whatsoever. Per *Jwala Prasad, J.*—When one party is clearly in the wrong and threatens to usurp the rights of another who is in actual possession of the land in dispute, the proper remedy is an order under S. 144, or S. 107. Where in a proceeding under S. 144, a Magistrate comes to the conclusion that there is a *bona fide* dispute as to the possession of the parties, then he is bound to start an enquiry under S. 145 either in continuation of his order under S. 144 or in supersession thereof, for S. 145 is the only section under which an enquiry in the case of a danger of a breach of the peace concerning a dispute as to land can be made. The words “rescind or alter” in cl. (4) of S. 144 are wide enough to vest the Magistrates mentioned in that clause with unlimited power to deal with an order passed under cl. (1) of the section on the question of jurisdiction as well as upon the merits. *Shebalak Singh v. Kamar-ud-Din Mandai*.

23 Cr. L. J. 549 :
68 I. C. 149 : 3 P. L. T. 573 :
1922 Pat. 241 : 4 U. P. L. R. Pat. 57 :
A. I. R. 1922 Pat. 435.

—S. 144—Scope of—Urgency—Breach of peace, likelihood of—Personal apprehension of Magistrate.

S. 144 is ordinarily to be used in cases of urgency and an order should not be made without recording any urgency in the matter and from the Magistrate's personal apprehension that the

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parties would break the public peace, when there was no report from the Police that there was a likelihood of any such breach. *Kamini Mohan Das Gupta v. Harendra Kumar Sarkar*.

13 Cr. L. J. 126 :
13 I. C. 782 : 38 Cal. 876.

—S. 144—Scope of object.

The section does not enable the Magistrate to make a mandatory order directing the opposite party to do some act, the opposite party is under no obligation to obey it. Consequently, disobedience of such order is not punishable under S. 188, Penal Code. *Kusum Kumari Debi v. Nalini Debi*.

34 Cr. L. J. 1192 :
146 I. C. 169 : 38 C. W. N. 115 : 6 R. C. 181 :
A. I. R. 1933 Cal. 724.

—Ss. 144, 145—Scope of—Dispute regarding land, etc.—Proceedings under both sections, legality of.

The proper proceeding to be adopted when there is a dispute concerning land or water which is likely to cause a breach of the peace is a proceeding under S. 145 and not a proceeding under S. 144. A proceeding under S. 144 has nothing to do with the question of possession of the parties. It relates only to temporary order in emergent cases of apprehended danger. S. 115, on the other hand, relates to a dispute concerning land or water that may be likely to cause a breach of the peace. It is quite open to a Magistrate, after a final order under S. 144 has been passed, to draw up proceedings under S. 145. *Jhama Mahuon v. Thakuri Mahton*.

21 Cr. L. J. 625 :
57 I. C. 449 : 1 P. L. T. 369 :
2 U. P. L. R. Pat. 192 : A. I. R. 1920 Pat. 219.

—Ss. 144, 145—Scope of.

The provisions of S. 145 were enacted with the specific intention of definitely settling a quarrel after a fair hearing of each side, and proceedings under S. 144 should not be substituted for proceedings under S. 115 in order to evade the provisions of law which require an inquiry into the question of possession with reference to the evidence adduced by the parties. The use of S. 144 is a suitable method of avoiding a breach of the peace only if it is clear upon a reading of the Police report that the claim of the party creating the disturbance is not a claim made in good faith. Where, however, the facts on the record clearly indicate that a proceeding under S. 115 is necessary, the Magistrate has no jurisdiction to take action under S. 144. *Kamiz Amina v. Emperor*.

19 Cr. L. J. 869 :
47 I. C. 65 : 3 P. L. J. 243 : 4 P. L. W. 354 :
A. I. R. 1918 Pat. 663.

—Ss. 144, 195, 476—Scope of S. 144—Magistrate, power of, to prohibit market—Disobedience of order—Offence—Penal Code, S. 188, elements of—Direction for prosecution—Prima facie case.

A Magistrate has power under S. 144, to issue a notice, prohibiting the holding of a new market on the same day as the old market is held, in order to prevent a breach of the peace but he has no power, under the section

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to pass a general order restraining the holding of a *hat* or market. A disobedience of a valid order under S. 144, is punishable under S. 188, Penal Code, prosecution for which might be started either by sanction given under S. 195 or by an order passed under S. 476, but disobedience itself is not punishable under the said section unless that disobedience causes or tends to cause obstruction, annoyance or injury to any person lawfully employed. A Court in giving directions for the prosecution under S. 188, Penal Code, is bound to find that there was a *prima facie* case with respect to all elements which are essential to constitute the offence with respect to which the order under S. 476 is passed. An order which does not set forth all the elements of an offence covered by it is, therefore, without jurisdiction. *Parmeshwar Rai v. Emperor*. 23 Cr. L. J. 381 :

67 I. C. 205 : 3 P. L. T. 208 : 1922 Pat. 204 :
U. P. L. R. Pat. 34 : A. I. R. 1922 Pat. 84.

———S. 144 (1), (2)—Scope of—Orders under.

The first two clauses of S. 144 do not invest the Magistrate with any power to issue an order to the general public. They are confined to the case of an individual person or persons. *Sat Narain v. Emperor*. 41 Cr. L. J. 121 :

185 I. C. 172 : 1939 A. L. J. 1011 :
I. L. R. 1939 A. W. R. 711 :
1939 All. 934 : 12 R. A. 307 :
A. I. R. 1939 All. 746.

———S. 144 (1), (3)—Scope of—Order contemplated—District Magistrate, powers of.

The District Magistrate has jurisdiction throughout his District and is empowered to direct any person to abstain from a certain act if he considers that such direction is likely to operate in any of the ways mentioned in Sub-s. (1) of S. 144. Sub-s. (3) of S. 144 has nothing to do with the nature of the order but is one of four sub-sections which refer to the manner of promulgation and to the duration of an order under Sub-s. (1). When because of the number of persons to be directed, it is impracticable for the Magistrate to issue notice to each individual, he can issue an order to the public generally, including besides residents, persons who may frequent or visit a particular place and such order will be effective against each individual to whose knowledge it has come. *Abdul Karim Shorash v. Emperor*.

38 Cr. L. J. 354 (b) :
167 I. C. 284 : I. L. R. 1937 Nag. 228 :
17 Lah. 515 : 38 P. L. R. 964 :
9 R. L. 474 : A. I. R. 1937 Lah. 80.

———S. 144 (3)—Scope—Order to general public, legality of—Particular place, what is.

Sub-s. (3) of S. 144 has nothing to do with the nature of the order, but is merely one of the four sub-sections which refer to the manner of promulgation and to the duration of an order under Sub-s. (1). Where an order is passed under S. 144 to the public generally, prohibiting them from doing certain acts "within the limits of Nawadah Union Committee," the order sufficiently describes a particular place within the meaning of S. 144 (3) when the limits of the Union Committee are clearly and

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specifically defined. *In the matter of : Madan Kishore*. 41 Cr. L. J. 414 :

181 I. C. 135 : 21 P. L. T. 231 :
6 B. R. 425 : 12 R. P. 578 :
A. I. R. 1940 Pat. 446.

———S. 144 (3)—Scope and object—Particular place, meaning of.

The expression "particular place" in Sub-s. (3) of S. 144 implies that the place to which the restriction applies should be sufficiently particularised. *Vasant B. Khare v. Emperor*.

36 Cr. L. J. 130 :
152 I. C. 701 : 36 Bom. L. R. 733 :
59 Bom. 27 : 7 R. B. 161 :
A. I. R. 1934 Bom. 375.

———S. 144 (4)—Scope of.

The jurisdiction conferred by S. 144 (4) is neither appellate nor revisional but is a special one that can be exercised only if the actual terms of the section are strictly satisfied. Jurisdiction is given by this sub-section only to alter or rescind the order by which the petitioners are said to be aggrieved. *Sevugan Chettiar v. Karuppan Chettiar*.

38 Cr. L. J. 864 :
170 I. C. 193 : 1937 M. W. N. 210 :
45 L. W. 367 : 10 R. M. 152 :
A. I. R. 1937 Mad. 487.

———S. 144—Starting of rival business in close proximity to previously established one—Order under S. 144 against person interested in rival business, if can be issued.

A Magistrate, as an emergency measure, has power to stop, by an order under S. 144, the holding of a *hat*, or the exercise of his rights by a man on his own land. But a man, who holds a *hat* on his own land, is perfectly entitled to do so and that by itself is not a wrongful act. Competition in trade, unless illegal methods are adopted, is not a wrongful act. When a rival business is started in close proximity to a previously established business the person interested in the latter is bound to object to the former and some sort of strained feeling is inevitable. This by itself is no ground for restraining the new-comer from carrying his trade unless he is doing or is likely to do any wrongful act which may lead to a breach of the peace. In such a case the best course is to prohibit the doing of the wrongful act, or if necessary, to bind down the wrong-doer under S. 107, Cr. P. C. But an order more or less of a permanent nature is not justified under S. 144, Cr. P. C., which is meant for speedy remedy. *Rama Barik v. Emperor*.

41 Cr. L. J. 463 :
187 I. C. 511 : 6 B. R. 480 : 12 R. P. 637 :
A. I. R. 1940 Pat. 185.

———S. 144.

Suspension of order—High Court can, under inherent powers, suspend operation of order under S. 144. *Pilchai v. Muhammad Atham*.

33 Cr. L. J. 826 :
139 I. C. 773 : 1932 M. W. N. 726 :
36 L. W. 461 : 63 M. L. J. 594 : 56 Mad. 149 :
I. R. 1932 Mad. 793 : A. I. R. 1932 Mad. 720.

———S. 144—Time-expired order—Revision.

High Court will not, in revision, interfere with

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an order under S. 144, which has expired by lapse of time, and adjudicate upon matters which have no practical effect. *Kuppu Odayar v. Poomalal Goundan*. 25 Cr. L. J. 1304 :

82 I. C. 472 : 47 M. L. J. 439 :

1924 M. W. N. 675 : A. I. R. 1924 Mad. 896.

———S. 144 (5)—*Time-expired order, setting aside of.*

An order, which on the date on which it is sought to be revised by the High Court has ceased to be in force by efflux of time under S. 144 (5) should not be interfered with in revision under S. 435, Cr. P. C. *Swaminatha Mudaliar v. Gopalakrishna Naidu*.

16 Cr. L. J. 292 :

28 I. C. 160 : A. I. R. 1916 Mad. 626.

———S. 144 — *Time, non-specification of—Order, validity of.*

An order made under S. 144, is not bad because omits to state that its operation is confined to two months or some shorter period from the making thereof. *Ram Nathu v. Emperor*.

6 Cr. L. J. 194 :

6 C. L. J. 186 : 11 C. W. N. 942 :

2 M. L. T. 474 : I. L. R. 34 Cal. 897.

———S. 144—*Too often resort to the provisions of—Recourse to S. 107, or Chapter XII of the Code—When time fixed in the order expires.*

A Magistrate should not have repeated recourse to the provisions of S. 144 in the same dispute. He must take steps under the provisions of Chapter XII or S. 107, Cr. P. C. or apply to Government under clause (5) of S. 144 when the period of two months fixed in the order expires. *Swaminatha Mudaliar v. Gopalakrishna*. 16 Cr. L. J. 592 :

30 I. C. 144 : A. I. R. 1916 Mad. 640.

———S. 144—*Trustee of temple required to abstain from interfering with conduct of adyapakam service—Order, whether definite.*

Where a trustee of a Vaishnavite temple was directed under S. 144 to abstain from "in any way interfering with the conduct of the adyapakam service"; Held, that the order was definite and sufficiently defined the acts from which the trustee was required to abstain, and rendered the acts 'certain' within the section. *In re: Srinivasa Thathachariar*.

19 Cr. L. J. 933 (a) :

47 I. C. 657 : A. I. R. 1918 Mad. 18.

———S. 144—*Validity of order.*

An order directed to the public when frequenting public or private streets in a particular city is sufficiently definite as to place to comply with the requirements of S. 144. *Sohrab Shavaksha v. Emperor*. 36 Cr. L. J. 547 :

154 I. C. 637 : 36 Bom. L. R. 1129 :

7 R. B. 359 : A. I. R. 1935 Bom. 33.

———S. 144—*Validity of order.*

An order prohibiting the public generally from taking part in processions within the whole of the Municipal limits and all public places within such limits is illegal. *Motilal v. Emperor*.

33 Cr. L. J. 75 :

134 I. C. 1237 : 33 Bom. L. R. 1178 :

I. R. 1932 Bom. 21 : A. I. R. 1931 Bom. 513.

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———S. 144—*Validity of order.*

An order under S. 144 can be directed to the public generally only "when frequenting or visiting a particular place", such, for instance, as a market or other place within a specified boundary. There is no power to direct the public generally *simpliciter*. *Motilal v. Emperor*.

33 Cr. L. J. 75 :

134 I. C. 1237 : 33 Bom. L. R. 1178 :

I. R. 1932 Bom. 21 : A. I. R. 1931 Bom. 513.

———S. 144—*Validity of order.*

Order containing reference to customary rules and timings is not indefinite and ambiguous—It is a valid order.

35 Cr. L. J. 699 :

148 I. C. 518 : 11 O. W. N. 384 :

6 R. O. 419 : A. I. R. 1934 Oudh 162.

———S. 144—*Validity of order.*

Order for injunction must be absolute and definite and not conditional. *Emperor v. Bhola Giri Mohunt*. 37 Cr. L. J. 696 :

162 I. C. 827 : 63 C. L. J. 137 :

40 C. W. N. 640 : 8 R. C. 662 (2) :

A. I. R. 1936 Cal. 259.

———S. 144—*Validity of order.*

Order under—Decision upon rights of parties, such decision being unnecessary—Order can be set aside after its expiry. *Joint Agents, I. G. N. & Ry. Co. v. Narain Singh*.

34 Cr. L. J. 717 :

144 I. C. 228 : 14 P. L. T. 379 :

I. R. 1933 Pat. 221 (2) :

A. I. R. 1933 Pat. 185.

———Ss. 144, 134—*Copy of order not stuck up as required by S. 134—Irrregularity, when material—Order under S. 144, when inadequate to sustain conviction.*

Where as required by S. 134, no copy of an order under S. 144, is stuck up, the irregularity would be immaterial provided the persons whom it was sought to prosecute in respect of any disobedience of the order had knowledge of its contents. The service of the order which was only a precis of formal order under S. 144, was insufficient and being inconsistent with main order, could not sustain conviction. *Abu Husain Sheikh v. Emperor*. 41 Cr. L. J. 864 :

190 I. C. 228 : 44 C. W. N. 641 :

I. L. R. 1940 2 Cal. 110 : 13 R. C. 157 :

A. I. R. 1940 Cal. 358.

———Ss. 144, 145.

See Cr. P. C., 1898, S. 107.

———Ss. 144, 145—*Action under S. 145, when should be taken.*

When, in the course of a proceeding under S. 144, the Magistrate finds that there is a *bona fide* dispute as to possession of land likely to cause a breach of the peace, he is bound immediately to take action under S. 145. *Viru Karu v. Devanadas Jeyan Jay*.

41 Cr. L. J. 952 :

190 I. C. 613 : 1940 Kar. 503 : 13 R. S. 110 :

A. I. R. 1940 Sind 158.

———Ss. 144, 145, *application of—Order*

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spending itself by expiry of time—Interference in revision.

Although where there is a *bona fide* dispute of possession between the parties, the Magistrate ought to proceed under S. 145, and not under S. 144, the High Court will not interfere with the order under S. 144, after it has spent its force by reason of the expiry of the period and to direct the Magistrate to begin under S. 145. *Jagernath Singh v. Ramjas Singh*.

35 Cr. L. J. 88 :
146 I. C. 557 : 6 R. P. 274 :
A. I. R. 1933 Pat. 584 (2).

———**Ss. 144, 145—Exercise of powers under S. 144—Duty of Magistrate.**

It is true that S. 144 gives wide powers to the Magistrate and that imminent danger to the public peace justifies the subordination of private interests. At the same time care should be taken to see that use of this section is not invoked by one party to a dispute in order to obtain material advantage over the other. *Viru Kamu v. Dewandas Jhamandas*.

41 Cr. L. J. 952 :
190 I. C. 618 : 1940 Kar. 508 :
13 R. S. 110 : A. I. R. 1940 Sind 158.

———**Ss. 144, 145—Habitual and unjustified use of S. 144 as substitute for Ss. 107 and 145.**

There is no justification for periodical recourse to S. 144 on the plea of emergency in cases where emergency exists only by reason of neglect of the authorities to take proper order when the facts first came to their notice. What the Court deprecates is the habitual and unjustifiable use of S. 144 as a substitute for Ss. 107 and 145. *Viru Kamu v. Dewandas Jhamandas*.

41 Cr. L. J. 952 :
190 I. C. 618 : 1940 Kar. 508 : 13 R. S. 110 :
A. I. R. 1940 Sind 158.

———**Ss. 144, 145—No real dispute as to possession—Imminent danger of breach of peace—Order under S. 144 is proper—Order under S. 145, when becomes necessary.**

It is only where there is a dispute likely to cause a breach of the peace concerning any land or water or boundaries thereof and the dispute requires to be decided on evidence, that resort to S. 145 becomes necessary; and for this purpose the dispute has to be a real dispute and not a mere pretence on behalf of one of the contesting parties. Where A is in possession of the land and continuing it and B is trying to take the possession of the same land and the Police report that there is imminent danger of a breach of the peace an order under S. 144 is proper one as there is no real dispute about possession at all. *Bhuneshwar Prasad v. Rommoy Roy*.

41 Cr. L. J. 417 :
187 I. C. 139 : 6 B. R. 428 : 12 P. R. 588 :
A. I. R. 1940 Pat. 492.

———**Ss. 144, 145—Petition under S. 145 (4)—Order not purporting to be under any provision of law—No decision that dispute is likely to lead to breach of peace—Effect of order—Held, order and expression of opinion therein were void of legal force.**

Where on a petition presented under S. 145 (4) an order is passed which really does not

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purport to be passed under S. 145 or 144 and does not, in fact, purport to be an order passed in the exercise of any jurisdiction conferred on the Magistrate by any section of the Cr. P. C. or any other provision of law, and the Magistrate did not decide, as a matter of fact, whether this dispute was likely to lead to a breach of the peace or a disturbance of public tranquility, the essential preliminary to assuming jurisdiction thus not being found to exist, his order must be deemed to be an order having no legal force, and any expression of opinion contained therein must be deemed to be void of legal force or effect. In such circumstances, there is no order which requires to be formally set aside or modified in revision, the order complained of being one which has really no legal force or effect. But such an order must necessarily prejudice a party and it is not at all desirable that the Magistrate who has jurisdiction should omit to exercise his jurisdiction in the manner prescribed by law, but on the other hand, proceed to deal with it in a way not contemplated by the law. *Vattathara S. J. v. Reverend Koshi*.

38 Cr. L. J. 892 :
170 I. C. 390 : 45 L. W. 473 :
1937 M. W. N. 636 : 10 R. M. 198 :
A. I. R. 1937 Mad. 494.

———**Ss. 144, 145—Police report and sketch, evidentiary value of—Orders under S. 144, how far evidence of possession—Evidence—Admission of documents without objection—Evidentiary value, whether may be challenged subsequently.**

An order under S. 144 could only refer to a point of time when it was passed and cannot show who was in possession when the statutory period during which that order remained operative was at an end. A judgment of a Criminal Court in which a person was acquitted and in which it was incidentally found that he was in possession, can only be evidence of the fact that there was such a case and that it ended in such acquittal; the finding on the question of possession which is a ground of such acquittal can hardly be any evidence in subsequent proceedings between the parties with regard to the property in dispute. The only legitimate use to which a Police report and sketch prepared in connection with proceedings under S. 145 could be put is to treat them as the basis of the proceedings and as affording materials for determining the likelihood of breach of the peace and of the identity of the subject-matter of the dispute and of the disputing parties. The fact evidenced thereby, of the Sub-Inspector having seen the parties in possession of certain plots, cannot be treated as evidence of possession. The fact that such documents were admitted without objection does not prevent their admissibility as evidence of possession being challenged subsequently, the question being not a mere question of mode of proof but a question of the evidentiary value of their contents. *Shashi Mukhi Debi v. Sarat Chandra Chakravarty*.

28 Cr. L. J. 329 :
100 I. C. 713 : 31 C. W. N. 310 :
45 C. L. J. 537 : A. I. R. 1927 Cal. 327.

———**Ss. 144, 145—Possession, dispute as to—Proceedings, proper.**

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an offence is punishable under S. 188, Penal Code, provided sanction for prosecution is given under S. 195. *Nagendro Nath Biswas v. Rakhal Das Sinha*. 20 Cr. L. J. 113 (a) : 49 I. C. 97 : 23 C. W. N. 141 : A. I. R. 1919 Cal. 108.

———Ss. 144, 195, 476—*Injunction under S. 144—Disobedience of order—Penal Code, S. 188, prosecution under—Cognizance of case by same Magistrate—Irregularity.*

A Magistrate, who institutes the proceedings under S. 144, cannot take cognizance of the offence under S. 188, Penal Code. He should either take action under S. 476 or under S. 195. *Chandra Kanta Kanjilal v. Emperor*. 17 Cr. L. J. 464 : 36 I. C. 144 : 20 C. W. N. 981 : A. I. R. 1916 Cal. 69.

———Ss. 144, 435 (3)—*Interference with order of Magistrate having jurisdiction—Revision.*

Where the Magistrate had jurisdiction to make an order in case of need, whether that order was or was not the best that could have been made, is not a question which should be considered in revision. *Bandalapalli Pedda v. Moka Subbarayadu*. 11 Cr. L. J. 194 : 4 I. C. 1128 : 5 M. L. T. 217.

———Ss. 144, 439—*Final order under S. 144—Sale of property kept in custody—Revision—Interference.*

Once a Magistrate passes his final order under S. 144, he is *functus officio* and cannot make any order with respect to the sale of property kept in custody. Such an order is not an executive order and is *ultra vires* and revisable by the High Court. *Mainabati v. Dulla Manjhi*. 21 Cr. L. J. 657 : 57 I. C. 817 : A. I. R. 1910 Pat. 155.

———Ss. 144, 476—*Penal Code, S. 188—Order under S. 144, disobedience of—Order directing prosecution—Magistrate, duty of.*

A Magistrate should not sanction a prosecution under S. 188 of the Penal Code unless he thinks that all the elements necessary for a conviction are present. A Magistrate ought not to make an order under S. 476, Cr. P. C., sanctioning prosecution for an offence under S. 188, Penal Code, for disobedience of an order under S. 144, Cr. P. C., without coming to a finding whether the disobedience of the order caused or tended to cause a riot or an affray or a breach of the peace. *Kumud Nath Chakravarty v. Ajoo Pramanik*. 21 Cr. L. J. 675 : 57 I. C. 915 : A. I. R. 1920 Cal. 520.

———S. 144, 530, 529 (f), 531—*Transfer of application under S. 144 (4) by District Magistrate—Validity of.*

Where the District Magistrate transfers an application made under S. 144 (4), the order of transfer cannot be regarded as void and cannot be set aside merely on that ground, in view of S. 529 (f), Cr. P. C., and also of S. 531 of the same Code. *Sevugan Chettiar v. Karuppan Chettiar*. 38 Cr. L. J. 864 : 170 I. C. 193 : 1937 M. W. N. 210 : 45 L. W. 367 : 10 R. M. 152 : A. I. R. 1937 Mad. 487.

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———S. 144, (1), (4), 145—*Possession doubtful—Proper section under which order can be passed—Order amounting to ejectment decree of Civil Court, whether can be made by Magistrate—Jurisdiction—Ultra vires order, whether can be set aside under Sub-s. (4) of S. 144—Revision.*

It is only when possession is either undisputed or clear beyond any shadow of doubt that S. 144 applies. Where the possession is disputed, the section has no application, the effective and proper section is S. 145. A Magistrate has no jurisdiction to pass, under S. 144, an order which amounts to an ejectment decree of a Civil Court. Where an order made by a Magistrate under S. 144 (1) is such as the Magistrate had no jurisdiction to make, the order cannot be set aside under Sub-s. (4) of that section. Such *ultra vires* orders can be set aside only by a High Court in revision. *Madan Lal v. Emperor*. 22 Cr. L. J. 685 : 63 I. C. 621 : 2 P. L. T. 484 : A. I. R. 1921 Pat. 392.

———S. 144 (3)—*Lahore District if "particular place"—Order relating to such District—Legality.*

District of Lahore is a particular place within the meaning of S. 144 (3). The fact that the order forbade meetings in so large a place as the Lahore District, does not make the order 'illegal' although it might have made the order difficult to enforce for one reason or another. *Abdul Karim Shorahs v. Emperor*. 38 Cr. L. J. 354 (b) : 167 I. C. 284 : 17 Lah. 515 : 38 P. L. R. 964 : 9 R. L. 474 : A. I. R. 1937 Lah. 80.

———S. 144 (3)—*Particular place, meaning of—Prohibitory order against public, legality of. Frequenting of "particular place" whether prohibited.*

The expression 'a particular place' is sufficiently wide to include the whole district over which a Magistrate may have jurisdiction. But the public who can be affected by a prohibitory order of this nature must consist of those who ordinarily frequent or visit or have occasion to frequent or visit the district as a whole or some place within the district. The law does not contemplate the prohibition of the frequenting or visiting of the 'particular place' to which reference is made in Sub-s. (3) but the prohibition of some act on an occasion on which such place is frequented or visited. *Abu Husain Sheikh v. Emperor*. 41 Cr. L. J. 864 : 190 I. C. 228 : 44 C. W. N. 641 : I. L. R. 1940 2 Cal. 110 : 13 R. C. 157 : A. I. R. 1940 Cal. 358.

———S. 144 (4)—*District Magistrate, power of, to alter order made by Magistrate subordinate to him, extent of.*

S. 144 (4) contemplates only a change in the nature of the order made and not a change in the party against whom it is made. A District Magistrate has, therefore, no power under this clause to set aside an order made by a Magistrate against one party and to substitute therefor a similar order against the other party. *Ganpat Singh v. Emperor*. 19 Cr. L. J. 880 : 47 I. C. 76 : 3 P. L. J. 287 : 4 P. L. W. 357 : A. I. R. 1918 Pat. 672.

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———Ss. 144, Col. (5), 107—*Enlargement of time by successive orders—Illegality.*

It is clearly improper for a Magistrate to extend the period of two months prescribed by Clause 5 of S. 141 by passing successive orders under that section. When one order under S. 144 does not prove sufficient for the purpose, the right procedure to adopt is to commence proceeding under S. 107. *Bishessor Chucker Butty v. Emperor.* 17 Cr. L. J. 200 :

34 I. C. 312 : 20 C. W. N. 758 :

24 C. L. J. 272 : A. I. R. 1916 Cal. 472.

———S. 145.

———Applicability.
 ——Arbitration.
 ——Attachment.
 ——Breach of Peace.
 ——Burden of proof.
 ——Compromise.
 ——Construction.
 ——Costs.
 ——Death of Applicant.
 ——Decree of Civil Court.
 ——Defect in Procedure.
 ——Dismissal.
 ——Duty of Court.
 ——Duty of Magistrate.
 ——Easement.
 ——Effect of Order.
 ——Enquiry.
 ——Evidence.
 ——Evidentiary value of order.
 ——Final order.
 ——Forum of order.
 ——Forum.
 ——Foundation of jurisdiction.
 ——Fresh Proceedings.
 ——Government of India Act, S. 107.
 ——Immovable Property.
 ——Information.
 ——Initial order.
 ——Joint possession.
 ——Jurisdiction.
 ——Large Area.
 ——Limitation.
 ——Local Inquiry.
 ——Meaning of words.
 ——Movable property.
 ——Nature of proceedings.
 ——Notice.
 ——Object of.
 ——Order without Jurisdiction.
 ——Order without Notice.
 ——Parties.
 ——Pendency of Civil Suit.
 ——Police Report.
 ——Possession.
 ——Power of Magistrate.
 ——Preliminary order.
 ——Procedure.
 ——Question of title.
 ——Receiver.
 ——Relevancy of title.
 ——Revision.
 ——Seops.
 ——Small area.
 ——Simultaneous Proceedings.
 ——Symbolical possession.
 ——Transfer.
 ——Transfer of Case.
 ——Transfer of Magistrate.

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S. 145—See also (i) Companies Act, 1913, Ss. 171, 179.

(ii) Cr. P. C., 1898, S. 107.

(iii) Cr. P. C., 1898, S. 110.

(iv) Cr. P. C., 1898, S. 145.

(v) Cr. P. C., 1898, S. 435.

(vi) Cr. P. C., 1898, Ss. 438, 439.

(vii) Cr. P. C., 1898, S. 439.

(viii) Cr. P. C., 1898, S. 526.

(ix) Cr. P. C., 1898, S. 561-A.

(x) Penal Code, 1860, S. 99.

(xi) Possession.

———S. 145—*Applicability.*

Bona fide dispute about land—Magistrate must proceed under S. 145. He may then take proceedings under Ss. 107 and 141. He cannot warn parties without taking proceedings under S. 145. *Amir Ali v. Dukhan Momin.*

29 Cr. L. J. 613 :

109 I. C. 805 : 10 A. I. Cr. R. 320 :

A. I. R. 1928 Pat. 574.

———S. 145—*Applicability.*

Bona fide dispute relating to fishery right—Proceeding under S. 145 and not under S. 107 should be instituted. Words in S. 145 are mandatory and those in S. 107 are discretionary. *Balajit Singh v. Bhaju Ghose.*

6 Cr. L. J. 398 :

6 C. L. J. 697 : 35 Cal. 117 :

12 C. W. N. 487.

———S. 145—*Applicability—Cause of action.*

"Cause of action" is a very unsuitable expression in connection with proceedings under S. 145. *Mariasusai Udayan v. Hajee Nahrul Azcaudeen Sahib Bahadur.*

37 Cr. L. J. 953 :

164 I. C. 689 (2) : 1936 M. W. N. 647 :

44 L. W. 305 : 71 M. L. J. 305 : 9 R. M. 158 :

A. I. R. 1936 Mad. 824.

———S. 145—*Applicability—Claim by landlord for possession of number of plots—Various tenants claiming different plots separately—Amalgamation of all plots in one proceeding, if legal.*

It is not necessarily illegal or irregular to combine a large number of plots in a proceeding under S. 145, where the dispute is between a landlord who claims a large number of plots on one side and different sets of tenants who claim different plots on the other. But particular care is required to ensure that the parties are not prejudiced by the amalgamation of a number of plots in one proceeding. *Raja Gope v. Sukan Singh.*

40 Cr. L. J. 749 :

183 I. C. 286 : 20 P. L. T. 145 :

5 B. R. 894 : 12 R. P. 120 :

A. I. R. 1939 Pat. 353.

———S. 145—*Applicability—Crops, dispute as to—Jurisdiction—Attachment.*

The right to make collections or to appropriate the crops or produce of a village or shares in a village comes within the purview of S. 145. A Magistrate has jurisdiction under S. 145 to pass an order restraining the disputing parties from interfering with the crops stored

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in the threshing floor or to attach such property. *Runit Mahlon v. Sirajulhaq*.

18 Cr. L. J. 652 :
40 I. C. 200 : 2 P. L. W. 67 :
A. I. R. 1917 Pat. 217.

———S. 145—*Applicability—Different plots of land—Possession with different persons—Single proceeding—Jurisdiction.*

One proceeding taken under S. 145 in respect of different plots of land in the possession of different persons is not without jurisdiction. *Sajani Kanta Roy v. Shamsheer Ali Sheikh*.

24 Cr. L. J. 235 :
71 I. C. 699.

———S. 145—*Applicability—Disobedience of order.*

Order under—Disobedience—Complaint after delay of nine months—Reasons for delay given—Action on complaint can be taken.

35 Cr. L. J. 820 :
148 I. C. 1014 : 16 N. L. J. 178 :
6 R. N. 214 : A. I. R. 1934 Nag. 114.

———S. 145 (4)—*Applicability—Dispossession wrongful but not forcible—Powers of Court.*

A Criminal Court cannot take action under S. 145 on the application of a party who has been wrongfully dispossessed unless the dispossession is forcible as well. *Low & Co. v. Manindra Chandra Nandy*.

26 Cr. L. J. 268 :
84 I. C. 332 : 3 Pat. 809 :
A. I. R. 1925 Pat. 33.

———S. 145—*Applicability—Disputes about joint possession.*

S. 145 applies only to disputes about actual physical possession and not to disputes about joint possession. *Wali Muhammad v. Rahmat Ali*.

29 Cr. L. J. 775 :
110 I. C. 807 : 11 A. I. Cr. R. 44 :
A. I. R. 1928 Lah. 818.

———S. 145—*Applicability.*

Dispute about possession of land—Likelihood of breach of the peace—Magistrate may proceed either under S. 145 or S. 144 or S. 107. *Sheoraj Roy v. Chatter Roy*.

2 Cr. L. J. 769 :
10 C. W. N. 288 : I. L. R. 32 Cal. 966.

———S. 145—*Applicability.*

Dispute as to actual possession likely to cause breach of peace—One party claiming exclusive possession of major portion—Others claiming possession of entire land—S. 145 is not applicable. *Nandkeshwar Prasad v. Sita Saran*.

34 Cr. L. J. 115 :
140 I. C. 902 : 13 P. L. T. 609 :
12 Pat. 87 : I. R. 1933 Pat. 35 (2) :
A. I. R. 1932 Pat. 366.

———S. 145—*Applicability—Dispute as to exclusive possession of partnership property by a co-partner.*

A dispute as to exclusive possession of the partnership property by a co-partner does not fall within the purview of S. 145. *Radha Raman Ghose v. Baliram*.

1 Cr. L. J. 845 :
8 C. W. N. 885 : I. L. R. 32 Cal. 249.

———S. 145—*Applicability—Dispute as to immovable property—Tenant of A attorning to*

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B—Tenant's rights to be maintained in possession—Proper order.

In proceedings under S. 145 all that the Magistrate is concerned with is the actual *de facto* possession of the land in question. The mere fact that a tenant who is admittedly in possession has denied the title of the landlord and has attorned to a third party cannot affect the right of the tenant in a summary proceeding under S. 115 to be maintained in possession of the land of which he is in occupation. Where C a tenant of A attorned to B, and in proceedings under S. 145, the Magistrate declared that A was in possession: *Held*, that the order of the Magistrate should be modified by declaring that A was in possession through C. *Suraj Mia v. Tullock*.

30 Cr. L. J. 982 :
119 I. C. 31 : 33 C. W. N. 571 :
I. R. 1929 Cal. 719 : A. I. R. 1921 Cal. 632.

———S. 145—*Applicability—Dispute as to right to collect definite share of rents.*

Proceedings under S. 145 are not warranted by Sub-s. (2) of the section in respect of disputed crops or other produce of land or of disputed *bholi* rents or profits of such property when these have been severed and removed from the land. The definition of "land," however, as extended by Sub-s. (2) of the section includes the rents of the land and where there is a dispute between rival claimants as to exclusive possession of a certain share of the rents, the section is not inapplicable and proceedings may properly be instituted under the section. *Basudeo Singh v. Mahadeo Lal*.

26 Cr. L. J. 1187 :
88 I. C. 707 : 6 P. L. T. 454 :
1926 Pat. 142 : A. I. R. 1925 Pat. 618.

———S. 145—*Applicability—Dispute as to severed crops—Jurisdiction of Magistrate.*

A Magistrate has no jurisdiction to proceed under S. 145 in the case of a dispute relating to crops, where, before the initiation of the proceedings under the section, the crops are severed from the land and consequently cease to be immovable property. *Sita Das v. Jaisri Das*.

27 Cr. L. J. 1363 :
98 I. C. 483 : L. R. 7 All. 193 Cr. :
A. I. R. 1927 All. 99.

———S. 145—*Applicability—Dispute between members of joint family.*

The possession of the manager of a joint Hindu family as against another member, can be protected by proceedings under S. 145. *Kesavarayadu v. Chalapatirayadu*.

8 Cr. L. J. 205 :
18 M. L. J. 343 : 31 Mad. 318 :
4 M. L. J. 301.

———S. 145—*Applicability—Dispute concerning right to bore for minerals—Court, jurisdiction of, to go into questions of possession and title—Breach of peace apprehended—Procedure.*

Where in a proceeding under S. 145 the dispute between the parties is not one concerning land and does not involve any question of actual possession, but concerns the rights of the respective parties to carry on boring operations for coal over a specific area, the Court

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has no jurisdiction to go into intricate questions of title and possession which arise between the parties. If, in such a case, there is a likelihood of a breach of the peace, proceedings under S. 107, Cr. P. C. should be taken. *Indian Iron & Steel Co., Ltd. v. Banso Gopal*.

22 Cr. L. J. 99 :
59 I. C. 403 : 32 C. L. J. 54 :
A. I. R. 1920 Cal. 824.

————S. 145—*Applicability—Dispute in respect of bund.*

Where the subject-matter in dispute is a bund in existence and not a mere right to erect a bund, the case comes within the purview of S. 145. *Sashi Bhusan Chowdhury v. Debendra Gati Ray*.

31 Cr. L. J. 944 :
125 I. C. 857 : 33 C. W. N. 1004 :
A. I. R. 1930 Cal. 59.

————S. 145—*Applicability—Dispute regarding right to tap trees—Jurisdiction.*

The right to tap a tree is a question which may be the subject of proceedings under S. 145. Where on a Police report that there was an apprehension of a breach of the peace regarding the right to tap a tree, the Magistrate initiated proceedings under S. 145 and directed that a passage may be left in a wall which was being built by the second party to enable the first party to tap the tree, the only way to cut the tree lying over the wall : *Held*, that the order of the Magistrate was entirely without jurisdiction. *Jiblal Mahto v. Emperor*.

19 Cr. L. J. 656 :
45 I. C. 848 : 3 P. L. J. 316 :
A. I. R. 1918 Pat. 237.

————S. 145—*Applicability—Dispute regarding some, out of a number of plots—Rent half share of produce, question of—No question of share as between parties.*

Where in proceedings under S. 145, it is found that out of a few plots of land there is no dispute regarding some of them as to what tenants are in possession and there is a dispute as to the remaining plots, and it is declared by the Magistrate that each party should remain in possession of the plots of which they have been respectively receiving the rents : *Held*, that with regard to these remaining plots of land, the Magistrate ought not to have passed any order in the absence of the tenants, because they might be very seriously prejudiced by an order in favour of one or other of the parties to these proceedings. Where it is a question of dividing a hitherto undivided share, S. 145 may not apply, but where it is a question of rent and it so appears that the rent is half the share of the produce, but there is no question of shares as between the two parties to the proceeding, S. 145 applies. The question of the division of the produce only arises where the tenant comes to pay his rent. *Hari Das Samanta v. Abdul Melleb Mallik*.

16 Cr. L. J. 590 :
30 I. C. 142 : 19 C. W. N. 959 :
A. I. R. 1916 Cal. 727.

————S. 145—*Applicability—Dispute relating to claim to weigh grain and realise weighment dues.*

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A claim to weigh grain in a market and realise the weighment dues is not covered by S. 145. *Magbul Ahmad v. Emperor*.

23 Cr. L. J. 612 :
68 I. C. 836 : 22 A. L. J. 694 :
A. I. R. 1922 All. 430.

————S. 145—*Applicability.*

Dispute relating to immovable property likely to cause breach of the peace—Magistrate may proceed either under S. 115 or S. 107 : *Thakur Pandey v. Emperor*. 13 Cr. L. J. 526 : 15 I. C. 798 : 9 A. L. J. 582.

————Ss. 145, 426—*Applicability—Dispute relating to immovable property—Sale by one of the parties of his interest, effect of—Jurisdiction of Magistrate.*

Where a Magistrate receives information from any source that there is likelihood of a breach of the peace relating to the possession of immovable property, he is entitled to initiate proceedings under S. 145 even although it appears that one of the parties has already sold the property provided he has not delivered possession to the purchaser and still claims to be in possession of the property. *Gouri Shanker v. Collector of Muzaffarpur*. 26 Cr. L. J. 965 : 87 I. C. 421 : 6 P. L. T. 215 :

3 Pat. L. R. 127 Cr. : A. I. R. 1925 Pat. 553.

————S. 145—*Applicability—Dispute relating to land—Possession delivered by Civil Court, effect of.*

Though, ordinarily, a dispute relating to land should be enquired into in a proceeding under S. 145 yet when possession in the land is vested in one party as against every person claiming to be in possession of the property by reason of a writ of delivery of possession issued by a Civil Court, e. g., under O. XXI. r. 95, Cr. P. C. S. 145 has no applicability. *Kamla Prasad Singh v. Gobind Sahay*. 24 Cr. L. J. 241 : 71 I. C. 785 : 3 P. L. T. 826 : A. I. R. 1922 Pat. 13.

————S. 145—*Applicability.*

Dispute relating to land—Special provisions of S. 145 apply to the exclusion of S. 110. *Emperor v. Alisher Dost Muhammad*.

40 Cr. L. J. 837 (b) :
184 I. C. 189 (2) : 12 R. S. 94 :
A. I. R. 1939 Sind 261.

————S. 145—*Applicability.*

Dispute relating to provision of immovable property—Proper course is to proceed under S. 145 and not S. 107. *Jatal v. Emperor*.

19 Cr. L. J. 446 (a) :
42 I. C. 974 : 144 P. L. R. 1917 :
A. I. R. 1918 Lah. 344.

————S. 145—*Applicability—Dispute relating to undivided share of land or its produce—Batai share of zemindar.*

S. 145 does not apply to a dispute relating to an undivided share in land or to an undivided share in the produce of the land, because S. 145 Sub-ss. (4) and (6), contemplate that one of the parties shall be or shall not be put in possession of the subject-matter of the dispute and a party cannot be put in possession of an undivided share of land or its produce. But a

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batai share of *zemindar* in the produce is not an undivided share and S. 145 applies to disputes relating to such a share. *Muhammad Araf v. Satramdas Sakhmal*.

37 Cr. L. J. 1030 :
164 I. C. 969 : 9 R. S. 60 (2) :
A. I. R. 1936 Sind 143.

—S. 145—*Applicability—Dispute with regard to collection of offerings at temple, whether within purview of section.*

A dispute with regard to the collection of offerings at a temple cannot be said to be a dispute concerning land or water and, therefore, cannot come within the purview of S. 145. *Ghulam Subtain v. Kaniz Khatoon*.

21 Cr. L. J. 572 :
57 I. C. 92 : 5 P. L. J. 246 :
1 P. L. T. 608 : A. I. R. 1920 Pat. 383.

—S. 145—*Applicability—Dispute with regard to sub-soil rights—"Land," whether includes mining rights.*

The provisions of S. 145 may be used in disputes with regard to sub-soil rights, as the definition of land, as given in the Cr. P. C., is wide enough to cover mining rights and even prospecting or boring licenses. *Bimala Prosad Mookerjee v. Tata Iron and Steel Co., Ltd.*

24 Cr. L. J. 168 :
71 I. C. 236 : 35 C. L. J. 456 :
A. I. R. 1922 Cal. 83.

—S. 145—*Applicability—Easement.*

No action under S. 145 can be taken where the claim is only to the right to use land either as a public road or as a pathway. *Turab Ali Khan v. Shromani Gurdwara Parbandhak Committee*.

34 Cr. L. J. 616 :
143 I. C. 477 : I. R. 1933 Lah. 356 :
A. I. R. 1933 Lah. 145.

—S. 145—*Applicability—Fees khutagarai arhat and keali whether come within expression "land and water", in S. 145 (1).*

Certain fees called *khutagarai*, *arhat* and *keali*, levied in respect of boats moored in a shallow channel and dissociated from the ownership of the site are not included within the expression "land and water" as used in Sub-s. (1) of S. 145, and as explained in Sub-s. (2) of that section. *Kunjo Mandal v. Sarju Ram Marwari*.

40 Cr. L. J. 538 :
181 I. C. 176 : 20 P. L. T. 169 :
5 B. R. 53 : 11 R. P. 573 :
A. I. R. 1939 Pat. 206.

—S. 145—*Applicability—First Class Magistrate—Jurisdiction, whether confined to his ilaga or extends to whole District—Proviso to S. 145 (4), scope of.*

Where a First Class Magistrate has been invested with powers over a whole District, the mere fact that the District Magistrate has, for the sake of convenience, devided the District into *ilagas* and a particular *ilaga* has been allotted to a First Class Magistrate, does not deprive him of jurisdiction to hear a case under S. 145, arising out of another *ilaga* of the District. Where no order under S. 145 (1), has been passed, the first proviso to S. 145 (4) can-

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not be resorted to. *Ghulam Hussain v. Sajawal Shah*.

142 I. C. 430 : I. R. 1933 Lah. 204 :
34 P. L. R. 365 : A. I. R. 1933 Lah. 143.

—S. 145—*Applicability.*

In spite of delivery of possession by the Civil Court, a Magistrate has jurisdiction to start a case under S. 145 when there is an apprehension of a breach of the peace, he has a discretion to choose either S. 145 or S. 107. *Bajendra Narain Bhanja Deo v. Chintaman Mahapatra*.

40 Cr. L. J. 339 :
180 I. C. 322 : 19 P. L. J. 632 :
20 P. L. T. 333 : 5 B. R. 385 : 11 R. P. 493 :
A. I. R. 1939 Pat. 151.

—S. 145—*Applicability—Joint possession.*

S. 145 contemplates cases where one party claims to be in actual possession of the subject in dispute as against his opponent. A case of possession by co-owners of property held in common cannot be considered in law to be a case of actual possession on the part of one co-owner as against another. *Arjun Singh v. Chandan Kuar*.

22 Cr. L. J. 625 :
63 I. C. 321 : 24 O. C. 167 :
A. I. R. 1921 Oudh 6.

—S. 145—*Applicability—Joint possession—Co-sharer in exclusive possession of defined area—Other claiming joint right.*

If property is found to be actually in the joint possession of parties, S. 145 cannot apply, but that if one party, even if a co-sharer, is in exclusive possession of a defined area, and the other party claiming a joint right therein wants to disturb his possession, then the provisions of the section would apply. *Laxman v. Ganu Singh*.

17 N. L. J. 216 :
A. I. R. 1935 Nag. 44.

—S. 145—*Applicability—Joint possession—Magistrate's duty to determine question of possession.*

An order under S. 145, should merely declare whom the Magistrate finds to be in actual possession of the property in dispute, regarding which proceedings have been taken to prevent a breach of the peace. Where parties are in joint possession of property in dispute, a Magistrate has no jurisdiction to take action under S. 145. *Jogeswar Das v. Emperor*.

21 Cr. L. J. 224 :
54 I. C. 1008 : 1919 Pat. 479 :
A. I. R. 1920 Pat. 835.

—S. 145—*Applicability—Joint property—Exclusive possession, claim to—Jurisdiction.*

Proceeding under S. 145 cannot be instituted with respect to a dispute between two parties having joint rights to the land in dispute, each claiming exclusive possession thereof. *Makhan Lal v. Baroda Kanta*.

5 Cr. L. J. 296 :
11 C. W. N. 512.

—S. 145—*Applicability—Joint property.*

The mere fact of there being joint title to the land in dispute, would not prevent the application of S. 145, where one of the joint

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owners is in actual and exclusive possession.
Bijanath Maricari v. W. S. Street.

17 Cr. L. J. 251 :
34 I. C. 971 : 20 C. W. N. 518 :
A. I. R. 1917 Cal. 404.

———S. 145—*Applicability—Land cultivated by heirs of zemindar on his behalf—Person squatting on such land—Heirs declaring to be heirs of such person in respect of same land—Whether forcible ousting of zemindar.*

Where after a person has squatted on the land of zemindar cultivated by the heirs of zemindar on his behalf, the heirs declare they are heirs of that person in respect of the same land, such a declaration in such circumstances cannot amount to forcible ousting of the zemindar.
Muhammad Ali Yar Muhammad v. Shamsul Haq Pir Ziauddin Shah.

41 Cr. L. J. 486 :
187 I. C. 636 : 1940 Kar. 162 : 12 R. S. 255 :
A. I. R. 1940 Sind 33.

———S. 145—*Applicability—Locus standi to apply.*

The application of S. 145 does not depend upon whether the claim is made by a private owner or on behalf of a trust. *Jagathambal Anni v. Periatambi Nadar.*

161 I. C. 234 : 43 L. W. 496 : 70 M. L. J. 441 :
1936 M. W. N. 458 : 8 R. M. 804 :
A. I. R. 1936 Mad. 188.

———S. 145 — *Applicability — Mines and minerals, possession—Proceedings under S. 115—Propriety.*

If a party under a mining lease is in actual possession of the mines and minerals, it can claim to be maintained in its possession by an order under S. 145. But the question whether a proceeding under S. 145 is appropriate must be determined with reference to the circumstances of each case. *Mahadeo Dutt v. J. N. Sarkar.*

24 Cr. L. J. 263 :
71 I. C. 871 : 1922 Pat. 122 :
A. I. R. 1922 Pat. 340.

———S. 145—*Applicability—Offerings to deity, movable property—Declaration as to possession of offerings, legality of.*

Offerings given by worshippers to a deity are not profits arising out of immovable property but are profits arising out of deity irrespective of the building or land upon which he may happen to dwell and are, therefore, movable property. Therefore a declaration under S. 145 that one of the parties is in possession of such offerings is an order made without jurisdiction. *Sobhagsingh v. Bakhtanar Singh.*

28 Cr. L. J. 687 :
103 I. C. 415 : 23 N. L. R. 84 :
A. I. R. 1927 Nag. 333.

———S. 145—*Applicability—Order under, finality of.*

An order under S. 145, no doubt ceases to have any force as soon as it is superseded by the order of a competent Civil Court, but until it is superseded, it is final. *Emperor v. Bandi Din.*

22 Cr. L. J. 384 :
61 I. C. 240 : 24 O. C. 21 :
A. I. R. 1921 Oudh 119.

———S. 145—*Applicability—Order under, passed against father claiming property on behalf*

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of sons—Property subsequently mutated in name of sons—Application by sons under S. 145—Application, if barred by previous order.

Where an order is passed under S. 145 against the father who claimed property on behalf of his sons, but mutation of the property is subsequently made in the name of the sons and the sons apply under S. 145, the sons must be deemed to be parties to the previous proceedings and are bound by the order passed in such proceedings. Such an order is, therefore, a bar to the subsequent application by the sons under S. 145. *Muneshwar Bakhsh Singh v. Gajju Singh.*

39 Cr. L. J. 868 :
177 I. C. 247 : 1938 O. W. N. 828 :
11 R. O. 40 : 1938 O. L. R. 401.

———Ss. 145, 522—*Applicability—Order under S. 522, whether bars proceedings under S. 145.*

An order under S. 522, which is never carried out, does not bar the jurisdiction of a Criminal Court under S. 145. *Prabhat Chandra Chatterjee v. Prasanna Kumar Sen.*

15 Cr. L. J. 700 :
26 I. C. 148 : 18 C. W. N. 1088 :
A. I. R. 1915 Cal. 157.

———S. 145—*Applicability—Ouster to trespasser by owner without using physical violence, whether forcible.*

Mere ouster of people with no title to a piece of land by the lawful owner without using any physical violence by removing things which had no right to be on the land, cannot be said to be an unlawful or forcible entry on the land within S. 145. *Collector of Howrah v. Santak Das.*

28 Cr. L. J. 210 :
99 I. C. 1010 : 44 C. L. J. 593 :
7 A. I. Cr. R. 383 : A. I. R. 1927 Cal. 261.

———S. 145—*Applicability—Parties having valid claim to joint possession—Jurisdiction—Dispossession within two months—Dispossession under decree.*

A Magistrate has no jurisdiction to take proceedings under S. 145 when a party has a good and valid claim to joint possession. *Scoble—*For the purpose of a decision under S. 145 the dispossession within two months must be forcible and wrongful dispossession, and possession delivered under a decree would not be a dispossession of that character. *Ramparitar Singh v. Kasim Ali Khan.*

23 Cr. L. J. 379 :
67 I. C. 203 : A. I. R. 1922 Pat. 423.

———S. 145, cl. (5)—*Applicability—Persons interested in disputed land—Right to show non-existence of dispute.*

In a proceeding under S. 145, a person who is interested in the land in dispute as a tenant of a part of the disputed property should be allowed to show that there is no dispute under paragraph 5 of the section. *In re : Haran Mandal.*

11 Cr. L. J. 371 :
6 I. C. 545 : 11 C. L. J. 414 :
37 Cal. 285 : 14 C. W. N. 708.

———S. 145—*Applicability—Person not party to proceeding not bound by order.*

A person who is not a party to the proceedings under S. 145 cannot be held to be a person

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bound by the order of the Magistrate. *Mst. Maya Devi v. Diwan Chand.*

A. I. R. 1935 Lah. 115 (2).

————S. 145—*Applicability.*

Possession on behalf of applicant converted into adverse one within two months of application—Court can proceed under S. 145. *Prem Kaur v. Benarsi Das.*

34 Cr. L. J. 342 :

142 I. C. 207 : 34 P. L. R. 368 :

I. R. 1933 Lah. 177 : A. I. R. 1933 Lah. 409.

————S. 145—*Applicability—Proceedings under—Bengal Alluvial Lands Act, S. 3—Alluvial lands recently re-formed—Breach of peace, probability of—Court, jurisdiction of.*

It is open to a Magistrate, in the case of alluvial lands recently reformed, when questions of breach of the peace arise, to deal with the matter either under the Bengal Alluvial Lands Act or under the provisions of S. 145. The provisions of S. 145 are not impliedly repealed by the provisions of the Bengal Alluvial Lands Act, so far as alluvial lands recently formed are concerned. *Abdul Jabbar Munshi Mafizuddin Sarkar.*

25 Cr. L. J. 1107 :

81 I. C. 931 : 28 C. W. N. 783 :

A. I. R. 1924 Cal. 980.

————S. 145—*Applicability—Proceedings under—Civil Procedure Code, O. XXI, r. 35 (1), possession under, nature of—Dispute between judgment-debtor and decree-holder—Possession delivered by Civil Court in execution of decree—Criminal proceedings, legality of.*

Where in execution of a decree, possession of property is delivered to the decree-holder under Order XXI, rule 35 (1), C. P. C., the property cannot form the subject of proceedings under S. 145 at the instance of the judgment-debtor. *Behari Gir v. Bhubaneswari Kocr.*

21 Cr. L. J. 200 :

54 I. C. 984 : 1 P. L. T. 9 :

5 P. L. J. 104 : 1920 Pat. 79 :

2 U. P. L. R. Pat. 21.

A. I. R. 1920 Pat. 633.

————S. 145—*Applicability—Proceedings under—Movable property.*

Proceedings under S. 145 cannot be instituted with respect to movables. *Hira Lal v. Emperor.*

25 Cr. L. J. 440 :

77 I. C. 728 : 11 O. L. J. 59 :

A. I. R. 1924 Oudh 331.

————S. 145—*Applicability—Proceedings under—Order against father binding on son.*

The sons are bound by the proceedings taken and the order passed under S. 145 against the father. *Thakurdas v. Narayan.*

38 Cr. L. J. 307

166 I. C. 709 : I. L. R. 1936 Nag. 205 :

9 R. N. 144 : A. I. R. 1936 Nag. 192.

————S. 145—*Applicability, proceeding under—Wrongful and forcible dispossession, digging tank with Municipality's sanction, if amounts to—Addition of a fresh party—Necessary party.*

The dispossession effected by one party or another in possession by digging on the land in dispute a tank under a sanction obtained from the Municipality to the exclusion of the latter is a wrongful and forcible dispossession within

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S. 145 (4) (1). A person who is concerned in a dispute as to the possession of land is a necessary party to a proceeding under S. 145, concerning the possession of the same, though at the time of the proceeding he being absent from the place where the land was situate, was not likely to be actually involved in the breach of the peace which was then apprehended. The circumstances under which the addition of a fresh party to a pending proceeding under S. 145 does not make the proceeding irregular, discussed. *Manmotha Nath v. Ganga Giri Gossain.*

17 Cr. L. J. 449 :

36 I. C. 129 : 20 C. W. N. 978 :

A. I. R. 1917 Cal. 173.

————S. 145 (1)—*Applicability—Proceedings under S. 145, nature of—Movable property, order, dealing with.*

S. 145 relates only to immovable property, and a Magistrate has no jurisdiction to pass an order in a proceeding under that section affecting movable property, even though such property is contained in the immovable property, and over it, there is also a dispute. *Mahadei v. Beni Parsad.*

21 Cr. L. J. 242 :

55 I. C. 194 : 18 A. L. J. 171 : 42 All. 214 :

A. I. R. 1920 All. 225.

————S. 145—*Applicability—Produce of immovable property,—Jurisdiction of Magistrate to deal with—Order, good in part and bad in part—Court, power of, to sever good part from bad.*

Sub-s. (2) of S. 145 must be read in conjunction with Sub-s. (1) which deals with land and water; and Sub-s. (2) purports to give a definition of what land and water are supposed to comprise. A Magistrate has, under S. 145, power to deal with movable property which represents the produce of the land in dispute if the produce is attached to, or if the same is cut and lying on, the land in dispute under the section; but if the produce of the land has been removed and is wholly unconnected with and dissociated from the land in dispute, then the Magistrate is deprived of jurisdiction to deal with it under S. 145, Sub-s. 2. Orders as opposed to convictions are severable and the bad part of an order can be severed from the good. Where an order under S. 145 is bad in part and good in part, the Court will sever the bad from the good, reject the bad and maintain the good. *Sunder Mall v. Jhari Lal.*

18 Cr. L. J. 756 :

41 I. C. 132 : 2 P. L. W. 54 : 2 P. L. J. 637 :

A. I. R. 1917 Pat. 183.

————S. 145—*Applicability—Profits arising out of land—Offerings by worshippers, whether such profits.*

The offerings given by the worshippers for the worship of any deity, are not profits arising out of a building, for they arise out of the deity irrespective of the building, or the land upon which he may happen to dwell, and an order under S. 145 cannot be passed in respect of them. *Ram Saran v. Raghu Nandan Gir.*

12 Cr. L. J. 3 :

9 I. C. 6 : 13 C. L. J. 445 : 38 Cal. 387.

————S. 145—*Applicability—Profits arising out of land—Offerings of pilgrims, not such profits.*

Proceedings under S. 145 cannot be instituted

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in respect of a dispute between two parties relating to the distribution of fees paid by pilgrims at Gaya for performing *Sradh* ceremony, although there may be a likelihood of a breach of the peace in consequence of such dispute. Such fees can, in no sense, be said to be profits which issue out of land. *Narayan Misser v. Bhagwan Misser*. 3 Cr. L. J. 214 : 3 C. L. J. 137.

———S. 145—*Applicability—Property in dispute declared by a Civil Court to be joint.*

Where a Civil Court in a suit for partition has declared certain properties to be joint properties of the two parties concerned and ordered partition being effected: *Held*, that no order under S. 145 can be made until the jointness of the properties is disturbed by actual partition in pursuance of the Civil Court's order. *Dharani Kanta Lahiry Chowdhury v. Girija Kanta Lahiry Chowdhury*. 1 Cr. L. J. 367 : 8 C. W. N. 485.

———S. 145—*Applicability—Property in possession of tenants—Dispute.*

Where neither party is in actual physical possession of the land in dispute and the real dispute is whether the tenants, who are in actual possession, are the tenants of one party or of the other, a Magistrate is not competent to take proceedings under S. 145 in respect of the land in dispute. *Atma Ram v. Allah Wasaya*. 23 Cr. L. J. 166 : 65 I. C. 630.

———S. 145—*Applicability—Rent of land, dispute as to—Dispute, whether should be between rival claimants—Jurisdiction.*

A dispute as to the right to collect rent is a right concerning "tangible immovable property or land" within the meaning of S. 145. To take action under the section, it is not necessary that the apprehended breach of the peace should be between the rival claimants. The grounds of a Magistrate's belief need not be set out *seriatim* in the notice issued to parties under the section. It is enough if the Magistrate states in his order that he believes the statement of the petitioner which contains such grounds. *In re : Medai Dhalavay Tirumalayappa Mudaliar*. 18 Cr. L. J. 156 : 37 I. C. 524 : A. I. R. 1918 Mad. 1203.

———Ss. 145, 147—*Applicability—Right to worship in temple, dispute as to—Section applicable—Procedure.*

When a dispute arises with reference to the right to worship in a temple, the proper section under which action should be taken to prevent a breach of the peace is S. 117 and not S. 145. But where the dispute is really as regards the possession of the temple, S. 145 would be the proper section. *Sinnaswami Chetty v. Pannadi Palani Goundan*. 26 Cr. L. J. 1057 : 88 I. C. 2 : 48 M. L. J. 528 : A. I. R. 1925 Mad. 779.

———S. 145—*Applicability—Section, if applies to case of dispossession of tenant by landlord.*

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S. 145 covers the cases of dispossession of the tenants by their landlords. The question of title does not arise before the Magistrate making an inquiry under S. 145. He is concerned with the question of possession in such proceedings. *Muhammad Ali v. Ladha*.

39 Cr. L. J. 297 : 173 I. C. 352 : 39 P. L. R. 775 : 10 R. L. 439 : A. I. R. 1938 Lah. 122.

———S. 145—*Applicability.*

The fact that there is a dispute about land which might be made the subject of proceedings under S. 145 does not bar proceedings under S. 107. *Hira Singh v. Mohan Singh*.

10 Cr. L. J. 221. 3 I. C. 64 : 5 N. L. R. 94.

———S. 145—*Applicability to case of joint possession—Possession obtained through Court, position of.*

It is true that when it has been found that the contesting parties are actually in joint possession, no order should be made under S. 145. The position is different where one of the parties claims to have and is actually found to have exclusive possession adverse to the other party. The mere fact that the other party sets up a title to joint possession does not then render S. 145 inapplicable. The proposition that possession obtained through Court should be upheld would be applicable to possession obtained against the judgment-debtor but not when the party in possession at the time is not the judgment-debtor but one of the decree-holders claiming exclusive title. *Sheoprasad v. Govindram*.

41 Cr. L. J. 799 : 189 I. C. 774 : 1940 M. L. J. 375 : 13 R. N. 78 : A. I. R. 1940 Nag. 265.

———S. 145—*Applicability—Water channel, dispute concerning, nature of—Proceedings, when justified.*

A dispute concerning the flow of water through a channel for purposes of irrigation over another person's field is a dispute concerning water within the meaning of S. 145. But where the channel is not being actually used for irrigation at the time of the dispute, the dispute does not fall within the purview of that section. Where there is ample time for the obtaining of a civil remedy, proceedings under S. 145 are not justified. *Chotey Lal v. Emperor*.

25 Cr. L. J. 227 : 76 I. C. 691 : A. I. R. 1924 Oudh 341.

———S. 145—*Applicability.*

When there is dispute about possession over land, proceedings under S. 145 should be instituted. Proceedings under S. 107 are justified when there is undisputed possession. *Kali Prosad Gope v. Dhodhai Gope*.

22 Cr. L. J. 574 (b) : 62 I. C. 590.

———S. 145—*Applicability.*

Where one party who is clearly in the wrong threatens to disturb the rights of another who is in actual possession of the land, the provisions of S. 145 have no application. But the proper course when there is a real dispute

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regarding land is to proceed under S. 145 since otherwise the effect might be to bind down one of the parties to the dispute, without any adjudication on the question as to which of the two parties is in possession. *Sadique v. Mohid*.

32 Cr. L. J. 208 :
129 I. C. 85 : 10 Pat. 630 : I. R. 1932 Pat. 5 :
A. I. R. 1930 Pat. 426.

———S. 145, 107—*Applicability—Dispute as to possession of land—Proceedings under S. 107—Court, jurisdiction of—Proper procedure.*

Where there is a dispute about land and where there is some *bona fide* claim on the part of both parties the appropriate and proper section to be operated is S. 145. But when a Magistrate has reason to think that an individual is likely to commit a breach of the peace, he has jurisdiction, even though apprehended breach of the peace may relate to a dispute about land, to put into operation the provisions of S. 107. *Abdus Sayeed Khan v. Emperor*.

23 Cr. L. J. 123 :
I. C. 515.

———Ss. 145, 144—*Applicability—Bona fide dispute as to possession of land—Procedure.*

In the case of *bona fide* disputes with regard to possession of land, the proper method of dealing with the dispute is by a proceeding under S. 145 and not by a proceeding under S. 144. *Bhikkhal Tewary v. Achaiyar Kuer*.

41 Cr. L. J. 451 :
187 I. C. 349 : 21 P. L. T. 326 :
6 B. R. 464 : 12 R. P. 618 :
A. I. R. 1940 Pat. 471.

———S. 145, 146—*Applicability—Dispute about rents and profits of land. what is—Right to collect rent from tenants—Order.*

Where there is no dispute between the parties as to the extent of their respective shares in a village, such extent having been declared by the Civil Court, or as to the fact of their being in possession, but the dispute is only as to who is entitled to collect the rent from the tenants, the Criminal Courts have no jurisdiction to take proceedings under S. 145, inasmuch as a dispute about the collection of rent from the tenants is not a dispute about the rents or profits of land within the meaning of S. 145. *Mohammad Fazil v. Mohammed Abdul Samad*.

5 Cr. L. J. 394 :
10 O. C. 89.

———Ss. 145, 146—*Applicability—Disputes between joint owners—Dispute between members of Hindu family and manager—Proper procedure—Attachment under S. 146, propriety of.*

Ss. 145 and 146 are not confined in their application to disputes between two opposing parties having adverse rights to exclusive possession of land, but are applicable also to disputes between parties having joint rights to the land in dispute, each of which is claiming exclusive possession. Where the younger brothers of a Hindu family started proceedings under S. 145, against their elder brother in respect of family property and the Magistrate attached the property under S. 146: *Held*, that though the Magistrate had jurisdiction to make an order under S. 146, such an order

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ought not to have been made in the circumstances of the case, and if there was any likelihood of the breach of the peace, the proper procedure was to take proceedings under S. 107 against all the parties. *In re : Venkattraman Rama Hedge*.

31 Cr. L. J. 933 :
125 I. C. 718 : 32 Bom. L. R. 340 :
A. I. R. 1930 Bom. 172.

———Ss. 145, 146—*Applicability—Dispute between members of Muhammadan family—Right to collect rents from tenants—Possession with managing member effect of—Magistrate's discretion of, to allow application to re-summon witnesses—'Forcible dispossession'—Right to fractional share, if right to tangible immovable property.*

In an inquiry under S. 145 it is in the discretion of the Magistrate to allow witnesses to be re-summoned upon a petition presented towards the end of his inquiry. A dispute as to a right to collect rents is a dispute within the operation of S. 145. Where the dispute is between the members of a Muhammadan family who claim fractional shares in the properties of the family, only that person can be said to be in actual possession within the meaning of S. 145 who is in actual receipt of rent and to whom the tenants pay such rent. Where more than two months have elapsed from the date of the death of the last person in possession, there is no 'forcible dispossession,' within two months within the meaning of S. 145. A right to a fractional share may be a right to tangible immovable property even when the shares are not definitely ascertained. *Bulkis Bibi v. Nagoor Kannu Rowther*.

16 Cr. L. J. 284 :
28 I. C. 332 : 17 M. L. T. 225 :
1915 M. W. N. 267 : A. I. R. 1915 Mad. 1105.

———Ss. 145, 146—*Applicability—Property in dispute held jointly—Dispute in respect of share of each party.*

Neither S. 145 nor S. 146 has any application to a case in which the property in dispute is held jointly by the parties, and the matter of the dispute is as to the respective shares of the parties in the property. *Ram Bislu Majhi v. Joy Ram Majhi*.

22 Cr. L. J. 350 :
61 I. C. 174 (2) : A. I. R. 1920 Cal. 894.

———Ss. 145, 146—*Applicability—Proviso to sub-section 4—Attachment.*

Where proceedings were initiated under S. 145 on the report of the Amildar that there was a likelihood of breach of peace in respect of property in dispute: *Held*, this was quite sufficient to give jurisdiction to the Magistrate to make an order of attachment under the section. *Venkatasubbiah Setty v. Hucha Setty*.

9 Cr. L. J. 335 :
12 M. C. C. R. 93.

———Ss. 145, 146, 147—*Applicability—Temple, dispute as to possession and management of, and right to perform puja in, whether a dispute as to 'use of land' in S. 145 or 147—Order, subject to reservations, whether valid—Jurisdiction.*

Disputes with regard to the management of a temple and the right to the performance of *puja* therein are not disputes of the kind to which S. 147 applies as the words 'land or

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water' in that section are used in their ordinary significance without the extended meaning assigned to them in S. 145 (2). As a temple is a 'building' within the meaning of S. 145 (2), a dispute as to the possession of a temple and for such indicia of his possession as the holding of its key is cognizable by a Magistrate under S. 145. Where a dispute is in effect for possession of the temple and the right to perform *pūja* there is only a portion of the larger relief claimed, a Magistrate can deal with it under S. 145. An order as to possession subject to reservations is not forbidden by S. 145 (6). It is competent, therefore, for a Magistrate, while upholding one party's possession of a temple, to direct by his order that the opposite party be allowed to enter the temple and perform *pūja* to one of the idols therein without adopting the stringent procedure of attaching the temple under S. 146. *Palaniyandi Pandaram v. Palaniappa Thevar*.

17 Cr. L. J. 235 :
34 I. C. 651 : A. I. R. 1917 Mad. 840.

—Ss. 145, 147—*Applicability—Hereditary right to perform duties of pujari, whether within S. 147—Right of use of land.*

A dispute as to an hereditary right to perform the duties of *pujari* of an idol in a temple is not a dispute coming within S. 147 as there is no right of use of land which is in dispute. *Guiram Ghoshal v. Lal Behary Das*.

11 Cr. L. J. 292 :
6 I. C. 182.

—Ss. 145, 147—*Applicability—Proceedings under S. 147, regarding disputes as to road—Order in form under S. 145 (6)—No prejudice to opposite party.*

Where in a proceedings under S. 147 regarding a certain road, it is found that the disputed portion of the road is the private road of one party, the appropriate order to be passed is a declaration that the road is not a public road and a prohibition directed against the opposite party going on the road. Where instead of that the Magistrate declares that the road is in the first party's possession and prohibits all disturbance of such possession until eviction in due course of law, the order is in form one under S. 145 (6), and there is no prejudice to the opposite party. *Dhansar Coal Co., Ltd. v. Babu Lal Agarwala*.

39 Cr. L. J. 363 (b) :
173 I. C. 750 : 10 R. P. 436 : 4 B. R. 329 :
19 P. L. T. 323 : A. I. R. 1938 Pat. 133.

—Ss. 145, 147—*Applicability.*

The right to lay warps in a street in a village is not a right to the possession of land but a right to the use of it, and the Court should deal with the matter under S. 147 and not under S. 145. *Sanyata Kylasa Mudaliar v. Kuthalinga Mudaliar*.

19 Cr. L. J. 977 :
47 I. C. 877 : A. I. R. 1919 Mad. 812.

—Ss. 145, 360—*Applicability—Evidence of witnesses not read over, effect of—Irregularity—Trial, if initiated—Defect of parties, effect of—De facto possession, meaning of.*

In the case of proceedings under Chapter XII, the evidence must be read over to the witnesses. But the non-reading over of depositions to the

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witnesses in a proceeding under S. 145 does not, however, invalidate the trial itself. *Ram Narain Singh v. Dhonrai Gope*, 23 Cr. L. J. 125 : 65 I. C. 557 : 3 P. L. T. 291 : A. I. R. 1922 Pat. 371.

—Ss. 145, 435, 439—*Applicability—Dispute as to immovable property—Procedure—Jurisdiction of Magistrate.*

A Magistrate is only justified in applying S. 145 when he anticipates that unless he interferes, there will be a breach of the peace. He may so anticipate by reasons of general information or by a particular representation from some person, and if the person who makes that particular representation is the person whose possession is likely to be forcibly disturbed, then such person is in a position similar to a person who makes a complaint. But he is not a complainant and his petition is not a complaint. *Moolyamal Topandas v. Ali Mohammad Jadore*.

26 Cr. L. J. 1333 :
89 I. C. 309 : 18 S. L. R. 278 :
A. I. R. 1926 Sind 85.

—S. 145 (2)—*Applicability—Forcible dispossession—Delay in passing preliminary order—Effect.*

In proceedings under S. 145 the party who complains of forcible dispossession should not be deprived of the benefit of the section by reason of the delay caused by the Court in passing the preliminary order. *Srinivasa Reddy v. Dasartha Rama Reddy*.

30 Cr. L. J. 144 :
113 I. C. 336 : 28 L. W. 504 :
1928 M. W. N. 791 : I. R. 1929 Mad. 118 :
52 Mad. 66 : 56 M. L. J. 33 :
A. I. R. 1929 Mad. 198.

—S. 145 (2)—*Applicability—"Land," meaning of—Dispute concerning distribution of profits of land—No dispute as to possession—Proceedings under section, whether competent.*

The words "crops or other produce of land" in S. 145 (2) refer only to the crops or other produce while still attached to land. Where there is no dispute as regards possession but only as to profits, the provisions of the section have no application. *Emperor v. Ram Bhajan*.

23 Cr. L. J. 650 :
69 I. C. 90 : 25 O. C. 137 :
A. I. R. 1922 Oudh 199.

—S. 145 (5)—*Denial of existence of dispute, necessity of.*

S. 145 (5) applies only to those cases where any of the parties concerned in the dispute or any other person interested appears before the Magistrate and denies the existence of such dispute, and if this is not the case, Sub-s. (5) does not come into operation at all. *Sei Chand v. Bashambar Nath*.

38 Cr. L. J. 242 :
166 I. C. 580 :
9 R. L. 393 (1) : A. I. R. 1936 Lah. 1012.

—S. 145 (4)—*Applicability—Bengal Tenancy Act, S. 87—Landlord resuming possession of abandoned holding—Forcible possession.*

Where a landlord resumes possession of an abandoned holding after compliance with the procedure laid down in S. 87 of the Bengal

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Tenancy Act, it cannot be said that he has taken forcible possession of the holding within the meaning of Sub-s. (4) of S. 145. *Nikunja Behari Mullik v. Usabati Devi*.

28 Cr. L. J. 245 :
100 I. C. 117 : 31 C. W. N. 242 :
7 A. I. Cr. R. 357.

—S. 145 (6) — *Applicability — Order in respect of crops reaped under direction of Court.*

An order under S. 145, Sub-s. 6, cannot be passed in respect to crops which, though standing on the land at the time proceedings were taken under S. 145, had been attached and reaped by direction of the Court at the time of passing the order and were, therefore, movable property. *Siddamma v. Devajamma*.

9 Cr. L. J. 339 :
12 M. C. C. R. 116.

—S. 145 (6) — *Land gora deh shamilat — Action under S. 145.*

Where the land is *gora deh*, no one has a right to take exclusive possession to the detriment of the other persons who were entitled to and apparently were in the habit of using the land and the mere fact that the land is *shamilat* does not preclude the Court from making enquiry and taking proceedings under S. 145. *Giani v. Emperor*.

38 Cr. L. J. 123 :
166 I. C. 71 : 38 P. L. R. 332 : 9 R. L. 334 :
A. I. R. 1936 Lah. 1015.

—S. 145 (7) — *Applicability — Charter Act (24 and 25 Vic. c. 104), S. 15 — High Court — Revision — Death of party pending revision — Abatement — Power to deal suo motu on merits.*

S. 145 (7) regulates only proceedings under the section and its purview cannot be extended to others, such as revisional proceedings before the High Court under the Charter Act. On the death, therefore, of the petitioner, pending disposal of revision-petition in the High Court under the Charter Act against an order passed under S. 145, the proceedings abate and his son will not be permitted to be brought on the record to prosecute it. The High Court will not deal, in revision, with the Magistrate's order *suo motu* when the Magistrate has complied with all the formalities essential to his having jurisdiction. *Subbaraju v. Rambhadra Raju*.

17 Cr. L. J. 389 :
35 I. C. 821 : 4 L. W. 440 :
A. I. R. 1917 Mad. 664.

—S. 145 — *Arbitration — Agreement to refer arbitration or compromise — Dropping of proceedings.*

There can be no question of a breach of the peace when the parties have agreed to arbitration or to a compromise. The preliminary order should, in such a case, be cancelled under S. 145 (5). *Gangadhar v. Balkrishna*.

31 Cr. L. J. 191 :
121 I. C. 47 : A. I. R. 1929 Nag. 285.

—S. 145 — *Arbitration — Dispute concerning immovable property — Arbitration, reference to — Order relating to property not referred to in preliminary order, validity of.*

The law does not allow delegation of the jurisdiction of the Court under S. 145 to arbitra-

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tors. The utmost that the Code allows in a proceeding under S. 145 is that the Court may direct a local inquiry and bring the inquiry report on the record as evidence. If, however, the Magistrate has before him clear and undeniable evidence that there is no further likelihood of the breach of peace and that the parties have come to a settlement of their dispute, the Magistrate must drop the proceedings. In such a case a compromise between the parties may be taken by the Magistrate as evidence for an order to be passed under cl. (5) of S. 145, but the compromise cannot possibly be made the basis of an order under cl. 6 of the section. A Magistrate has no jurisdiction to pass an order under S. 145 in respect of property which was not referred to in the initiatory proceedings. *Uttam Singh v. Jodhan Rai*. 27 Cr. L. J. 220 : 92 I. C. 172 : 3 Pat. 288 : 7 P. L. T. 288 : A. I. R. 1924 Pat. 589.

—S. 145 — *Arbitration — Magistrate, whether can make reference — Jurisdiction.*

A Magistrate acting under S. 145 has no jurisdiction even with the parties' consent to refer the dispute to arbitration, and to make an order in regard to the possession of the parties upon the award of the arbitrators. *Hari Prasad Tewari v. Sewak Das*. 18 Cr. L. J. 685 : 40 I. C. 333 : 1 P. L. W. 748 : 1917 Pat. 251 : A. I. R. 1917 Pat. 624.

—S. 145 — *Arbitration proceedings under — Arbitration — Award accepted by both parties — Revision — Objection to award, validity of.*

Where after drawing up proceedings under S. 145, the matter is, with the consent of the parties, referred to arbitration and the award is filed and accepted by both parties, it is not open to either of them to object to the award in revision. *Haldhar Singh v. Bulaki Singh*.

19 Cr. L. J. 266-A :
44 I. C. 122 : 4 P. L. W. 104 : 3 P. L. J. 249 :
A. I. R. 1918 Pat. 383.

—S. 145 — *Arbitration — Proceedings under — Magistrate, delegation of duties by.*

S. 145 does not give the Magistrate charged withholding the enquiry under that section the right or power to delegate the duties which have been vested in him to any other person. *Hamidul-Haq v. Aftab Hossain*.

18 Cr. L. J. 145 :
37 I. C. 513 : 1 P. L. W. 81 : 2 P. L. J. 86.
A. I. R. 1917 Pat. 191.

—S. 145 — *Arbitration — Proceedings under — Reference to arbitration, legality of.*

The proceedings cannot be compromised or submitted to arbitration though the Magistrate may appoint in certain cases a Commissioner or Commissioners to conduct a local enquiry and to report as regards actual possession which the Magistrate is bound to consider. The Commissioner or the arbitrator will, however, have no power to decide the case. *Gangadhar v. Balkrishna*.

31 Cr. L. J. 191 :
121 I. C. 47 : A. I. R. 1929 Nag. 285.

—S. 145 — *Arbitration — Reference to arbitration, whether contemplated — Question of actual possession to be decided by Magistrate —*

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Award of arbitrator, when can be accepted by Magistrate.

A reference to arbitration is not contemplated in proceedings under S. 145. The section directs the Magistrate to receive evidence himself, and on a consideration of such evidence, to decide the question of actual possession. If, however, the parties have privately referred the dispute to arbitration and the award of the arbitrators has been accepted by both, the Magistrate would have ground for proceeding under S. 145, (5). *Jamuna Das Kijriwala v. Hanuman Bakhsh Marwari*. 22 Cr. L. J. 623 : 63 I. C. 159 : 33 C. L. J. 338 : 25 C. W. N. 719. A. I. R. 1921 Cal. 637.

———S. 145—Attachment and sale of crops—Proceedings dropped—Order disposing of sale-proceeds.

Where a Magistrate declines to continue proceedings under S. 145 in respect of a dispute relating to certain crops on the ground that there is no likelihood of a breach of the peace, he has no jurisdiction to direct that the sale-proceeds of the crops attached under the preliminary order should be deposited in Court till one of the parties establishes his right to them in the Civil Court. The proceeds must be restored to the person from whose possession the crops were taken. *Mahalakshmi v. Subbarayadu*. 24 Cr. L. J. 783 : 74 I. C. 447 : 17 L. W. 420 : A. I. R. 1923 Mad. 472.

———S. 145 — Attachment — Bengal Alluvial Lands Act, Ss. 3, 10—Attachment under S. 145, whether bars fresh attachment under S. 110, Bengal Alluvial Lands Act.

Where a Magistrate, after taking proceedings under S. 145 in respect of certain *char* lands and attaching them under the said section, released them from attachment and attached them again under the Bengal Alluvial Lands Act, 1920 : *Held*, that the provisions of S. 10, Bengal Alluvial Lands Act, were wide enough to apply to all proceedings including an attachment that may have been made under S. 145 and there was nothing substantially wrong in the procedure adopted by the Magistrate. *Digendra Behary Roy v. Janaki Nath Roy*. 31 Cr. L. J. 911 : 125 I. C. 737 : 33 C. W. N. 1115 : 57 Cal. 607 : A. I. R. 1929 Cal. 646.

———S. 145—Attachment—Elephant, whether can be attached—Attachment of forest containing elephant—Final order.

An elephant cannot be attached under S. 145. If, however, a forest is attached under that section with an elephant in it, the elephant should be delivered only to the person in whose favour the final order is passed under S. 145. *Kochunny v. Manavikrama Rajah Amyal*. 13 Cr. L. J. 222 : 14 I. C. 318 : 1912 M. W. N. 540.

———S. 145 — Attachment — Final order — Order, setting aside of.

A final order for attachment passed under S. 145 cannot be reviewed or set aside in any way either by the Magistrate who passed it or by his successor. The remedy of the person

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aggrieved is to go to the Civil Court. *Lallan Mis'r v. Ram Richcha*. 27 Cr. L. J. 466 : 93 I. C. 690 : 24 A. L. J. 227 : L. R. 7 All. 29 Cr. : 48 All. 258 : A. I. F. 1926 All. 242.

———S. 145—Attachment—Irregular proceeding—Property attached—Proceedings dropped—Subsequent delivery of property on petition of opposite party, legality of.

A land was attached under S. 145 (4). After several adjournments, the Magistrate holding the proceedings refused to give further time to the first party and recorded the order : "Proceedings stopped : File." On the same day a petition was put in by the second party and the Magistrate passed on it an order : "Heard the parties : examined the documents. The first party have failed to have their possession and case though repeated opportunity was granted. Second party will remain in possession": *Held*, that the procedure was irregular and that as the land had been attached under cl. (4), some further order than merely dropping the proceedings was necessary: *Held*, also, that possession ought not to have been awarded to the second party merely because the first party had failed to prove its case. *Samad Ali v. Abdul Majid*.

23 Cr. L. J. 195 : 65 I. C. 851.

———S. 145—Attachment—Decree of Civil Court, effect of.

In proceedings under Chap. XII of the Cr. P. C. where the Magistrate attaches property, the attachment should continue only until a competent Court has determined the rights of the parties thereto, and the mere fact that an appeal from such determination is pending before a higher Court is no reason for the Magistrate continuing to keep the property in attachment. *Emperor v. Abdul Aziz*.

19 Cr. L. J. 261 : 44 I. C. 117 : 46 P. W. R. 1917 Cr. : A. I. R. 1918 Lah. 390.

———Ss. 145, 146—Attachment.

In proceedings under Ss. 145 and 146 a Magistrate should determine actual possession, not rightful possession. *In re : Sanganbasappa kom Basappa*. 2 Cr. L. J. 28 : 7 Bom. L. R. 18.

———Ss. 145, 146—Attachment—Magistrate, duty of—Attachment of property, when permissible.

In cases under S. 145 a reasonable effort must be made to decide the question as to possession before there is jurisdiction to attach the subject-matter under S. 146. It is not a Magistrate's business to speculate whether his order under S. 145 will prejudice a future decision in a revenue proceeding. It is also not sound to check his hand because his decision is not final. *Wayezul Haq v. Shobzati Jolaha*. 24 Cr. L. J. 754 : 74 I. C. 258 : 4 P. L. T. 441 : 1 P. L. R. 161 Cr. : A. I. R. 1924 Pat. 47.

———Ss. 145, 146—Attachment—Movable property found in math, whether can be attached.

In a proceeding under S. 145 a Magistrate

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ordered a *math* to be attached under cl. (4) of the section and directed a Police Officer to take charge of it. The latter accordingly attached the *math* and also six cattle found therein. The Magistrate finally ordered the attachment of a *math* under S. 146: *Held*, that the attachment of the cattle by the Police Officer was legal, inasmuch as they could not be released or made over to any of the parties until his right to the *math* was finally determined by a competent Court. *Bharat Das v. Ram Charitar Das.* 18 Cr. L. J. 287 : 38 I. C. 319 : 1 P. L. J. 356 : 2 P. L. W. 367 : A. I. R. 1916 Pat. 42.

———Ss. 145, 146—Attachment—Order of attachment, without written statement and evidence—Jurisdiction of Magistrate.

Although it is not beyond the jurisdiction of a Magistrate to make an order under S. 146 without written statements and without evidence, yet, if he makes such an order without making any attempt to investigate the question in the light of evidence and of written, statements he acts without jurisdiction. *Asfandiyar Khan v. Irshad Khan.* 11 Cr. L. J. 90 : 5 I. C. 249.

———Ss. 145, 146—Attachment—Possession neither with one party nor with other—Procedure—Attachment.

Where in a proceeding under S. 145 the Magistrate finds neither the first party nor the second party in possession but finds that actual possession is with a person who does not claim to be in possession, he should proceed to attach the property under S. 146. *Baghjogin v. Emperor.* 20 Cr. L. J. 215 : 49 I. C. 775 : A. I. R. 1919 Pat. 130.

———Ss. 145, 146—Attachment—Procedure.

Before attaching property under S. 146, the Magistrate should make some inquiry in order to ascertain, if possible, who was in possession. An order of attachment made without such inquiry cannot be sustained. *Parsuram Rai v. Shivajatan Upadhaya.* 23 Cr. L. J. 277 : 66 I. C. 421 : 3 P. L. T. 434 : A. I. R. 1922 Pat. 544.

———Ss. 145, 146—Attachment of property in dispute—Appointment of Receiver, proper stage for.

Under S. 145, a Magistrate has, in cases of emergency, power to attach the subject in dispute but a Receiver can be appointed only where the Magistrate is unable to decide which of the parties is in possession and considers it necessary that the property should vest in some person appointed by the Court under S. 146. *Emperor v. Diwan Chand.* 30 Cr. L. J. 411 : 115 I. C. 29 : 30 P. L. R. 23 : I. R. 1929 Lah. 365 : 10 Lah. 800 : A. I. R. 1929 Lah. 233.

———Ss. 145, 146—Attachment—Proceedings, not drawn up—Attachment—Jurisdiction.

Where no proceedings under S. 145 are, as a matter of fact, drawn up, a Magistrate has no jurisdiction to attach the property in dispute, and all orders passed consequent upon

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such attachment are invalid and liable to be set aside. *Jamuna Prasad Singh v. Mohan Koebi.* 23 Cr. L. J. 64 : 64 I. C. 848 : 2 P. L. T. 724.

———Ss. 145, 146—Attachment—When can be withdrawn—Opposing claims to mesne profits—Procedure.

In order to enable a Magistrate to withdraw an attachment order under S. 146, it is not necessary that there should be a decree in favour of all the parties, and if there is an adjudication by a Civil Court in favour of some of the parties, that is sufficient. Where, in an application made under S. 145, a Magistrate, in consequence of a dispute with regard to the ownership of certain properties, attached them as he was not satisfied that any one of the parties was in possession, and then the counter-petitioner and another brought several suits and obtained decrees for certain shares in the property: *Held*, that as the applicants would not be able to bring a suit to recover possession of the property, more than six years having elapsed since the Magistrate took possession, the proper course for him to follow was to withdraw the attachment as there had been a civil adjudication in favour of some of the parties (2) that the Magistrate would have no jurisdiction to pass an order with regard to mesne profits and the proper course for him to follow was to deposit the money in Court and allow the parties to litigate their rights in respect of the share due to them for mesne profits. *Vitoba Rao v. Narasinga Rao.* 17 Cr. L. J. 331 : 35 I. C. 507 : 4 L. W. 55 : 20 M. L. T. 247 : 1916 2 M. W. N. 173 : A. I. R. 1917 Mad. 453.

———S. 145, 146—Attachment—Proceedings under—Attachment of property by Deputy Magistrate—District Magistrate—Jurisdiction of, to interfere—Procedure.

An order passed by a Magistrate in a proceeding under S. 145 cannot be upset by the District Magistrate; the remedy is to move the High Court in revision, or to go to the Civil Court for a decision of the claims of the parties. *Ram Kumar Lal v. Thakar Ojha.* 23 Cr. L. J. 562 : 68 I. C. 402 : 4 U. P. L. R. Pat. 52 : 1922 Pat. 224 : 3 P. L. T. 648 : A. I. R. 1922 Pat. 554.

———S. 145 (4)—Attachment—Dispute concerning immovable property—Attachment of property.

Power under S. 145 is given to a Magistrate for the purpose of preventing the peace and it is only for that purpose that he may, where a breach of the peace is imminent, attach disputed property. This means that if the Magistrate thinks that the likelihood of a breach of the peace is so imminent as to call for immediate action to prevent it, he may attach the property in respect of which the dispute is subsisting. An order of attachment of property cannot be passed under the section for the mere purpose of avoiding future litigation in respect of the

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right to the present produce of the land in dispute. *Atma Singh v. Harnam Singh*.

27 Cr. L. J. 761 :
95 I. C. 281 : 7 Lah. 134 :
8 L. L. J. 358 : 27 P. L. R. 341 :
A. I. R. 1926 Lah. 205.

———S. 145 (4)—Attachment of lands and crops harvested, legality of—Appointment of Receiver—Powers of Receiver.

It is competent to a Magistrate, under S. 145 (4) to order the attachment not only of the land in dispute, but also of "the crops harvested and rents received since the beginning of the disturbance." The appointment of a Receiver under S. 145 (4), is not prohibited, but he has not and cannot exercise all the functions that a Receiver appointed under S. 146 can exercise. A Receiver appointed under the former section must be treated only as an agent or servant of the Magistrate, whose order is only an administrative order passed for the management of the property. *Srinivasa Pillay v. Sathayappa Pillay*.

13 Cr. L. J. 295 :
14 I. C. 759.

———Ss. 145 (4), 146—Attachment—Order of attachment under S. 145 (4)—Appointment of Receiver—Jurisdiction.

S. 146 (2) cannot be so read as to make its provisions apply to attachments under the preceding section. The appointment of a Receiver under the provisions of S. 145 (4) is not authorised by law and is *ultra vires* and illegal. *Subadramma v. Satyam Swami*.

11 Cr. L. J. 536 :
7 I. C. 895.

———S. 145—Breach of the peace, absence of evidence of likelihood of—Magistrate, whether has jurisdiction.

Where in a proceeding under S. 145, there is no evidence of, and nothing in the proceedings to show, the likelihood of a breach of the peace between the parties or either of them, a Magistrate has no jurisdiction to make an order in favour of one of the parties. *Rasik Chandra Hore v. Jagabandhu Roy*.

22 Cr. L. J. 502 :
62 I. C. 326 : 25 C. W. N. 214 :
A. I. R. 1921 Cal. 261.

———S. 145—Breach of peace.

Breach of the peace possible only if the applicant himself acts illegally—Order in his favour should not be passed. *Ramchandra v. Dr. Shankarrao*.

33 Cr. L. J. 556 :
138 I. C. 38 : 15 A. L. J. 28 :
I. R. 1932 Nag. 71 : A. I. R. 1932 Nag. 83.

———S. 145—Breach of peace—Jurisdiction—Previous order of Court.

The likelihood of breach of the peace is sufficient to give the Magistrate jurisdiction. The weight to be attached to a previous order of a Civil or Criminal Court is a question for the consideration of the Magistrate. *Gaya Prasad Singh v. Ram Sardar Saran Singh*.

36 Cr. L. J. 624 (2) :
155 I. C. 36 : 15 P. L. T. 453 :
7 R. P. 520 : A. I. R. 1934 Pat. 471.

———S. 145—Breach of peace—Likelihood—

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Police report stating possibility of a breach of the peace.

Proceedings under S. 145 were instituted on a Police report which showed that the two parties were disputing about the possession of a tank and that they were big zemindars, and that though there was nothing to show that there was a likelihood of a breach of the peace, yet it was not impossible that there should be a breach of the peace : *Hela*, that the police report as it is cannot be and ought not to be the foundation of a proceeding under S. 145. The opinion expressed by the Police officer without sufficient materials ought not to be the ground for the institution of the proceedings. *Maharaja Bahadur Singh v. Ranjit Singh*.

6 Cr. L. J. 36 :
11 C. W. N. 835.

———S. 145—Breach of peace, likelihood of, absence of—Effect.

An order under S. 145 can only be passed when there is a present danger of a breach of the peace ; in the absence of any finding that there is a likelihood of the breach of the peace, an order under the section cannot be maintained. The mere fact that the parties are in a "contesting mood" does not amount to a finding that there is a likelihood of a breach of the peace. *Munnu Lal v. Hirde Ram*.

26 Cr. L. J. 944 :
86 I. C. 1008 : 12 O. L. J. 256 :
O. W. N. 220 : 29 O. C. 23 :
A. I. R. 1925 Oudh 416.

———S. 145—Breach of peace, nature of.

It does not require that there should be a fear of an 'imminent' or 'immediate' breach of the peace. *Hari Churan De v. Sheratilalukdar*.

33 Cr. L. J. 305 (2)
136 I. C. 475 : 35 C. W. N. 1003 :
I. R. 1932 Cal. 203 : A. I. R. 1932 Cal. 60.

———S. 145—Breach of peace.

No proceedings under S. 145 can be started unless the Magistrate is satisfied that there is fear of a breach of the peace between the parties. *Ram Manorath Das v. Kaushal Kishore Das*.

34 Cr. L. J. 934 (1) :
145 I. C. 299 (2) : 10 O. W. N. 310 :
6 R. O. 41 (1) : A. I. R. 1933 Oudh 253.

———S. 145—Breach of peace—Order striking off proceedings—Court, duty of—Apprehension of breach of peace.

An order, striking off a case under S. 145 without making a final order as contemplated by law, is wholly illegal. There must be some material before the Magistrate to come to the conclusion that there is no apprehension of a breach of the peace. *Sastu Sahu v. Nathuni Thakur*.

26 Cr. L. J. 105.
83 I. C. 665 : 1924 Pat. 231 : 6 P. L. T. 258 :
3 Pat. L. R. 145 Cr. : A. I. R. 1924 Pat. 689.

———S. 145—Breach of peace—Police report, contents of—Breach of the peace, likely, imminent—Possession—Decree of Civil Court, not necessarily conclusive.

A Police report upon which the Magistrate founds his initial order under S. 145 should contain a statement of the facts from which

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the Magistrate may be satisfied of the existence of a likelihood of a breach of peace, he must form his own judgment and not proceed upon a mere expression of opinion by the Police. To take proceeding under S. 145 it is enough that a breach of the peace is likely; it is not necessary that it should be imminent. If the Police report is defective, it is not obligatory upon the High Court to interfere, when it is proved at the trial that a breach of the peace was likely at the date of the initial order. The question of possession in a proceeding under S. 145 has to be determined with reference to a special point of time: upon this question every previous decree of a Civil Court or other order of a Criminal Court is not necessarily conclusive; the evidentiary value to be attached to such document must depend upon the circumstances of each particular case. *Kulada Kinkar Roy v. Danesh Mir.* 2 Cr. L. J. 670 : 10 C. W. N. 257 : 2 C. L. J. 271 : I. L. R. 33 Cal. 33.

—————S. 145—*Breach of peace—Proceedings under—Apprehension of breach of peace ceasing—Procedure.*

The apprehension of a breach of the peace is the first condition necessary to give a Magistrate jurisdiction under S. 145 and if in the course of a proceeding under that section it is found that there is no longer any such apprehension, the Magistrate's jurisdiction ceases and he ought to stay all further proceedings under Cl. (5) of the section. *Muhammad Khandu Sarkar v. Sadak Ali Shaikh.* 25 Cr. L. J. 291 : 76 I. C. 963 : 38 C. L. J. 284 : A. I. R. 1923 Cal. 577.

—————Ss. 145, 147 — *Breach of peace not imminent—Effect.*

The fact that breach of the peace is not imminent and there is sufficient time to go to the Civil Court is no bar to the initiation of proceedings under Chap. XII, Criminal Procedure Code. *Todar Mal v. Emperor.*

32 Cr. L. J. 309 :
1930 A. L. J. 1437 : L. R. 11 All. 190 Cr. :
129 I. C. 441 (2) : A. I. R. 1931 All. 14.

—————Ss. 145, 537—*Breach of peace imminent—Preliminary order—Copy of order not fixed—failure to give notice to persons interested—Irregularity—Duty of Magistrate.*

A preliminary order under S. 145 should be made as soon as a Magistrate finds from a Police report that a breach of the peace is imminent. The irregularity of not affixing a copy of the preliminary order on or near the land in dispute, under S. 145 (3) is cured by S. 537. An omission to give notice of proceedings under S. 145 to persons interested in the property in dispute is not a defect. Even if it be one, it is cured by S. 537. Any interested person to whom the Magistrate in his discretion does not direct the notice to issue or any such person of whose interest the Magistrate is unaware, can always intervene under S. 145 (5). In proceedings under S. 145, the Magistrates are concerned primarily with danger of a breach of the peace and the taking of prompt measures to prevent it; the question of actual possession

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even is entirely subsidiary. *Bhure Khan v. Fakira.* 25 Cr. L. J. 159 :

76 I. C. 303 : A. I. R. 1924 Nag. 171.

—————S. 145 (5)—*Burden of proof.*

If any person interested denies the existence of the dispute, the onus lies on him to show that it does not exist and the Magistrate should state clearly whether he believes or not that a dispute likely to cause a breach of the peace exists. *Emperor v. Munnu.* 33 Cr. L. J. 46 :

134 I. C. 1020 : 8 O. W. N. 1182 :

I. R. 1931 Oudh 428 : A. I. R. 1932 Oudh 21.

—————S. 145—*Compromise proceeding under—Sale of crops—Deposit in Court—Proceedings dropped by consent—Disposal of sale-proceeds—Question of title, decision of—Procedure.*

During the pendency of proceedings under S. 145, the crops on the land were seized and sold and the proceeds deposited in Court. The proceedings were then dropped with the consent of the parties: *Held*, that it was not thereafter competent to the Magistrate to decide which of the parties was entitled to the money and to hand it over to him; the proper order to make in the case was to direct the money to remain in deposit pending the decision in a Civil Court as to which of the parties was entitled to it. *Natesa Naicker v. Raghavachariar.*

26 Cr. L. J. 512 :

85 I. C. 256 : 20 L. W. 924 :

A. I. R. 1925 Mad. 327.

—————Ss. 145, 439—*Compromise—Proceeding under S. 145—Compromise—Breach—Continuation of proceedings—Irregularity—Revision.*

During the course of a proceedings under S. 145 the parties entered into a compromise whereby it was agreed that the first party would continue in possession of the property in dispute. The Court, thereupon, consigned record to the record-room. A few days after, the first party appeared before the Court and filed a petition complaining that the second party had dispossessed him from a portion of the property in dispute and threatened to use violence. The Magistrate thereupon revived the proceedings and finally passed an order confirming the possession of the first party: *Held*, that there was no grave irregularity in the proceedings or final order of the Magistrate which justified interference in revision. *Khushalgi v. Jamnagar.* 23 Cr. L. J. 724 :

69 I. C. 452 : A. I. R. 1923 Lah. 46.

—————S. 145, Cls. (5) and (6)—*Compromise—Termination of proceeding—Petition of compromise—Subsequent proceeding, if legal.*

The parties to a proceeding under S. 145 compromised and filed a petition of compromise, and according to its terms, the Magistrate ordered that the lands would be in the possession of both sides as stated in the petition: *Held*, that the order fell under Cl. 5 of S. 145 and not one under cl. 6 and that, therefore, a subsequent proceeding instituted under S. 145 between the parties in respect of the same lands, is not one made without jurisdiction. *Sadhu Biswas v. Mahamad Ali.*

12 Cr. L. J. 32 :

9 I. C. 167 : 15 C. W. N. 568.

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—S. 145—Construction—Dispute in respect of *lac* growing on trees—Proceeding under S. 145, whether within jurisdiction.

The Police submitted a report that, in attempting to collect *lac* on plum trees standing on lands compromised in the holdings of the tenants of a zemindari concern, the officers of the latter were opposed by the lessees of the tenants, and that there was every possibility of a serious breach of the peace at any moment between the parties; an order was thereupon made by the District Magistrate directing a proceeding under S. 145 to be drawn up and the *lac* trees attached; this order was attacked in a revision petition to the High Court and the question was, whether the subject-matter of the dispute came within S. 145: Held, that *lac* did not fall within the meaning of the expression "land" in S. 145 and that the proceedings held under that section were without jurisdiction; that the matter did not come within S. 147, and even if it did, no order for attachment could be made. *Ali Muhammad v. Fakiruddi Munshi*. 22 Cr. L. J. 131 : 59 I. C. 643 : 24 C. W. N. 1839 : 32 C. L. J. 255.

—S. 145—Construction.

The word "shall" in S. 145 is directory and not mandatory. *Imperator v. Lackhano*. 10 Cr. L. J. 231 : 2 S. L. R. 18.

—S. 145—Costs—Assessment of.

In proceeding under S. 145 it is extremely difficult to prove the exact sum spent in costs and the Court may very well use its discretion in awarding an amount which it considers reasonable. *Brij Pal Singh v. Ram Nresh Singh*. 33 Cr. L. J. 157 : 135 I. C. 246 : L. R. 13 All. 98 Cr. : I. R. 1932 All. 70 : A. I. R. 1932 All. 325.

—S. 145—Costs—Assessment of.

In proceedings under S. 145, the value of the property in dispute cannot by itself be taken as a fair test of the costs which should be awarded. *Kallu v. Bashiruddin*. 32 Cr. L. J. 372 : 129 I. C. 269 : 1930 A. L. J. 1504 : L. R. 11 All. 181 Cr. : 53 All. 172 : I. R. 1931 All. 141 : A. I. R. 1931 All. 3.

—S. 145—Costs—Proceedings under—Discretion—Reasons for not awarding costs to successful party not given—Successful party should be awarded costs—Company, one of the parties—Costs awarded against Manager could be realised from Company.

In a proceedings under S. 145, the Magistrate has discretion to award costs, but where he has given no reason for not exercising that discretion in favour of the successful party, he should be given a reasonable amount of costs. Where one of the parties to a proceedings under S. 145 are some managers of a certain Limited Company though the company is the real contestant, the costs awarded against them should be realised either from the managers or from the company

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itself. *Udhab Chandra Pal v. Sideswar Prasad Singh*. 38 Cr. L. J. 1099 : 171 I. C. 604 : 18 P. L. T. 714 : 4 B. R. 43 : 10 R. P. 224 : A. I. R. 1937 Pat. 559.

—S. 145—Costs.

Order for costs is an order incidental to order for possession. On failure of Magistrate to pass it, High Court can, in revision, make order for payment of costs of proceedings. 35 Cr. L. J. 1 : 145 I. C. 837 : 11 Rang. 361 : 6 R. Rang. 64 : A. I. R. 1933 Rang. 288.

—S. 145—Costs ordered by one Magistrate—Successor, whether competent to assess—Death of party in whose favour order is made—Application by deceased's son for assessment of costs, whether entertainable—Procedure—Interpretation—Power of Courts to invent rules.

The Cr. P. C. contains no special provisions for bringing on record representatives of accused parties. All that the Court has to see is that the appeal or application has not abated by reason of the death of one of the parties. The successor of a Magistrate, who decided a case under S. 145 and directed a party to pay his opponent's costs, has jurisdiction to assess the amount of costs. *Subbiah Serrai v. Chokkalinga Thevan*. 15 Cr. L. J. 676 : 25 I. C. 1004 : 16 M. L. J. 248 : 1914 M. W. N. 790 : 27 M. L. J. 613 : A. I. R. 1915 Mad. 92.

—S. 145—Costs—Original order directing payment of costs without fixing amount assessed in separate order—Legality.

Where a Magistrate in his order under S. 145 directed the petitioners to bear the costs of the other side but did not specify the amount: Held, that it was not illegal for him to assess the amount in a separate order passed subsequently after hearing both sides. *In re : Medapati Ammiruddi*. 14 Cr. L. J. 570 : 21 I. C. 170 : 14 M. L. T. 195 : 1913 M. W. N. 771.

—S. 145—Costs to successful party—Notice.

Mere delay in applying for costs in proceedings under S. 145 does not affect the jurisdiction of the Magistrate to award costs, but no order as to costs can be made without notice to the party affected. *Palaniandi Serrai v. Sammandi Ammal*. 24 Cr. L. J. 80 : 71 I. C. 128 : 16 L. W. 613 : A. I. R. 1923 Mad. 87.

—Ss. 145, 146, 147, 148 (3)—Costs—Time for making order.

There is nothing in the law to preclude a Magistrate from making an order for costs after passing a decision under Ss. 145, 146 or 147 but such order ought only to be made by the Magistrate who passed the decision, and within a reasonable time thereafter. Ordinarily an interval of three months is nota

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reasonable time. *Nafar Chandra Pal v. Sidhartha Krishna.* 21 Cr. L. J. 751 (b) :

58 I. C. 255 : 24 C. W. N. 672 :

32 C. L. J. 34 : 47 Cal. 974 :

A. I. R. 1920 Cal. 320.

———Ss. 145, 147—Costs.

Witnesses may be examined locally to avoid expense; but that does not mean that no expense is properly incurred at all so as not to award costs to any party. *Kunjo Mandal v. Sarju Ram Marwari.* 40 Cr. L. J. 538 :

181 I. C. 176 : 20 P. L. T. 164 :

5 B. R. 539 : 11 R. P. 573 :

A. I. R. 1939 Pat. 206.

———Ss. 145, 148—Costs—Dispute as to immovable property—Order as to costs.

Although an order under S. 148 may be made subsequent to the passing of an order under S. 145, it must be made by the Magistrate who tried the case under S. 145 within a reasonable time on proper materials, namely, the actual costs incurred as Pleader's fees and costs of witness. *Manglu Sahu v. Ramdhani Tamboli.*

30 Cr. L. J. 252 :

114 I. C. 193 : 9 P. L. T. 835 :

I. R. 1929 Pat. 113 : A. I. R. 1929 Pat. 93.

———Ss. 145, 148—Costs—Jurisdiction.

In awarding costs in proceedings under S. 145, a Magistrate is restricted to the amount awarded as Pleader's fees (if any) and costs for witnesses: any order about costs passed arbitrarily is without jurisdiction and must be set aside. *Hira Mahton v. Rajkumar Mahton.*

23 Cr. L. J. 508 :

68 I. C. 44 : 3 P. L. T. 484 :

A. I. R. 1922 Pat. 564.

———Ss. 145, 148—Costs—Withdrawal of proceedings by petitioner—Award of costs—Order allowing withdrawal, whether a "decision."

An order allowing proceedings initiated under S. 145 to be withdrawal is not a "decision" within the meaning of S. 148 of the said Code, and an award of costs to the counter-petitioner under S. 148 is illegal. *Narasimha Chairiar v. Pillanna.* 12 Cr. L. J. 49 :

9 I. C. 289 : 9 M. L. T. 324.

———Ss. 145, 439—Costs—Proceedings under Chap. XII—Revision—Costs.

The High Court has no power to award costs incurred before it on the hearing of a criminal revision-petition, against an order passed under Chap. XII of the Cr. P. C. *Veerappa Naidu v. Avudayammal.* 26 Cr. L. J. 707 :

86 I. C. 147 : 48 M. L. J. 106 :

21 L. W. 686 : 48 Mad. 262 :

A. I. R. 1925 Mad. 438.

———S. 145—Death of applicant.

Proceedings under S. 145—Revision—Death of applicant—Application, whether abates. See *Post*, S. 435.

———S. 145—Decree of Civil Court as to possession of property not clear—Dispute as to possession—Magistrate's jurisdiction to decide the question of possession in such cases.

Where it cannot be disputed that a certain

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person has been declared owner and put in possession of certain property by a Civil Court, it is not open to a Magistrate to decide the question of possession contrary to the Civil Court's action. But where the decretal terms leave the *factum* of possession fairly open to doubt, it is competent to the Magistrate if, in his opinion, there is a dispute likely to lead to a breach of the peace, to construe the decree for the purposes of deciding on the evidence the fact of possession. *In re: Moti Lal Har Gobind.*

1 Cr. L. J. 256 :

6 Bom. L. R. 246.

———S. 145—Decree of Civil Court—Decision by Civil or Criminal Court, whether binding on Magistrate—Written statement supported by evidence of deponent—Discretion—Further evidence, when necessary.

It is not always incumbent upon a Magistrate trying a case under S. 145 to give effect to the decision of a Civil or Criminal Court and no hard and fast rule can be laid down in this respect. Where, in a proceeding under S. 145 one of the parties files a written statement, and that statement is supported by his own evidence in Court, the Magistrate in relying upon the written statement does not act without jurisdiction; nor does he do so in not accepting a decision in a previous case of rioting as to possession. It is in the discretion of the Magistrate in a proceeding under S. 145 to take further evidence, if he thinks it is necessary to do so. If he is satisfied on the evidence produced as to the party in actual possession, it is not necessary for him to take further evidence. *Bhulan v. Kumar Rai.* 24 Cr. L. J. 951 :

75 I. C. 535 : 5 P. L. T. 69 :

2 Pat. L. R. 104 Cr.

———S. 145—Decree of Civil Court—Dispute between tenants of joint owners—Jurisdiction of Magistrate to proceed under s. 145.

Certain land was jointly leased to tenants by two joint owners, and the former continued in possession for several years under the lease. One of the joint owners sued for partition of his share and obtained a decree but he did not obtain possession of his share under the decree, and while the old tenants were in possession as before, some new tenants forcibly entered on the land asserting that they were the tenants of only one of the joint owners. The Magistrate, acting under S. 145, put the old tenants in possession: *Held*, that the Magistrate did not act without jurisdiction, and that though there is no doubt that the Court must give effect to a decree of a Civil Court for partition, yet in this instance the dispute not being between the parties to the decree but between two rival sets of tenants, the Magistrate was right in putting the old tenants into possession of the land. *Ma E Mya v. Maung Po Thaug.* 11 Cr. L. J. 655 :

8 I. C. 453 : 3 Bur. L. T. 74.

———S. 145—Decree of Civil Court, effect of—Possession, mode of delivery of, whether material.

A Magistrate, in declaring possession in a proceeding under S. 145, cannot go behind a decision of a Civil Court in the matter. When

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a decree such as the above is *inter partes*, it is immaterial whether the delivery of possession under it was symbolical or not. *Akhoy Mondal v. Basu Rai*.

24 Cr. L. J. 517 :
73 I. C. 53 : 27 C. W. N. 267 :
37 C. L. J. 256 : A. I. R. 1923 Cal. 176.

—S. 145—Decree of Civil Court—Failure to decide effect of Civil Court decree between parties—Refusal of jurisdiction.

Neglecting to decide what effect a Civil Court decree between the parties to a proceedings under S. 145 may have had on the question of possession, is an omission to deal with a material part of the case made before the Magistrate and a refusal of jurisdiction by him. *Gopal Chandra v. Uma Charan*.

11 Cr. L. J. 181 :
5 I. C. 646.

—S. 145—Decree of Civil Court—Lease to applicant for one year—Lease to opposite party for next year—Applicant trying to retain possession—Decree of Civil Court declaring applicant to be in possession—Proceedings under S. 145—Opposite party entitled to possession.

A lease of certain land was granted to the applicant for a year. For the next year the land was leased to the opposite party as dissatisfaction was felt with the applicant who said that the land having been leased to him he had entered into possession and that possession could not be taken away from him and, therefore, the Court should not have found that the opposite party was in possession. Applicant tried to retain possession. A decree was passed in a civil suit declaring the applicant to be tenant for the second year but it related only to a fraction of the land. The trial Magistrate declared the opposite party to be in possession under S. 145 : *Held*, that the decision was correct and the actual physical possession had to be determined as otherwise a breach of the peace was likely to result, and that the Magistrate was not bound by the decision of the Civil Court. *China Tambi v. Virappa*.

38 Cr. L. J. 805 :
169 I. C. 939 : 10 R. Rang. 39 :
A. I. R. 1937 Rang. 202.

—S. 145—Decree of Civil Court—Magistrate's duty to uphold.

A Magistrate is not justified in disregarding the decree of a Civil Court. It is his duty to uphold and carry out that decree so far as lies in him to do so. *Baldeo Bakhsh Singh v. Raj Ballam Singh*.

2 Cr. L. J. 236 :
2 A. L. J. 274.

—S. 145—Decree of Civil Court not *inter partes*—Possession under such decree—Magistrate's power to declare opposite party's possession.

Where the first party was put in possession of disputed property under a decree of a Civil Court, which was not one against the second party : *Held*, that a Magistrate had jurisdiction, in a proceeding under S. 145, to declare the possession of the second party. *Jagabudha Shaha v. Raj Kumar Roy Choudhury*.

13 Cr. L. J. 583 :
15 I. C. 999.

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—S. 145—Decree of Civil Court—Proceedings under—Civil Court decree, *ex parte*—Symbolical possession under—Effect.

A Civil Court decree obtained *ex parte* against a tenant under which the decree-holder obtained mere symbolical possession of the land is not binding on a Criminal Court in proceedings under S. 145 with respect to the land, between the decree-holder and a third party. *Promoda Sundari Dassi v. Khelra Bag*.

25 Cr. L. J. 1104 :
81 I. C. 928 : A. I. R. 1925 Cal. 186.

—S. 145—Decree of Civil Court—Proceedings under—Decree of Civil Court, effect of.

A Magistrate in deciding the question of possession under S. 145 is not in every case bound by the previous order of a Civil or Criminal Court relating to the possession of the subject-matter of the dispute and the weight to be attached to any such previous order depends upon the facts of the particular case. Where, however, there is a recent order of a Civil Court delivering possession to a particular party, that order ought to be respected and given effect to by a Magistrate acting under S. 145 unless and until there is something shown which might induce the Magistrate to hold that, subsequent to the delivery of possession something had happened which had the effect of dispossessing the party to whom possession had been delivered by the Civil Court. *Rambarai Rai v. Sagina Rai*.

24 Cr. L. J. 939 :
75 I. C. 363 : 4 P. L. T. 333 :
A. I. R. 1923 Pat. 437.

—S. 145—Decree of Civil Court—Proceedings under—Possession, delivery of, by Civil Court—Criminal Court, whether can investigate question of possession.

Where in a proceeding under S. 145 in respect of a house, it is established that possession was delivered by a Civil Court to one of the parties, the Criminal Court is bound to maintain that person in possession and is not competent to re-open the question and to investigate it under S. 145. But in order to find out whether the possession is disputed or not, the Criminal Court can investigate the actual service of the writ of delivery of possession, and if *dakhat dehani* is proved to its satisfaction, to have been effected, it is bound to maintain the possession of the person so obtaining it either by an order under S. 145, or by having recourse to action under S. 141 or S. 107. *Ram Krishna Singh v. Emperor*.

23 Cr. L. J. 321 :
66 I. C. 817 : 3 P. L. J. 335 :
A. I. R. 1922 Pat. 197.

—S. 145—Decree of Civil Court—Proceedings under—Possession delivered under decree of Civil Court, value of—Procedure.

Proceedings may be taken with jurisdiction under S. 145 before the Magistrate comes to know that one party has a decision of the Civil Court in his favour and the proceedings will not be without jurisdiction. But when in the course of the proceedings he finds that there is such an order of the Civil Court, it

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is his duty to maintain that order and possession granted under that order, if such possession has been given within a reasonable time from the initiation of the proceedings under S. 145. It will then be proper for him not to stay the proceedings, but to pass an order under S. 145 declaring the party which has the Civil Court decree in its favour, or which has been put in possession by the Civil Court to be in possession and to forbid the other party to interfere with the possession of that party. This is not, however, an invariable rule and the evidentiary value to be attached to the fact that the Civil Court has given possession to one party must depend upon the particular circumstances of each case. *Kedar Nath v. Jaleswar Ram*.

24 Cr. L. J. 467 :
72 I. C. 883 : 4 P. L. T. 248 :
1 P. L. R. 166 Cr. :
A. I. R. 1923 Pat. 364.

—S. 145—*Decree of Civil Court—Proceedings under—Possession of land purchased in execution of decree—Decree-holder auction-purchaser's and judgment-debtor's right thereto.*

In a proceeding under S. 145 concerning a land which was purchased and of which delivery of possession was obtained by a decree-holder, the judgment-debtor should not be allowed to retain possession of the same as against the decree-holder auction-purchaser so as to drive him back to the Civil Court for a further declaration of his right, even though it is found that the decree-holder was never in actual possession and the judgment-debtor grew crops upon the land. *Atul Hazra v. Uma Charan*.

17 Cr. L. J. 182 :
33 I. C. 822 : 20 C. W. N. 596 :
A. I. R. 1916 Cal. 339.

—S. 145—*Decree of Civil Court—Proceedings under—Previous decree or order of Civil Court for possession, value of.*

A previous order of a Civil Court relating to the property in dispute in a proceeding under S. 145 might throw light upon the matter, but the evidentiary value to be attached to such a piece of evidence must depend upon the particular circumstances of each individual case. *Atul Chandra v. Srinath Laik*.

20 Cr. L. J. 840 :
53 I. C. 936 : 30 C. L. J. 123 :
33 C. W. N. 982 : A. I. R. 1919 Cal. 526.

—Ss. 145, 146—*Decree of Civil Court—Decree declaring title—Determination of possession—Jurisdiction of Magistrate.*

Where the dispute is as to the possession of immovable property, the existence of a decree of a Civil Court declaring merely the title of one of the parties to the dispute is no bar to a Magistrate taking action under S. 145, with a view to determine the fact of actual possession on a particular date. *Subbarama Aiyar v. Mariya Pillai*.

15 Cr. L. J. 559 :
24 I. C. 967 : 16 M. L. J. 52 :
1 L. W. 493 : 1914 M. W. N. 798 :
A. I. R. 1914 Mad. 78.

—Ss. 145, 146—*Decree of Civil Court—Dispute as to possession of immovable property—Decree of Civil Court in favour of one party, effect of—Magistrate, duty of—Attachment of property, legality of.*

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In a proceeding under S. 145 the Magistrate has no right to compel a party who has obtained a decree from the Civil Court in respect of the property in dispute to go back to the Civil Court and get something else. The Civil Court would refuse to entertain his suit, the matter being *res judicata*. All that such a person can do is to execute his decree and to obtain possession of the property until a competent Court has determined the rights of the parties, and once that is done, the Magistrate has nothing to do but to give effect to the decree of the Civil Court. —*Lachmi Kuer v. Partab Narain*.

27 Cr. L. J. 43 :
91 I. C. 75.

—Ss. 145, 146—*Decree of Civil Court—Question of possession—Civil Court's judgment—Its evidentiary value before Criminal Court—Quaere.*

Quaere.—If the decree had been for delivery of possession followed by execution, the proof of formal delivery of possession might well be treated as conclusive proof in favour of the successful complainant but where there has been no execution, and all that exist is a simple declaratory decree, whether the opinion of the Munsif on this matter of possession should have any weight at all with a Criminal Court which has to decide the question of possession on the evidence before it, is doubtful. *Raghunath Singh v. Emperor*.

37 Cr. L. J. 1126 :
165 I. C. 289 : 15 Pat. 336 :
17 P. L. T. 526 : 3 B. R. 30 :
9 R. P. 165 : A. I. R. 1936 Pat. 537.

—S. 145—*Defect in procedure—Dispute likely to cause breach of the peace not mentioned in notice—Jurisdiction of Magistrate.*

Where there is a dispute likely to cause a breach of the peace and the parties are aware of it, the Magistrate is not ousted of his jurisdiction to act under S. 145 simply because in the notice issued it is not stated that a dispute likely to cause a breach of the peace exists. *Ram Behari v. Muneshwar*.

16 Cr. L. J. 224 :
27 I. C. 848 : A. I. R. 1915 All. 9.

—S. 145 (1)—*Defect in procedure—Order, formal, if necessary—Jurisdiction—Arbitrator's decision of question as to actual possession—Delegation, if legal.*

The making of a formal order under S. 145 (1) is absolutely necessary to the initiation of proceedings under the section, and an omission to make such an order renders all the proceedings invalid. *Semble* : S. 145 does not contemplate that the question as to who is in actual possession should be delegated, even by consent of parties, to arbitrators. The section directs the Magistrate himself to receive the evidence adduced by the parties, and on a consideration thereof, to come to a decision. *Banwari Lal Mukhopadhyaya v. Hriday Chakaravarti*.

2 Cr. L. J. 347 :
1 C. L. J. 432 : I. L. R. 32 Cal. 552.

—S. 145—*Defect in procedure—Order, legality of.*

An order of possession under S. 145 passed on the evidence of a person who was not

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called by either party, is bad law. *Fatch Sher Khan v. Emperor*. 17 Cr. L. J. 129 :

33 I. C. 305 : 4 R. R. 1916 Cr. :
23 P. W. R. 1916 Cr. :
A. I. R. 1916 Lah. 368.

———S. 145—Defect in procedure—Order made without recording evidence, legality of.

A Magistrate taking action under S. 145 is bound to record the evidence of the petitioners, as required by Sub-s. (4) of the section, and an order passed without recording such evidence is made without jurisdiction and is *ultra vires*. *Tara Chand v. Behari Lal*. 18 Cr. L. J. 36 :

36 I. C. 868 : 22 P. R. 1916 Cr. :
A. I. R. 1916 Lah. 378.

———S. 145—Defect in procedure—Proceedings under, requisites of—Errors and omissions relating to procedure, whether oust jurisdiction—Prejudice, proof of.

The only two essential conditions which not only confer jurisdiction on a Magistrate, but make it imperative for him to take the preventive proceedings contemplated by S. 145, are first, that there should be a dispute over land or water; and secondly, that such dispute should be likely to cause a breach of the peace. A Magistrate having been once seized of jurisdiction to institute proceedings under S. 145 cannot, in the absence of proof or prejudice to a party, be divested of it by errors and omissions which relate to procedure and not to jurisdiction. *Mahomed Mahdisha of Pir Jhando v. Wahdhal-shah*. 26 Cr. L. J. 1292 :

89 I. C. 156 : A. I. R. 1926 Sind 53.

———S. 145—Defect in procedure—Provisions not complied with—Illegal order—Disobedience, not punishable—Penal Code, S. 188.

A Magistrate, purporting to act under S. 145 but without complying with the provisions of that section, passed an order to the effect that from an order issued by the Collector, it was clear that A was in possession of certain land and that B was not to interfere with that possession. On the very next day, A complained to the Magistrate that his order had been disregarded. The Magistrate found that B had interfered with the possession of A and hence under S. 188 of the Penal Code, he sentenced B to imprisonment for one month: *Held*, that the order purporting to have been passed under S. 145 was illegal, as there had been no proper inquiry regarding the existing possession of the parties, and, therefore, the conviction under S. 188 of the Penal Code could not be upheld. *Mst. Sardara v. Emperor*. 14 Cr. L. J. 63 :

18 I. C. 351 : 16 P. W. R. 1913 Cr.
92 P. L. R. 1913.

———Ss. 145, 146 (1)—Defect in procedure—Order of attachment passed without examining witnesses present in Court, legality of.

An order passed under S. 146, cl. (1) without examining any of the witnesses of a party to the proceeding who are present in Court is invalid. *Sita Nath Bhagat v. Ramkishore Mondal*. 23 Cr. L. J. 688 :

69 I. C. 272 : 36 A. L. J. 291 :
A. I. R. 1922 Cal. 280.

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———Ss. 145 (1), 537—Defect in procedure—Dispute relating to immovable property—Preliminary order not drawn up—Illegality.

The provisions of S. 145 (1) are mandatory and a disregard of those provisions vitiates the entire proceedings in the case. Ordinarily a Magistrate who has to draw up the order under S. 145 (1) is the Magistrate who after drawing up the order, proceeds to decide the case. *Banka Singh v. Gokal*. 28 Cr. L. J. 231 :
99 I. C. 1031 : L. R. 8 All. 39 Cr. :
25 A. L. J. 246 : 7 A. I. Cr. R. 267 :
49 All. 325 : A. I. R. 1927 All. 286.

———Ss. 145 (1), (4), 537—Defect in procedure—Proceedings under—Failure to make order in writing—Irregularity, whether curable—Order preventing either party from working land.

The failure to make an order in writing as required by S. 145 (1) in proceedings under that section, makes the procedure of the Court irregular, but the defect is curable by S. 537 where no party has been prejudiced. In proceedings under S. 145 an order that neither party should work the land in dispute is incorrect. In emergent cases the Magistrate can attach the land. *Mg. Po Lon v. Ba On*. 26 Cr. L. J. 324 :

84 I. C. 548 : 3 Bur. L. J. 256 :
A. I. R. 1925 Rang. 111.

———S. 145—Dismissal in default, irregularity of.

There is no provision in S. 145 which would warrant the dismissal of the case merely because the complainant failed to attend and an order dismissing the case for default of the complainant is *ultra vires*. *Raguma v. Ghirrai*. 41 Cr. L. J. 96 (b) :

184 I. C. 751 : 1939 O. W. N. 974 :
1939 O. L. R. 651 : 12 R. O. 142 :
A. I. R. 1940 Oudh 22.

———S. 145—Duty of Court—Finding as to possession essential—Civil Court's decision, whether conclusive.

The decision of a Civil Court on the question of possession is not conclusive in proceedings under S. 145. The Magistrate must arrive at his own finding. *Annaswamy Aiyangar v. Muthukumara Pillai*. 15 Cr. L. J. 663 :

25 I. C. 991 : A. I. R. 1915 Mad. 83.

———S. 145—Duty of Court—Finding as to possession.

Under S. 145 the Court must record a finding as to which party was in possession at the date of its preliminary order. *Saukara Kylosa Mudaliar v. Kuthulinga Mudaliar*. 19 Cr. L. J. 977 :

47 I. C. 877 : A. I. R. 1919 Mad. 812.

———S. 145—Duty of Magistrate—Amendment to Cl. (1)—Effect of—Duty of Magistrate to take evidence for forming opinion.

Under S. 145 the Magistrate's duty is to decide whether there is likely to be a breach of the peace and whether one party, although recently dispossessed, is to be regarded as in possession. To do this, he must take such evidence as he finds necessary and it rests with him and not with the parties to decide what evidence is necessary to be called. The recent amendment to Cl. 4 which requires the

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Magistrate to receive all such evidence as may be produced by the parties and to consider the effect of such evidence does not mean anything more than that he must receive evidence actually put before him by the parties but does not require him to summon witnesses at the instance of the parties who are unable to bring these witnesses to Court. In S. 145 there is no such provision as is to be found in Cl. 2 of S. 252. *Dr. Meah v. Steel Brothers & Co., Ltd.*

39 Cr. L. J. 708 :
176 I. C. 266 : 11 R. Rang. 40 :
A. I. R. 1938 Rang. 229.

———S. 145—Duty of Magistrate—Application for re-hearing on ground of non-service of notice—Procedure—Magistrate, duty of—Affidavit of service, whether necessary.

Although in a proceeding under S. 145 it is not necessary in all cases that there should be an affidavit of service of notice, the Magistrate should, nevertheless, satisfy himself whether service has in fact been effected or not, and ought not to reject an application for re-opening a case on the ground that no notice was served without satisfying himself as to the truth of the allegations contained in the application. *Kali Charan Kapali v. Abdul Laskar.*

21 Cr. L. J. 848 :
58 I. C. 923 : 32 C. L. J. 14 :
24 C. W. N. 902 : A. I. R. 1920 Cal. 541.

———S. 145—Duty of Magistrate—Dispute as to immovable property—Finding as to possession based on mere local inspection and statements of by-standers, legality of—Allegation of dispossession by one party—Magistrate's duty to enquire into allegation.

A Magistrate cannot base his decision as to possession in proceeding under S. 145 on the mere fact that in the course of his local inspection many persons appeared before him and supported the case of a particular party. Where, during the course of a local inspection, a party alleges that he has been dispossessed by the opposite party forcibly on the day of the inspection, it is the duty of the Magistrate to inquire into the truth of the allegation before passing an order upholding the possession of one of the parties. *In the matter of : Adbud Misser v. Satruhan Das.*

28 Cr. L. J. 603 :
102 I. C. 779 : 8 A. I. Cr. R. 251 :
8 P. L. T. 755 : A. I. R. 1927 Pat. 301.

———S. 145—Duty of Magistrate—Dispute as to possession—Duty of Magistrate to maintain actual physical possession—Delivery of symbolical possession by Court, effect of.

In proceedings under S. 145 a Magistrate has to determine who is in *actual possession* at the time or within two months of the proceedings, and he is, therefore, bound to maintain the possession of the party who is in actual possession of the land in dispute even though the other party has obtained symbolical delivery of the same through the Civil Court. *Ambar Ali v. Piran Ali.*

29 Cr. L. J. 503 :
109 I. C. 231 : 32 C. W. N. 275 :
47 C. L. J. 233 : 55 Cal. 826 :
10 A. I. Cr. R. 160 : A. I. R. 1928 Cal. 344.

———S. 145—Duty of Magistrate—Dispute likely to cause breach of peace—Proof.

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To satisfy the requirements of S. 145, the Magistrate must himself enquire into the question whether a dispute likely to cause a breach of the peace exists concerning any land or water and must record a judicial decision thereupon. A preliminary order under the section cannot be based on the report of a Zaildar before whom the parties had no opportunity of producing evidence. *Prem Singh v. Emperor.*

18 Cr. L. J. 565 :
39 I. C. 805 : 25 P. W. R. 1917 Cr. :
115 P. L. R. 1917 : A. I. R. 1917 Lah. 179.

———S. 145—Duty of Magistrate—Landlord claiming large number of plots to be in his possession but different sets of tenants claiming different plots separately—One enquiry—Legality—Prejudice—Magistrate should apply his mind to individual holding.

One enquiry under S. 145 in a case in which the landlord claims a large number of plots to be in his possession while different sets of tenants claim different plots in their respective possession separately, is not illegal or necessarily irregular, but in such a case, the question of prejudice will have to be examined, for in a case like this there is always the danger that from general evidence conclusions will be drawn in respect of specific land. It is, therefore, essential for the Magistrate to apply his mind to the case of each individual holding. *Gulab Kuer v. Ganouri Koeri.*

40 Cr. L. J. 17 :
178 I. C. 333 : 11 R. P. 239 : 5 B. R. 81 :
A. I. R. 1938 Pat. 511.

———S. 145—Duty of Magistrate—Magistrate finding that there is apprehension of breach of peace—His duty to enquire into possession and pass order—Passing of such order when unnecessary.

Once a Magistrate has found in proceedings under S. 145 that there is an apprehension of a breach of the peace, it is his duty to inquire into the possession of the parties and to pass orders accordingly either under S. 145 or under S. 146. It becomes unnecessary for him to pass such an order with regard to possession only on his being satisfied either that there is no longer any apprehension of a breach of the peace or that no dispute between the parties exists or has existed. The mere fact that one of the parties was absent on the date fixed does not entitle a Magistrate to dismiss proceedings under S. 145 when there has been a definite finding that there is an apprehension of a breach of the peace. *Raquma v. Ghirrai.*

41 Cr. L. J. 96 (b) :
184 I. C. 751 : 1940 O. W. N. 974 :
1939 O. L. R. 651 : 12 R. O. 142 :
A. I. R. 1940 Oudh 22.

———S. 145—Duty of Magistrate—Notice of proceedings, proof of—Ex parte order on evidence of persons not witness of either party.

A Magistrate should not simply accept the written return of a serving peon, without examining the peon, as to service of notice of the proceedings under S. 145 (1) nor should he pass a final order as to possession on the evidence of a person who is not a witness of either

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of the parties within the meaning of S. 145 (4).
Jogendra Nath Rai v. Abu Shaikh.

1 Cr. L. J. 716 :
8 C. W. N. 719.

———**S. 145—Duty of Magistrate—Omission by a Magistrate to state grounds of his initiatory order.**

A Magistrate is bound to state in his initiatory order under S. 145 the grounds of his being satisfied as to the likelihood of a breach of the peace. In a case initiated upon a Police-report or other information, it is the duty of a Magistrate to state the grounds upon which he acts.
Nityanand Roy Bahadur v. Parash Nath Sen.

2 Cr. L. J. 342 :
9 C. W. N. 621 : I. L. R. 32 Cal. 771.

———**S. 145—Duty of Magistrate—Omission to add person as party to proceedings—Jurisdiction, absence of—Magistrate, duty of, to hear parties.**

Cl. (4) of S. 145 throws upon the Magistrate conducting an enquiry under that section the obligation to hear parties and whether there is documentary evidence before him or not, the section expressly gives to the parties a right of being heard. The failure of a Magistrate to add a particular person as a party to proceedings under S. 54, Cr. P. C. does not involve an absence of jurisdiction in the Magistrate to hear the parties and arrive at a determination as to which of the parties is entitled to possession of the land in dispute. *Jatan Singh v. Dukhia Singh.*

18 Cr. L. J. 322 :
38 I. C. 434 : 1 P. L. W. 214 : 1917 Pat. 118 :
A. I. R. 1917 Pat. 264.

———**S. 145—Duty of Magistrate—Order—Reasons for decision, necessity of.**

Per *Buckland and Suhrawardy, JJ.*—In a proceeding under S. 145 the Magistrate must give a statement of the reasons for his decision sufficient to enable the High Court to determine whether he has or has not complied with Sub-s. (4) of S. 145 and directed his mind to the consideration of the effect of the evidence adduced before him. Provided, however, that he complies with what is necessary for the purpose of enabling the High Court to appreciate and deal with the case in revision, a degree of brevity which would be out of place in a judgment to which S. 367 of the Code applies would not necessarily be open to objection. *Ishan Chandra Samant v. Hriday Krishna Bose.*

26 Cr. L. J. 915 :
86 I. C. 979 : 29 C. W. N. 475 :
41 C. L. J. 357 : A. I. R. 1925 Cal. 1040.

———**S. 145—Duty of Magistrate—Proceedings, stay of by High Court—Duty of Magistrate.**

Once proceedings pending in the Court of a Magistrate are stayed by the High Court and the matter is brought to the notice of the Magistrate before whom the proceedings are pending it is his duty to stay his hands and stop further proceedings. If in spite of such notice the Magistrate proceeds with the matter, any order passed by him must be treated as passed without jurisdiction and

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cannot stand. *Gouri Shanker v. Collector of Muzaffarpur.*

26 Cr. L. J. 965 :
87 I. C. 421 : 6 P. L. T. 215 :
3 P. L. R. 127 Cr. :
A. I. R. 1925 Pat. 553.

———**S. 145—Duty of Magistrate—Proceedings under—Duty of Court.**

The crucial question to be decided in proceedings under S. 145 is as to who is in actual possession of the subject in dispute and not who has the right to such possession. *Abdul Wahab v. Emperor.*

27 Cr. L. J. 44 :
91 I. C. 76.

———**S. 145—Duty of Magistrate—Proceedings under—Likelihood of breach of peace, absence of—Proceedings dropped—Notice to parties—Disposal of property.**

Where after proceedings are started under S. 145, the Magistrate is satisfied that a likelihood of a breach of the peace either did not exist or that it has ceased to exist, it is his duty to drop the proceedings and to withdraw from interfering with the rights of the parties in the property. An order dropping the proceedings in such a case is not liable to be attacked on the ground that notice was not given to the parties to show the existence of a likelihood of a breach of the peace. After dropping the proceedings the Magistrate is *functus officio* and has no jurisdiction to pass any further orders in regard to the disposal of the sale-proceeds of the crops on the property which had been attached pending the proceedings. The proper procedure in such a case is to keep the amount in deposit to enable the party entitled to it to get a decree of a Civil Court establishing his title thereto. *Denepudi Narasayya v. Chigulari Venkiah.*

27 Cr. L. J. 95 :
91 I. C. 399 : 22 L. W. 524 :
1925 M. W. N. 792 : 49 M. L. J. 781 :
49 Mad. 232 : A. I. R. 1925 Mad. 1252.

———**S. 145—Duty of Magistrate—Proceedings under—Likelihood of breach of peace—Magistrate, duty of.**

In order to assume jurisdiction under S. 145 a Magistrate has to satisfy himself about the likelihood of a breach of the peace. He must exercise his own judgment upon materials placed before him and must arrive at a conclusion as to whether there is a likelihood of a breach of the peace. He would not be justified in acting merely upon the expression of an opinion by the Police, and if by exercising his own independent judgment, he comes to the conclusion that there is a likelihood of a breach of the peace, it is his duty to assume jurisdiction although the Police is of opinion that there is no such likelihood. If, in the proceedings so drawn up, a reference is made to the Police report or to the petition of a party and these documents state that there is no likelihood of a breach of the peace that circumstance will not by itself take away the jurisdiction of the Magistrate to initiate proceedings, if he is satisfied that there is a likelihood of the

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breach of the peace. *Ganga Bishun Singh v. Rajo Chaudhri*. 26 Cr. L. J. 133 :

83 I. C. 693 : 1924 Pat. 83 : 5 P. L. T. 252 :
A. I. R. 1924 Pat. 787.

———S. 145—Duty of Magistrate—Proceedings under—Magistrate, duty of, to state grounds—Abuse of section.

In proceedings under S. 145 a Magistrate should state the grounds upon which he is satisfied that a dispute likely to cause a breach of the peace exists. If he fails to do so, his subsequent proceedings would be without jurisdiction. Courts should be on their guard against an abuse of S. 145 as parties often resort to it as an easy way of getting possession without the expense, delay and trouble of a civil suit. *Ma Ma Gyi v. Emperor*.

25 Cr. L. J. 1161 :
81 I. C. 985 : 2 Bur. L. J. 295 :
A. I. R. 1924 Rang. 178.

———S. 145—Duty of Magistrate—Proceeding under—Order, final, contents of—Magistrate, duty of.

In passing final orders under S. 145 a Magistrate must give a statement of the reasons for his decision, sufficient to enable the High Court to determine whether he has or has not complied with Sub-s. (4) of the section, and whether he has directed his mind to the consideration of the effect of the evidence adduced. *Motaherali v. Eshaque Sikdar*.

25 Cr. L. J. 1115 :
81 I. C. 939 : 39 C. L. J. 366 :
A. I. R. 1924 Cal. 848.

———S. 145—Duty of Magistrate—Proceeding under—Written statement, failure of one party to file, effect of—Jurisdiction of Magistrate—Transfer of case to another Magistrate, when can be made.

The basis of a proceeding under S. 145 is not the written statement of the parties but the Police report or other information from which the Magistrate is satisfied about the fact of the likelihood of a breach of the peace. When a Magistrate is so satisfied, he should make a note stating the grounds of his being so satisfied, and require the parties to attend and put in written statement of their respective claims. If a party fails to put in a written statement that would not take away the jurisdiction of the Magistrate to proceed with the case. The proceeding having been properly initiated, it is incumbent on the Magistrate to make the enquiry and to take such evidence as the parties offer irrespective of the fact that one or other of them has failed to put in a written statement. *Ramjharla v. Piar Kocri*.

24 Cr. L. J. 557 :
73 I. C. 173 : 4 P. L. T. 308 :
2 P. L. R. 6 Cr. : A. I. R. 1923 Pat. 369.

———S. 145—Duty of Magistrate—Proceedings under S. 145—Duty of Magistrate to summon witnesses mentioned by parties.

In a proceeding under S. 145 the Court is bound to summon such witnesses as may be mentioned to the Court by either party. *Chakrapan v. Emperor*.

31 Cr. L. J. 839 :
125 I. C. 463 : 1930 A. L. J. 484 :
52 All. 91 : A. I. R. 1930 All. 319.

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———S. 145—Duty of Magistrate to complete enquiry.

After proceedings are started and a preliminary order is passed under S. 145 it is the duty of a Magistrate to complete the inquiry. *Virappa Cheitlar v. Kalnayer Ammal*.

24 Cr. L. J. 64 :
71 I. C. 112 : 16 L. W. 592 :
A. I. R. 1923 Mad. 180.

———Ss. 145, 146—Duty of Magistrate—Collection of evidence as to possession—Attachment of property.

Under S. 145 a Magistrate should be extremely reluctant to attach the property in dispute and it is his duty to collect information about possession whether false or true and to sift it before making use of S. 146. *Ram Bhal Singh v. Rang Bahadur Singh*.

25 Cr. L. J. 1295 :
82 I. C. 367 : 5 P. L. T. 589 :
A. I. R. 1924 Pat. 804.

———Ss. 145, 146—Duty of Magistrate, to find who is in possession on date of his order—Previous possession, effect of.

Under S. 145 a Magistrate should find as to who is in actual possession of the property in dispute on the date of his order, not on any date anterior to that, although previous possession may be a guide to his finding peaceful and actual possession on the date. *Thumalabed Hampanna v. Parisi Gangamma*.

16 Cr. L. J. 239 :
27 I. C. 911 : A. I. R. 1915 Mad. 1176.

———Ss. 145, 146—Duty of Magistrate, order under—Government of India Act 1915 (5 & 6 Geo. V. c. 61), S. 107—High Court, power of, to interfere—Magistrate, duty of—Finding, clear, as to likelihood of breach of peace, necessity of—Attachment order, propriety of—Revision.

In a dispute under S. 145 a High Court has no right to interfere on the merits so long as the Magistrate is acting within his own jurisdiction. To enable a Magistrate to make an order relating to disputes about immovable property, he must, in accordance with S. 145, first make an order in writing stating the grounds of his being satisfied that a dispute exists likely to cause a breach of the peace. Therefore, where a Magistrate, purporting to act under S. 145 merely states in his order that the report of the Police will show that the dispute is not likely to subside until an order is made, it does not amount to a finding that he is satisfied that there is likely to be a breach of the peace and his order is not in conformity with S. 145 (1) of the Code. To entitle a Magistrate to make an order of attachment, he must decide either that none of the parties was in possession as defined by S. 145 or that he is unable to satisfy himself as to which of them was. Therefore, an order of attachment made without one or other of these findings is an order made without jurisdiction and a High Court can interfere with such an order under S. 107 of the Government of India Act, though not under S. 435, Cr. P. C. *Nathu Ram v. Emperor*.

18 Cr. L. J. 557 :
39 I. C. 701 : 15 A. L. J. 270 :
A. I. R. 1917 All. 262.

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—Ss. 145, 146—*Decree of Civil Court—Proceedings under—Possession delivered under decree of Civil Court,—Magistrate, duty of.*

In a proceeding under S. 145 the Magistrate is bound to give effect to a Civil Court decree under which possession of the property in dispute has been recently given to one of the parties to the dispute. *Durganand Ojha v. Hiranand Ojha.*

25 Cr. L. J. 88 :
76 I. C. 24 : A. I. R. 1924 Pat. 711.

—Ss. 145, 146 and 148—*Duty of Magistrate—Refusal to grant time for regular proceedings to be followed—Attachment under S. 146, when the parties did not file written statements or produce evidence—Illegality.*

In a proceeding under S. 145, the parties appeared on the day of hearing but did not file any written statements, or produce any evidence. They prayed for time which the Magistrate did not grant. He then heard the parties and, being unable to satisfy himself as to which of them was in possession, attached the subject of dispute under S. 146: *Held*, that the Magistrate in so doing refused to exercise jurisdiction. He ought to have granted time to allow regular proceedings to be followed or he might have informed himself of the facts of the case either by local enquiry under S. 148, or in other ways. As he did neither, his order under S. 146 was bad in law and liable to reversal. *Sheikh Mansar Ali v. Matiullah.*

8 Cr. L. J. 202 :
12 C. W. N. 896.

—Ss. 145, 439—*Duty of Magistrate—Dispute concerning land—Co-sharers—Failure to make enquiry—Refusal to exercise jurisdiction—Revision.*

Where a person makes an application under S. 145 alleging that he is in possession of the land in question, it is the duty of the Magistrate to decide whether or not he is or has been recently in actual possession. The mere fact that the revenue records show that the holding is joint is not sufficient to stop the enquiry contemplated by S. 145. In proceedings under this section it is incumbent on the Magistrate to examine the parties and to take evidence. S. 145 applies to a case where the dispute is between co-sharers, each claiming to be in possession of the disputed land to the exclusion of the others; sub-section (b) does not render the section inapplicable to a case in which the parties are jointly entitled to the land in question. Where a Magistrate refuses to take action under S. 145 merely on the ground that the parties are jointly entitled to the land in question, a High Court has jurisdiction to interfere in revision where such irregularity has been committed. *Malan v. Makhan Singh.*

23 Cr. L. J. 225 :
66 I. C. 65 : 2 Lah. 372 :
A. I. R. 1922 Lah. 348.

—Ss. 145, 439—*Duty of Magistrate—Dispute concerning land—Delivery of possession under decree of Civil Court,—Failure to maintain possession under decree—Illegality.*

A recent delivery of possession by a Civil Court binds a Criminal Court in a proceeding

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under S. 145 and the Criminal Court must uphold that possession. The failure of a Criminal Court to maintain such possession amounts to an error of jurisdiction which vitiates the order of the Magistrate. *Pratap Udai Nath Sahi Deo v. Sunderbans Koor.*

24 Cr. L. J. 279 :
71 I. C. 999 : 3 P. L. T. 628 :
A. I. R. 1923 Pat. 76.

—S. 145 (1)—*Duty of Magistrate—"Actual possession" has no reference to any right to possess.*

What the Magistrate is concerned with in proceedings relating to disputes as to immovable property under Chap. XII, Cr. P. C., is not the right to possess the subject-matter of dispute but the actual possession thereof at the date of the order under cl. (1), S. 145. *Rahimalishah Alishah v. Emperor.*

41 Cr. L. J. 493 :
187 I. C. 627 : 1940 Kar. 421 :
12 R. S. 253 : A. I. R. 1940 Sind 61.

—S. 145 (1)—*Duty of Magistrate—Dispute relating to land—Breach of the peace apprehension of—Preliminary order, absence of—Jurisdiction.*

Before instituting proceedings under S. 145, a Magistrate must satisfy himself that a dispute likely to cause a breach of the peace exists concerning any land, etc., and he must make an order in writing stating the grounds of his being so satisfied. Where no such order is made, the Magistrate has no jurisdiction to institute proceedings and any proceedings started by him, are liable to be set aside. *Sher Khan v. Fazal Illahi.*

26 Cr. L. J. 1177 :
88 I. C. 601 : 7 L. L. J. 173 :
A. I. R. 1925 Lah. 368.

—S. 145, cl. (4)—*Duty of Magistrate—Actual possession without reference to the merits of the claims—Jurisdiction, where merits of claims referred to.*

What a Magistrate has to look to in a case under S. 145, is the question of actual possession. Cl. (4) of that section lays down that he has to decide the question without reference to the merits of the claims of any of the parties to a right to possess the subject-matter of the dispute. Where a Magistrate in deciding a case under S. 145, refers to such merits, he exceeds his jurisdiction. *Ram Dayal v. Kidarnath.*

6 Cr. L. J. 192 :
6 C. L. J. 182.

—S. 145 (4)—*Duty of Magistrate—Dispute as to immovable property—No finding as to recent possession.*

An order passed by a Magistrate under S. 145 (4), should embody a clear finding as to which of the parties was in possession at the date of his order under S. 145 (1). It is not enough to find who was in possession a year before the date of the proceeding under the section. *Mundalamony Ellamambal v. Gadipudi Chintiah Venkiah.*

9 Cr. L. J. 595 :
2 I. C. 159.

—S. 145, 147—*Easement—Breach of peace—Possession—Inquiry—Grounds of satisfaction.*

S. 145 does not apply to a dispute about an easement in respect of which a finding must be taken under S. 2147. A Magistrate has no

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jurisdiction under S. 145, to make an enquiry as to possession, still less a final order, unless and until he is satisfied of the likelihood of a breach of the peace. It is essential that the facts and grounds of his being so satisfied should appear in his first order directing the issue of notice, and the grounds must be such as to satisfy a Court of Revision before which the case may be brought by any of the parties concerned. The "Police report and the personal talk to parties and personal inspection of the land in dispute" are not such grounds. *Asaram v. Cholu Lal*.

22 Cr. L. J. 763 :
6 I. C. 288.

————S. 145, 147—*Easement—Dispute concerning easement—Proceedings, form of.*

Where the subject-matter of a dispute likely to cause a breach of the peace is a right of easement claimed by one party, and there is no claim by the former to possession of the land, proceedings cannot be taken under S. 145. In such a case, S. 147 of the Code is the appropriate section. *Kali Kumar Das v. Bejoy Gobinda Mitra*.

21 Cr. L. J. 697 :
57 I. C. 937 : A. I. R. 1920 Cal. 561.

————S. 145—*Effect of order.*

Attachment of house—Entry into house for removal of movable property therein after attachment without Magistrate's order is not legal. *Niranjan Lal v. Emperor*.

37 Cr. L. J. 346 :
160 I. C. 870 (a) :
1936 A. L. J. 83 : 8 R. A. 661 :
A. I. R. 1936 All. 141.

————S. 145—*Effect of order—Court should take into consideration present possession—Fresh proceeding.*

The question to be taken into consideration by a Criminal Court under S. 145, is the question as to the present possession of the parties concerned. Hence an order made in the previous proceeding under S. 145, does not and cannot legally bar the initiation of a fresh proceeding, if there be reasonable grounds for such initiation, as contemplated by law. *Haripada Mazundar v. Dhani Ahmad Sarkar*.

157 I. C. 674 : A. I. R. 1935 Cal. 494.

————S. 145—*Effect of order—Magistrate stating in preliminary order that he was satisfied as to the likelihood of breach of the peace—Final order.*

Where the Magistrate had already stated in his preliminary order, that he was satisfied that there was a likelihood of a breach of the peace and there is nothing in the final order to show that the circumstances or his opinion had altered, the fact that there is nothing to show in the final order that he was satisfied that there was a likelihood of a breach of the peace, does not make the final order under S. 145, defective. *Sheoprasad v. Gobindram*.

41 Cr. L. J. 799 :
189 I. C. 774 : 1940 N. L. J. 375 :
13 R. N. 78 : A. I. R. 1940 Nag. 265.

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————S. 145—*Effect of order.*

Order under—No bar to proceedings under S. 107. *In re : Muthia Moopan*.

14 Cr. L. J. 559 :
21 I. C. 159 : 36 Mad. 315.

————S. 145—*Effect of order—Orders under section not to be executed by Magis'trates—Proceedings after final order ultra vires.*

There is no law authorizing a Magistrate to take proceedings in the nature of execution after passing orders under S. 145. All proceedings after the decision of the case are *ultra vires*. *Ronendra Narain v. Kishori Lal*.

11 Cr. L. J. 26 :
5 I. C. 40 : 14 C. W. N. 78.

————S. 145—*Effect of order.*

Order under S. 145 lasts only until the party in whose favour it is made is lawfully evicted. It does not bar restitution under S. 144, C. P. C. *Rajiabali Khan v. Ilakhu Bibi*.

134 I. C. 906 :
58 Cal. 1070 : 35 C. W. N. 483 :
I. R. 1931 Cal. 906 : A. I. R. 1932 Cal. 29.

————S. 145—*Effect of order—Order, whether binding on persons not parties—Remedy—Breach of peace, likelihood of, grounds for.*

An order under S. 145 is not binding against persons who are not parties to the proceedings under the section and their remedy is not by an application for revision against the order. A Magistrate has no jurisdiction under S. 145 to make any inquiry as to possession still less any final order, unless and until he is satisfied of the likelihood of a breach of the peace and it is absolutely essential that the facts and the grounds of his being so satisfied should appear in his first order directing issue of notice and the ground must be such as to satisfy a Court of Revision. *Ramchandra v. Ganpat*.

26 Cr. L. J. 1035 :
87 I. C. 923 : A. I. R. 1925 Nag. 448.

————S. 145—*Effect of order—Previous order declaring party in possession—Proper order in subsequent proceedings.*

Where a party has once been declared to be in possession of a land in proceedings under S. 145, no contrary order should be made in any subsequent proceedings under the same section regarding the same land unless the Magistrate finds that there has been a change of possession since then. *Jagat Singh v. Sunder Singh*.

27 Cr. L. J. 815 :
95 I. C. 479 : 2 L. C. 331 : 27 P. L. R. 630 :
A. I. R. 1926 Lah. 479.

————S. 145—*Effect of order.*

Section is not mandatory. *Madan Mohan Lal v. Sheoraj Kumwar*.

34 Cr. L. J. 156 :
141 I. C. 131 : 1932 A. L. J. 503 :
L. R. 13 All. 132 Cr. : I. R. 1933 All. 63 :
A. I. R. 1932 All. 446.

————Ss. 145, 146—*Effect of order—U. P. Land Revenue Act (III of 1901), S. 40 (2)—Order under Ss. 145, 146, Cr. P. C.—Mutation in favour of opposite party—Restitution.*

An order under S. 145 or S. 143 does not interfere with an order subsequently made by

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the Revenue Authorities under S. 40 of the U. P. Land Revenue Act making over possession of the property to the party in whose favour an order of mutation has been passed. If the opposite party wins the mutation case at a subsequent stage, the Revenue Court has power to grant restitution to him. *Emperor v. Nisar Ali Khan*.

26 Cr. L. J. 1551 :
90 I. C. 309 : A. I. R. 1926 Oudh 179.

— — — — — Ss. 145, 146, 195, 200, 476, 537—*Penal Effect of order—Code (Act XLV of 1860), S. 182—Settlement of land attached under S. 146, whether judicial proceeding—Complaint made during proceeding—Sanction to prosecute complainant, legality of—Complainant, failure to examine, effect of—Irregularity.*

Certain lands having been attached by a Sub-Divisional Officer under S. 146, he ordered his Nazir to proceed to the spot and settle the lands by auction. The Nazir held the auction and reported the highest bid to the Sub-Divisional Officer. Subsequently the accused filed a petition before a Sub-Divisional Officer alleging that the Nazir had settled the lands fraudulently without holding an auction. The Sub-Divisional Officer sent the petition to a Sub-Deputy Magistrate for enquiry and on the latter's report that the allegations contained in the petition were false, directed the prosecution of the accused under S. 476 of the Cr. P. C., for an offence under S. 182, Penal Code. The accused was tried and convicted of an offence under the section: *Held*, (1) that the proceedings started by the Sub-Divisional Officer under S. 145 having terminated with the final order under S. 146, the settlement of the attached lands was not a judicial proceeding; (2) that, therefore, the complaint of the accused not having been made during the course of a judicial proceeding, the Sub-Divisional Officer was not competent to direct the prosecution of the accused under S. 476; (3) that the order made by the Sub-Divisional Officer should be treated as a complaint on which cognizance of an offence under S. 182 of the Penal Code could be taken under S. 195 (1), Cr. P. C.; (4) that the failure to examine the Sub-Divisional Officer as a complainant under S. 200 of the Cr. P. C. was a mere irregularity covered by S. 537 of the Code and did not vitiate the trial. *Saheb Tewari v. Emperor*.

20 Cr. L. J. 247 :
49 I. C. 919 : A. I. R. 1919 Pat. 203.

— — — — — Ss. 145, 146, cl. (1)—*Effect of order—Actual possession, dispute as to—Possession of different portions.*

Where a Magistrate finds that both parties were at the time of the order under S. 145 (1) realizing rents from some of the *raiya*ts of the village, his findings must mean that both parties were in possession, each of different portions of land, and in such a case, it is not open to him to act under S. 146, cl. (1). *Rajindra Narain Roy v. Mohammad Arjumand Khan Chowdhury*.

2 Cr. L. J. 408 :
1 C. L. J. 331 : 9 C. W. N. 887.

— — — — — Ss. 145, 435, 438—*Effect of order—Dismissal of complaint under S. 145—Revision—District Magistrate, powers of—Further enquiry, legality of.*

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Dismissal of a complaint under S. 145 is neither the dismissal of a complaint nor the discharge of an accused within the meaning of S. 436, Cr. P. C. Therefore, it is not competent to a District Magistrate to order a further enquiry under S. 145, especially without notice to the opposite party. In revision from the dismissal of an application under S. 145 all that a District Magistrate can do is to make a reference to the High Court under S. 438. *Maung San E v. Maung Mye Du*.

30 Cr. L. J. 709 :
117 I. C. 59 : I. R. 1929 Rang. 171 :
A. I. R. 1928 Rang. 292.

— — — — — Ss. 145, Sub-ss. (1), (5)—*Effect of order—Order under Sub-s. (1), when liable to be cancelled—Absence of finding of—Likelihood of breach of peace—Revision—Interference.*

Unless a party to a proceeding under S. 145 is in a position to show to the Magistrate that there is no likelihood of a breach of the peace, an order made under Sub-s. (1) of that section cannot be set aside. The mere absence of a finding by the Magistrate that there is likelihood of a breach of the peace does not go to the root of his jurisdiction and is not in itself sufficient to invoke interference by the High Court. *Ranada Ranjan v. Bharat Chandra*.

22 Cr. L. J. 484 :
62 I. C. 180 : 38 C. L. J. 69 : 25 C. W. N. 215 :
A. I. R. 1921 Cal. 637.

— — — — — S. 146 (6)—*Effect of order—Dispute over land—Order under S. 145 (6)—Subsequent dispute over same land between same parties or those deriving their interest from them—Order, if binding—Magistrate reversing order, legality of.*

There was a dispute over certain land in which an order under S. 145 (6) was passed in favour of one party. In a subsequent dispute over the same land between the same parties or between parties deriving their interest from them, the Magistrate reversed the order made in the former dispute: *Held*, that the proceedings in the former dispute were binding upon the parties concerned in the proceedings in the latter dispute and the order of the Magistrate was wrong. Consequently, as provided by S. 145, Sub-s. (6), the party declared to be entitled to possession in the former case was entitled to be protected against disturbance of such possession until evicted therefrom in due course of law. *Elimuddin Sarkar v. Umed Ali Bepari*.

38 Cr. L. J. 79 :
165 I. C. 878 : 63 C. L. J. 2 : 9 R. C. 462 :
A. I. R. 1936 Cal. 659.

— — — — — S. 145—*Enquiry as to possession—No danger of breach of peace—Proper procedure.*

Where in proceedings under S. 145 the Magistrate takes evidence under Cl. (4), and as a result of his inquiry, comes to the conclusion that there is no danger of a breach of the peace, he should not pass an order under Cl. (6) declaring any one party to be in possession but should cancel his order under Cl. (5). There is nothing in the Cr. P. C. to prevent the Magistrate from recording the results of his inquiry and the opinion at which

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jurisdiction under S. 145, to make an enquiry as to possession, still less a final order, unless and until he is satisfied of the likelihood of a breach of the peace. It is essential that the facts and grounds of his being so satisfied should appear in his first order directing the issue of notice, and the grounds must be such as to satisfy a Court of Revision before which the case may be brought by any of the parties concerned. The "Police report and the personal talk to parties and personal inspection of the land in dispute" are not such grounds. *Asaram v. Cholu Lal*.

22 Cr. L. J. 763 :
6 I. C. 288.

————S. 145, 147—Easement—Dispute concerning easement—Proceedings, form of.

Where the subject-matter of a dispute likely to cause a breach of the peace is a right of easement claimed by one party, and there is no claim by the former to possession of the land, proceedings cannot be taken under S. 145. In such a case, S. 147 of the Code is the appropriate section. *Kali Kumar Das v. Bejoy Gobinda Mitra*.

21 Cr. L. J. 697 :
57 I. C. 937 : A. I. R. 1920 Cal. 561.

————S. 145—Effect of order.

Attachment of house—Entry into house for removal of movable property therein after attachment without Magistrate's order is not legal. *Niranjan Lal v. Emperor*.

37 Cr. L. J. 346 :
160 I. C. 870 (a) :
1936 A. L. J. 83 : 8 R. A. 661 :
A. I. R. 1936 All. 141.

————S. 145—Effect of order—Court should take into consideration present possession—Fresh proceeding.

The question to be taken into consideration by a Criminal Court under S. 145, is the question as to the present possession of the parties concerned. Hence an order made in the previous proceeding under S. 145, does not and cannot legally bar the initiation of a fresh proceeding, if there be reasonable grounds for such initiation, as contemplated by law. *Haripada Mazundar v. Dhani Ahmad Sarkar*.

157 I. C. 674 : A. I. R. 1935 Cal. 494.

————S. 145—Effect of order—Magistrate stating in preliminary order that he was satisfied as to the likelihood of breach of the peace—Final order.

Where the Magistrate had already stated in his preliminary order, that he was satisfied that there was a likelihood of a breach of the peace and there is nothing in the final order to show that the circumstances or his opinion had altered, the fact that there is nothing to show in the final order that he was satisfied that there was a likelihood of a breach of the peace, does not make the final order under S. 145, defective. *Sheoprasad v. Gobindram*.

41 Cr. L. J. 799 :
189 I. C. 774 : 1940 N. L. J. 375 :
13 R. N. 78 : A. I. R. 1940 Nag. 265.

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————S. 145—Effect of order.

Order under—No bar to proceedings under S. 107. *In re : Mulhia Moopan*.

14 Cr. L. J. 559 :
21 I. C. 159 : 36 Mad. 315.

————S. 145—Effect of order—Orders under section not to be executed by Magistrates—Proceedings after final order ultra vires.

There is no law authorizing a Magistrate to take proceedings in the nature of execution after passing orders under S. 145. All proceedings after the decision of the case are ultra vires. *Ronendra Narain v. Kishori Lal*.

11 Cr. L. J. 26 :
5 I. C. 40 : 14 C. W. N. 78.

————S. 145—Effect of order.

Order under S. 145 lasts only until the party in whose favour it is made is lawfully evicted. It does not bar restitution under S. 144, C. P. C. *Rajabali Khan v. Ilakhu Bibi*. 134 I. C. 906 :
58 Cal. 1070 : 35 C. W. N. 483 :
I. R. 1931 Cal. 906 : A. I. R. 1932 Cal. 29.

————S. 145—Effect of order—Order, whether binding on persons not parties—Remedy—Breach of peace, likelihood of, grounds for.

An order under S. 145 is not binding against persons who are not parties to the proceedings under the section and their remedy is not by an application for revision against the order. A Magistrate has no jurisdiction under S. 145 to make any inquiry as to possession still less any final order, unless and until he is satisfied of the likelihood of a breach of the peace and it is absolutely essential that the facts and the grounds of his being so satisfied should appear in his first order directing issue of notice and the ground must be such as to satisfy a Court of Revision. *Ramchandra v. Ganpat*.

26 Cr. L. J. 1035 :
87 I. C. 923 : A. I. R. 1925 Nag. 448.

————S. 145—Effect of order—Previous order declaring party in possession—Proper order in subsequent proceedings.

Where a party has once been declared to be in possession of a land in proceedings under S. 145, no contrary order should be made in any subsequent proceedings under the same section regarding the same land unless the Magistrate finds that there has been a change of possession since then. *Jagat Singh v. Sunder Singh*.

27 Cr. L. J. 815 :
95 I. C. 479 : 2 L. C. 331 : 27 P. L. R. 630 :
A. I. R. 1926 Lah. 479:

————S. 145—Effect of order.

Section is not mandatory. *Madan Mohan Lal v. Sheoraj Kumwar*.

34 Cr. L. J. 156 :
141 I. C. 131 : 1932 A. L. J. 503 :
L. R. 13 All. 132 Cr. : I. R. 1933 All. 63 :
A. I. R. 1932 All. 446.

————Ss. 145, 146—Effect of order—U. P. Land Revenue Act (III of 1901), S. 40 (2)—Order under Ss. 145, 146, Cr. P. C.—Mutation in favour of opposite party—Restitution.

An order under S. 145 or S. 143 does not interfere with an order subsequently made by

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the Revenue Authorities under S. 40 of the U. P. Land Revenue Act making over possession of the property to the party in whose favour an order of mutation has been passed. If the opposite party wins the mutation case at a subsequent stage, the Revenue Court has power to grant restitution to him. *Emperor v. Nisar Ali Khan*. 26 Cr. L. J. 1551 : 90 I. C. 309 : A. I. R. 1926 Oudh 179.

—Ss. 145, 146, 195, 200, 476, 537—*Penal Effect of order—Code (Act XLV of 1860), S. 182—Settlement of land attached under S. 146, whether judicial proceeding—Complaint made during proceeding—Sanction to prosecute complainant, legality of—Complainant, failure to examine, effect of—Irrregularity.*

Certain lands having been attached by a Sub-Divisional Officer under S. 146, he ordered his Nazir to proceed to the spot and settle the lands by auction. The Nazir held the auction and reported the highest bid to the Sub-Divisional Officer. Subsequently the accused filed a petition before a Sub-Divisional Officer alleging that the Nazir had settled the lands fraudulently without holding an auction. The Sub-Divisional Officer sent the petition to a Sub-Deputy Magistrate for enquiry and on the latter's report that the allegations contained in the petition were false, directed the prosecution of the accused under S. 476 of the Cr. P. C., for an offence under S. 182, Penal Code. The accused was tried and convicted of an offence under the section: *Held*, (1) that the proceedings started by the Sub-Divisional Officer under S. 145 having terminated with the final order under S. 146, the settlement of the attached lands was not a judicial proceeding; (2) that, therefore, the complaint of the accused not having been made during the course of a judicial proceeding, the Sub-Divisional Officer was not competent to direct the prosecution of the accused under S. 476; (3) that the order made by the Sub-Divisional Officer should be treated as a complaint on which recognition of an offence under S. 182 of the Penal Code could be taken under S. 195 (1), Cr. P. C.; (4) that the failure to examine the Sub-Divisional Officer as a complainant under S. 200 of the Cr. P. C. was a mere irregularity covered by S. 537 of the Code and did not vitiate the trial. *Sahib Tewari v. Emperor*. 20 Cr. L. J. 247 : 49 I. C. 919 : A. I. R. 1919 Pat. 203.

—Ss. 145, 146, cl. (1)—*Effect of order—Actual possession, dispute as to—Possession of different portions.*

Where a Magistrate finds that both parties were at the time of the order under S. 145 (1) realizing rents from some of the *raiya*ts of the village, his findings must mean that both parties were in possession, each of different portions of land, and in such a case, it is not open to him to act under S. 146, cl. (1). *Rajindra Narain Roy v. Mohammad Arjumand Khan Chowdhury*. 2 Cr. L. J. 408 : 1 C. L. J. 331 : 9 C. W. N. 857.

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Dismissal of a complaint under S. 145 is neither the dismissal of a complaint nor the discharge of an accused within the meaning of S. 436, Cr. P. C. Therefore, it is not competent to a District Magistrate to order a further enquiry under S. 145, especially without notice to the opposite party. In revision from the dismissal of an application under S. 145 all that a District Magistrate can do is to make a reference to the High Court under S. 438. *Maung San E v. Maung Mye Du*. 30 Cr. L. J. 709 : 117 I. C. 59 : I. R. 1929 Rang. 171 : A. I. R. 1928 Rang. 292.

—Ss. 145, Sub-ss. (1), (5)—*Effect of order—Order under Sub-s. (1), when liable to be cancelled—Absence of finding of—Likelihood of breach of peace—Revision—Interference.*

Unless a party to a proceeding under S. 145 is in a position to show to the Magistrate that there is no likelihood of a breach of the peace, an order made under Sub-s. (1) of that section cannot be set aside. The mere absence of a finding by the Magistrate that there is likelihood of a breach of the peace does not go to the root of his jurisdiction and is not in itself sufficient to invoke interference by the High Court. *Ranada Ranjan v. Bharat Chandra*. 22 Cr. L. J. 484 : 62 I. C. 180 : 38 C. L. J. 69 : 25 C. W. N. 215 : A. I. R. 1921 Cal. 637.

—S. 146 (6)—*Effect of order—Dispute over land—Order under S. 145 (6)—Subsequent dispute over same land between same parties or those deriving their interest from them—Order, if binding—Magistrate reversing order, legality of.*

There was a dispute over certain land in which an order under S. 145 (6) was passed in favour of one party. In a subsequent dispute over the same land between the same parties or between parties deriving their interest from them, the Magistrate reversed the order made in the former dispute: *Held*, that the proceedings in the former dispute were binding upon the parties concerned in the proceedings in the latter dispute and the order of the Magistrate was wrong. Consequently, as provided by S. 145, Sub-s. (6), the party declared to be entitled to possession in the former case was entitled to be protected against disturbance of such possession until evicted therefrom in due course of law. *Elimuddin Sarkar v. Umed Ali Bepari*. 38 Cr. L. J. 79 : 165 I. C. 878 : 63 C. L. J. 2 : 9 R. C. 462 : A. I. R. 1936 Cal. 659.

—S. 145—*Enquiry as to possession—No danger of breach of peace—Proper procedure.*

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he has arrived as to possession. *Nawab Singh v. Rukmangad Singh*. 26 Cr. L. J. 1398 : 89 I. C. 710 : A. I. R. 1926 Oudh 182.

———S. 145—*Enquiry into the question of possession—Finding of Magistrate based on a Police Report—Illegality.*

In proceedings under S. 145 the Magistrate should himself inquire as to the fact of possession and record his finding on the evidence laid before him and should not rely on certain alleged admission of one of the parties contained in a Police Report. *Pasupathi Mudali v. Subramanya Gurukkal*. 10 Cr. L. J. 6 : 2 I. C. 428.

———S. 145—*Enquiry—Magistrate, duty of.*

In an enquiry under S. 145 it is the duty of the Magistrate to determine who is in actual possession of the property at the time of his preliminary order. *Vaithianath Aiyer v. Suppalu Ammal*. 15 Cr. L. J. 708 : 26 I. C. 156 : 1 L. W. 939 : A. I. R. 1915 Mad. 748.

———S. 145—*Enquiry, nature of—Necessary parties.*

The enquiry under S. 145 is confined to the fact of actual possession irrespective of the merits of the claims of the parties concerned. A claim, therefore, merely to a right to possession, as distinguished from a claim to be in possession, would be outside the scope of the enquiry. It is, therefore, not necessary that all parties interested in or claiming a right to the property in dispute entitled to it should be made parties to the proceedings. *Emperor v. Bhunessar Prasad*. 37 Cr. L. J. 886 : 164 I. C. 180 : 1936 A. L. J. 796 : 9 R. A. 119 : 1936 A. W. R. 626 : A. I. R. 1936 All. 531.

———S. 145—*Enquiry—Order without enquiry about possession—Legality—Suit to set aside order—Limitation—Limitation Act, S. 28, Art. 47.*

The order of a Magistrate under S. 145 is not *ultra vires*, though made without making any enquiry as to possession when the party against whom the order is made admits the possession of the opposite party. S. 28 and Art. 47 of Sch. II of the Limitation Act apply to a suit brought to set aside such an order. *Gangadharam Aiyar v. Sankarappa Naidu*.

12 Cr. L. J. 47 : 9 I. C. 285 : 9 M. L. T. 91.

———S. 145—*Enquiry, proceedings under—Enquiry as to possession—Duty of Magistrate.*

Before making an order under S. 145, the Magistrate must comply with the provisions of Chap. XII of the Code and must himself make an enquiry. Therefore an order based on the report of Zaildar is illegal. *Yar Ali Shah v. Rahim Shah*. 21 Cr. L. J. 563 : 57 I. C. 83 : A. I. R. 1920 Lah. 114.

———S. 145—*Enquiry, proceedings under—Necessity of inquiry—Omission to record reasons, effect of.*

S. 145 is a mandatory and if a Magistrate has reason to believe that a dispute as to land is likely to lead to a breach of

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the peace, he is bound to take action to prevent such a breach arising by placing one or other of the parties in possession and forbidding the other disturbance of such possession. It is only right and proper in order to avoid hasty action that a Magistrate should be required to state the grounds of his belief as to the necessity of an inquiry. But where the inquiry proves that there is a dispute which may lead to bloodshed, and when the Magistrate has taken effectively steps under S. 145 to abate temporarily the cause of dispute, his order cannot be set aside merely because he omitted to put in writing the grounds which caused him to take action. Disobedience of a mandatory and directory order does not, as a general rule, render proceedings null and void unless it can be proved that injustice has been done to any party as a result of that omission: *Maung Pu v. Maung Chit Pyu*.

28 Cr. L. J. 623 : 102 I. C. 911 : 5 Rang. 129 : 8 A. I. Cr. R. 241 : A. I. R. 1927 Rang. 177.

———S. 145—*Enquiry, proceeding under—Possession of parties not continued—Proceedings, whether proper.*

An enquiry under S. 145 of the Cr. P. C. must be directed to the decision of the absolute continuing possession of either party of the subject-matter of dispute. A *hal* which is held on one day of a week is not a proper subject-matter for proceedings under S. 145 between the proprietor thereof and the stall-holders where the latter do not lay any claim to actual possession of any stall for the other days in each week. Under such circumstances an order of the Magistrate under S. 145 declaring the stall-holders to be in possession of the stalls is without jurisdiction. In proceedings under S. 145 the element of continuity, is an ingredient which is necessary, at any rate, in case where interruption is not due to seasonal variations. *Nayan Manjuri Dasi v. Farley Huq Sardar*. 24 Cr. L. J. 175 : 71 I. C. 527 : 49 Cal. 871 : A. I. R. 1922 Cal. 502.

———S. 145—*Enquiry under S. 145, scope of.*

Under S. 145, the Magistrate has to decide who is in possession at the time when the Magistrate decides the question of possession and not at any time previous thereto. *Haji v. Emperor*. 30 Cr. L. J. 1124 :

120 I. C. 90 : I. R. 1929 Sind 234 : A. I. R. 1930 Sind 52.

———Ss. 145, 147—*Enquiry under S. 147—Procedure—Order passed without giving parties opportunity to produce evidence, legality of—Jurisdiction—Order affecting persons not parties to proceedings.*

An inquiry under S. 147 has to be made in the manner provided by S. 145 and the Magistrate conducting such enquiry must receive the evidence of the parties. Failure to give an opportunity to the parties of calling evidence affects the jurisdiction of the Magistrate. S. 147 contemplates an order to be passed between parties to the proceedings only. An

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order effecting persons who are not parties to the proceedings is liable to be set aside as affecting jurisdiction. *Pilaji v. Darya*.

20 Cr. L. J. 110 :
48 I. C. 990 : A. I. R. 1918 Nag. 138.

—S. 145—Enquiry under Sub-s. (1).

Sub-s. (1) of S. 145 does not contemplate any sustained inquiry before the making of the preliminary order. It is in the highest degree absurd for a Magistrate to delay the passing of a preliminary order while he undertakes a prolonged inquiry extending over several hearings. *Muhammad Ali Yar Muhammad v. Shamsul Haq Pir Zialdin Shah*.

41 Cr. L. J. 486 :
187 I. C. 636 : 1940 Kar. 162 :
12 R. S. 255 : A. I. R. 1940 Sind 33.

—S. 145—Enquiry under Sub-s. (4) whether obligatory after passing order under Sub-s. (1)—Order under Sub-s. (6) if must follow subsequently.

Sub-ss. (1), (4), (5) and (6) of S. 145 are complementary. Once an order has been passed under Sub-s. (1), it is obligatory for a Magistrate to make the inquiry provided for in Sub-s. (4) subject only to the obligation under Sub-s. (5) to terminate the proceeding in the circumstances therein contemplated. The words of Sub-s. (4) "the Magistrate shall then....." are mandatory. The word 'then' refers to the stage when in compliance with the order under Sub-s. (1) the parties have put in their written statements and attended the Court. On the completion of the inquiry under Sub-s. (4) a final order under Sub-s. (6) must follow, it being obvious that the holding of the said inquiry is a condition precedent to the making of the order under Sub-s. (6). An order under Sub-s. (6) cannot be made without having held any inquiry under Sub-s. (4). *Muhammad Ali Yar Muhammad v. Shamsul Haq Pir Zialdin Shah*.

41 Cr. L. J. 486 :
187 I. C. 636 : 1940 Kar. 162 :
12 R. S. 255 : A. I. R. 1940 Sind 33.

—Ss. 145, 435, 439—Enquiry about possession—Refusal of Magistrate to examine witnesses—Order based on local inspection—Revision.

Where a Magistrate declines to receive oral evidence in an inquiry under S. 145, his proceedings can be revised by the High Court. A decision as to possession based solely on local inspection is not what S. 145 contemplates. *Srteemanavedara Raju v. Parapravan Naidu*.

21 Cr. L. J. 46 (b) :
54 I. C. 254 : 38 M. L. J. 73 :
1920 M. W. N. 133 : 27 M. L. T. 85 :
11 L. W. 285 : A. I. R. 1920 Mad. 566.

—Ss. 145, 439, 539-B—Enquiry under S. 145—Finding in preliminary order that dispute is likely to cause breach of peace—Finding, if should be repeated in final order—Interference by High Court with such finding.

Where in an inquiry under S. 145, the Magistrate in his preliminary order has specifically found that the dispute was likely to cause a breach of the peace, it is not necessary for the Magistrate to repeat in the final order, that such an apprehension existed. Once a prelimi-

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nary order has been properly made by a Magistrate, it is open to the opposite party to show to the Magistrate by evidence that in fact there is no present danger of a breach of the peace. The High Court will not interfere lightly with the finding of a Magistrate when it is based on evidence and the duty of the weighing evidence is one purely for the trial Court. *Gurditta v. Taja*.

40 Cr. L. J. 519 :
181 I. C. 59 : 1938 I. L. R. Lah. 691 :
41 P. L. R. 217 : 11 R. L. 741 :
A. I. R. 1939 Lah. 108.

—S. 145—Evidence.

An order of a District Magistrate rescinding an order passed by a Sub-Divisional Magistrate under S. 144, must be ignored when evidence of possession is being taken in proceedings under S. 145. *Sadique v. Mohid*.

32 Cr. L. J. 208 :
129 I. C. 85 : 10 Pat. 630 :
I. R. 1932 Pat. 5 : A. I. R. 1930 Pat. 426.

—S. 145—Evidence as to possession not satisfactory—Evidence of title, relevancy of.

Where in proceedings under S. 145 the evidence of possession is not quite satisfactory on either side, a Magistrate can consider evidence of the title to supplement the evidence of possession. *Jagdamba Devi v. Emperor*.

38 Cr. L. J. 1107 :
171 I. C. 181 : 1937 O. W. N. 1016 :
10 R. O. 95 : 1937 O. L. R. 526 :
A. I. R. 1937 Oudh 510.

—S. 145—Evidence—Discretion to examine witnesses—Document admitted—Proof—Jurisdiction.

In a proceeding under S. 145 it is in the discretion of the Magistrate to refuse to examine all the witnesses produced by any party, but the discretion is one which must be exercised with due care and caution and with careful regard to the circumstances of each particular case. The admission of a document without being duly proved and without any objection may be an illegality, but it does not effect the jurisdiction of the Magistrate to pass the final order in the case. *Wihidumissa v. Pichit Lal Misser*.

24 Cr. L. J. 954 :
75 I. C. 538.

—S. 145—Evidence—No evidence of actual possession on date of proceeding—Jurisdiction, defect in the exercise of.

In S. 145 proceedings where a Magistrate acts *sua motu* in order to prevent breaches of the peace in his district, he should take such further evidence as may prove that an anterior possession has continued up to the date of his proceeding, and it is certainly a defect in the exercise of his jurisdiction if he leaves the case on the record absolutely unproved. *Juthan Singh v. Ram Narain Singh*.

15 Cr. L. J. 202 :
22 I. C. 986 : 19 C. L. J. 356 :
18 C. W. N. 700 : A. I. R. 1914 Cal. 812.

—S. 145—Evidence not discussed—Reason, for decision not given—Order, legality of.

An order under S. 145 which only contains a very brief statement of some of the facts of the case, does not discuss the evidence adduced by

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the parties and states no reasons, is not a decision as required by law. *Emperor v. Raghunath*. 29 Cr. L. J. 312 :

107 I. C. 907 : 10 A. I. Cr. R. 2 :
A. I. R. 1928 Nag. 255.

———S. 145—*Evidence of title, whether can be used by Magistrate—Jurisdiction.*

In a proceeding under S. 145 the Magistrate is not entitled to rely simply on the question of title. Where, however, the evidence of possession is not quite satisfactory on either side, it is open to him to use evidence of title to supplement the evidence of possession. *Romesh Chandra Sarkar v. Mohim Chandra Guha*. 22 Cr. L. J. 350 :

61 I. C. 174 (a) : A. I. R. 1920 Cal. 889.

———S. 145—*Evidence, order of taking of.*

Although there is nothing in S. 145 to suggest which party should begin the case, it is unusual for the second party to begin his evidence. *Ram Prasad Sahu v. Emperor*.

21 Cr. L. J. 136 :
54 I. C. 616 : A. I. R. 1920 Pat. 520.

———S. 145 — *Evidence — Order without giving opportunity to parties to adduce evidence, legality of.*

In proceedings under S. 145 both parties must be given an opportunity of adducing such evidence as they are advised to give in support of the possession which they claim. *Shakayat Ali Munshi v. Alhadi Hazi*.

19 Cr. L. J. 108 (b) :
43 I. C. 332 : 21 C. W. N. 928 :
27 C. L. J. 88 : A. I. R. 1918 Cal. 94.

———S. 145—*Evidence—Procedure.*

Evidence, recording of—Failure to record evidence in vernacular is mere irregularity which can be cured by S. 537. *Sankatha Misir v. Bishwanath*. 32 Cr. L. J. 368 :

129 I. C. 265 : I. R. 1931 All. 137 :
A. I. R. 1931 All. 2.

———S. 145—*Evidence—Proceedings under—Evidence, necessity of.*

A Magistrate has no jurisdiction to make an order under S. 145 without any evidence being adduced before him. *Hatemali Chaprasi v. Osimaddy*. 24 Cr. L. J. 702 :

73 I. C. 814.

———S. 145—*Evidence—Proceedings under—Magistrate acting on report of Subordinate Magistrate, legality of.*

A Magistrate, acting under S. 145 referred the issues raised between the parties to a Tahsildar for inquiry. On submission of the report by the Tahsildar, the Magistrate accepted the report and, without hearing the entire evidence himself, passed an order accordingly: *Held*, that the order was illegal, and must be set aside. *Sardha Prasad v. Pitamber Lal*.

13 Cr. L. J. 777 :
17 I. C. 409 : 10 A. L. J. 465.

———Ss. 145, 360—*Evidence—Proceedings under S. 145—Deposition of witnesses reading of.*

The provisions of S. 360, Cr. P. C. apply to proceedings under S. 145 subject to the qualifi-

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cation that in proceedings under that section, there is no accused whose presence at the reading of the evidence is necessary. *Narendra Chandra Rudra Pal v. Subrali Bhuiya*.

26 Cr. L. J. 1194 :
88 I. C. 714 : 29 C. W. N. 701 :
41 C. L. J. 479 : 52 Cal. 721 :
A. I. R. 1925 Cal. 822.

———S. 145—*Evidence recorded by Reader and not by Magistrate—Irregularity.*

The omission of a Magistrate in proceedings under S. 145 to make a memorandum of the evidence as required by S. 356 is a mere irregularity and does not vitiate the proceedings where no prejudice has been caused thereby. *Sumran Singh v. Emperor*. 29 Cr. L. J. 70 :

106 I. C. 582 : 4 O. W. N. 1200 :
9 A. I. Cr. R. 372 : A. I. R. 1928 Oudh 112.

———S. 145—*Evidence, recording of.*

Omission to comply with provision in S. 356 (1) in not recording evidence of witnesses in the vernacular is mere irregularity curable under S. 537. *Kallu v. Bashiruddin*.

32 Cr. L. J. 372 :
129 I. C. 269 : 1930 A. L. J. 1504 :
53 All. 172 : L. R. 11 All. 181 Cr. :
I. R. 1931 All. 141 : A. I. R. 1931 All. 3.

———S. 145—*Evidence—Rejection of evidence, effect of.*

Mere rejection of evidence does not vitiate proceedings under S. 145. It depends upon the circumstances in each case whether the rejection of evidence would be tantamount to a refusal to exercise proper jurisdiction. If the evidence rejected is a very material document affecting possession of a party, its rejection might furnish a good ground of grievance to that party. *Udit Narayan Lal v. Sunderman Jha*.

20 Cr. L. J. 234 :
49 I. C. 858 : A. I. R. 1919 Pat. 132.

———S. 145—*Evidence—Rejection of material evidence—Revision.*

Ordinarily the rejection of evidence might not be accepted as a good ground of revision of an order under S. 145 but the rejection of material evidence offered by a party would amount to a refusal to exercise jurisdiction vested in the Court by S. 145. *Paitali Singh v. Ganpati Kuer*. 19 Cr. L. J. 529 :

45 I. C. 337 : A. I. R. 1917 Pat. 145.

———S. 145—*Evidence—Summoning of witnesses.*

S. 145, Sub-s. (9) leaves it entirely to the discretion of the Magistrate whether he will or will not summon any witness or witnesses. *Kunj Behari Das v. Emperor*.

37 Cr. L. J. 694 :
162 I. C. 736 : 1936 A. L. J. 370 :
8 R. A. 892 : 1936 A. W. R. 439 :
A. I. R. 1936 All. 322.

———S. 145—*Evidence.*

Where a Magistrate is satisfied from the Police report that there is a likelihood of a breach of the peace concerning any land, he is entitled to draw proceedings under S. 145 (1)

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without accepting the truth of the whole of the report. *Ahmed Ali Sheikh v. Zabeed Sardar*.

30 Cr. L. J. 1027 :

119 I. C. 372 : 49 C. L. J. 428 :

33 C. W. N. 858 : I. R. 1929 Cal. 788 :

A. I. R. 1929 Cal. 468.

———**S. 145—Evidence—Written statement not filed by one party—Adjournment refused—Discretion—Ordered without evidence—Jurisdiction.**

Where in proceedings under S. 145 the second party filed a written statement while the first party prayed for time to file his written statement; and the Magistrate in refusing to give time made a final order under the section without some evidence on the part of the second party in support of his written statement: *Held*, that so far as refusal to give time is concerned, the Magistrate had a discretion. But he could not make any order under S. 145 without some evidence on the part of the second party in support of the statement put in by him. The order on that account is without jurisdiction. *Gobind Chandra Chakarburty v. Nibaran Chandra Bhattacharji*.

1 Cr. L. J. 631 :

8 C. W. N. 642.

———**Ss. 145, 146—Evidence—Presumption of possession arising from title, when can be applied—Evidence as to possession equally unreliable on both sides—Attachment.**

Where in a proceeding under S. 145 a Magistrate finds that on both sides evidence is equally balanced and he is unable to conclude which party is in possession, then he is entitled to corroborate the evidence of possession by the presumption arising from the title. The principle, however, does not apply to a case where the Magistrate has come to the conclusion that the evidence as regards possession is equally unreliable on both sides. In such a case the Magistrate should attach the subject-matter in dispute by putting in force the provisions of S. 146 of the Code. *Akshoy Kumar Bhattacharjee v. Brojeshwar Chatak*.

24 Cr. L. J. 141 :

71 I. C. 365 : 26 C. W. N. 1000 :

A. I. R. 1923 Cal. 303.

———**Ss. 145, 146—Evidence—Sufficient time given to parties—Omission to adduce evidence—effect.**

In a case under S. 145 neither party filed written statements or adduced any evidence, and an interval of more than two months had elapsed from the date of the initiation of the proceedings, and the Magistrate attached the land in dispute under S. 146: *Held*, that the order was not without jurisdiction. *Bejoy Madhub v. Chandra Nath*.

11 Cr. L. J. 27 :

5 I. C. 40 : 14 C. W. N. 80.

———**Ss. 145, 435—Evidence—Ex parte order—Revision—Interference.**

A Magistrate has no jurisdiction to found an order under S. 145 upon the mere absence of a party. The Court is bound to satisfy itself by examining the evidence tendered by the order that the other party is entitled to an order under the section. Proceedings under S. 145 are liable to revision under S. 435 in the same

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manner as other proceedings. *Chinna Pareddigari Sidda Reddi v. Mala Dasari Adigadu*.

31 Cr. L. J. 190 :

120 I. C. 895 : 1929 M. W. N. 708 :

31 L. W. 104 : A. I. R. 1929 Mad. 847.

———**Ss. 145, 439—Evidence—Appreciation of—Jurisdiction, failure to exercise—Revision,**

In passing an order under S. 146 a general remark made by the Magistrate that the oral evidence is not reliable, without referring to it and without giving any reason, is not a disposal of the evidence upon the record and it amounts to a refusal to exercise the jurisdiction vested in him by law, remediable by the High Court in revision. *Lachmi Ojha v. Birja Misser*.

22 Cr. L. J. 616 :

63 I. C. 152 : 2 P. L. J. 168 : 1921 Pat. 110 :

A. I. R. 1921 Pat. 173.

———**Ss. 145, 439—Evidence—Order under S. 145 without taking evidence, legality of.**

An order under S. 145 without taking any evidence whatever is an order made without jurisdiction. *Sahdat Khan v. Tajjaddi Sheikh*.

20 Cr. L. J. 688 :

52 I. C. 668 : 23 C. W. N. 750 :

46 Cal. 1056 : A. I. R. 1919 Cal. 67.

———**S. 145 (4)—Evidence—Oral evidence not taken—Final order passed on written statements and documentary evidence of parties.**

Where a Magistrate refused to receive oral evidence of a party, and considering a decree of the year 1881 as conclusive proof of possession of the opposite party, passed his final orders in the matter: *Held*, that oral evidence should have been taken. *Loewsen Santal v. Kali Charan Santal*.

1 Cr. L. J. 717 :

8 C. W. N. 719.

———**Ss. 145, 439—Evidentiary value of order—Proceedings under S. 145—Order of Civil or Criminal Code, evidentiary value of—Revision—Interference.**

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———S. 145—*Final order, contents of—Land, description of.*

Where in a proceeding under S. 145 the Magistrate finds that one of the parties is in possession of the land in dispute, his final order should accurately describe the land by specifying the boundaries thereof. *Abdul Hamid v. Yasin Munshi.* 22 Cr. L. J. 385 (a) : 61 I. C. 513 : A. I. R. 1921 All. 211.

———S. 145—*Final order—Finding of apprehension of breach of peace, whether necessary.*

In making a final order under S. 145 it is not necessary for the Magistrate to record a finding that there is an apprehension of a breach of the peace, such a finding is necessary only for the purpose of the preliminary order. *Ganga Ram v. Murad Shah.* 24 Cr. L. J. 631 : 73 I. C. 519 : A. I. R. 1923 Lah. 253.

———S. 145—*Final order—No evidence on record.*

A final order in a proceeding under S. 145, made by the Trial Magistrate on basis of a local enquiry of which there is no note or memorandum, is an order based upon no evidence, and as such, cannot be sustained. *Gogan Howladar v. Karimaddi.* 23 Cr. L. J. 199 : 65 I. C. 855 : 34 C. L. J. 127 : 25 C. W. N. 1007.

———S. 145—*Final order—Proceedings under—Final order—Breach of peace, apprehension of finding as to, absence of—Preliminary order not served on certain party—Order, whether binding.*

The law does not require a Magistrate to record in his final order in a proceeding under S. 145 an express finding that a breach of the peace is imminent. A finding in respect of the existence of a dispute likely to cause a breach of the peace is a matter to be considered in relation to the preliminary order and where the preliminary order states that the Magistrate is satisfied on the materials before him that a dispute likely to cause a breach of the peace exists, the final order cannot be objected to on the ground that it does not contain a finding as to the apprehension of a breach of the peace. A party upon whom the preliminary order required by sub-s. (1) of S. 145 has not been served and who has not been given an opportunity to prove his possession over the subject of the dispute, cannot be subjected to the final order passed in the proceedings. *Nauqin-un-Nisa v. Ahmad-un-nisa.* 26 Cr. L. J. 1581 : 90 I. C. 511 : 2 O. W. N. 704 : A. I. R. 1925 Oudh 605.

———Ss. 145, 146, 148 (5)—*Final order staying proceedings—Magistrate's power to award costs—Crops, meaning of.*

A final and irrevocable order staying proceedings instituted under S. 145 indicates that the Magistrate has applied his mind to the case and has arrived at a conclusion on the materials before him that no dispute exists which would justify him in continuing the proceedings and has the effect of destroying the proceedings altogether. It is, therefore, competent to the Magistrate on making such order to award costs to the opponent as against the petitioner. Crops which have been cut and gathered on the

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threshing floor are not crops or other produce of land within the meaning of Sub-s. (2) of S. 145. *Relumal v. Pherumal Madanmal.*

29 Cr. L. J. 857 : 111 I. C. 441 : 22 S. L. R. 386.

———Ss. 145, 366, 367—*Final order Proceedings under S. 145—Final order—Reasons for decision.*

The final order of a Magistrate, in a proceeding under S. 145 should contain a statement of the reasons which have led him to his decision, in order to enable a superior Court to determine whether he has or has not complied with the provisions of Sub-s. (4) of that section, and whether he directed his mind to the consideration of the effect of the evidence adduced before him. *Bhuban Chandra Hazra v. Nibaran Chandra Santra.* 22 Cr. L. J. 499 : 62 I. C. 323 : 25 C. W. N. 887 : 34 C. L. J. 125 : A. I. R. 1922 Cal. 382.

———S. 145—*Forum—Dispute as to land between two channels—Boundary—Province of Agra and Oudh—Deep stream of Ghagra—Magistrate—Jurisdiction.*

The deep stream of the river Ghagra, as it exists at any given point, forms the boundary line between the District of Fyzabad in the Province of Oudh and the District of Basti in the Province of Agra. A dispute arose about a piece of land situated between the two distinct channels of the river Ghagra between the District of Fyzabad and the District of Basti and the channel which was towards the Fyzabad side was found to be the deep stream of the river : *Held*, that the Magistrate of Basti had jurisdiction to take cognizance of the dispute under S. 145. *Audhendra Partap Singh Sahai v. Daman Singh.* 16 Cr. L. J. 527 : 29 I. C. 543 : A. I. R. 1915 All. 137.

———S. 144—*Form of order.*

Order not formally drawn up—No prejudice caused—Whole proceedings should not be set aside. *Madan Mohan Lal v. Sheoraj Kunwar.*

34 Cr. L. J. 156 : 141 I. C. 131 : 1932 A. L. J. 503 : L. R. 13 All. 132 Cr. : I. R. 1933 All. 63 : A. I. R. 1932 All. 446.

———S. 145—*Foundation of—Jurisdiction—Essential conditions.*

For the foundation of jurisdiction of the Magistrate under S. 145, two essential conditions are that there should be a dispute likely to cause a breach of the peace and that the dispute should concern land. *In the matter of Inderdeo Singh v. Kesho Singh.*

39 Cr. L. J. 268 : 173 I. C. 10 : 18 P. L. T. 886 : 4 B. R. 211 : 10 R. P. 372 : A. I. R. 1938 Pat. 9.

———Ss. 145, 147—*Foundation of jurisdiction—Imminence of breach of peace—Proceedings under S. 145—Arbitration—Failure of arbitration—Revival proceedings—Jurisdiction.*

The jurisdiction of a Magistrate under Chapter XII of the Cr. P. C. is solely based on the imminence of a breach of the peace. What the Crown and the parties want is decision as to their present rights and a decision which will be effectual to prevent a breach of the peace.

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Where during the pendency of proceedings under S. 137 the parties refer their dispute to arbitration and the proceedings are stayed, it is not open to the Magistrate to continue the proceedings under S. 147 after the arbitration proceedings become ineffectual without any allegation of likelihood of breach of peace after the arbitration proceedings ceased. *Kalanand Singh v. Rameshwar Singh*. 11 Cr. L. J. 729 : 8 I. C. 892.

—S. 145—Foundation of jurisdiction.

Magistrate's jurisdiction is subject to limitation provided in S. 145 only. Limitations not provided by statute cannot be grafted. *Nandkeshwar Prasad v. Sila Saran*. 34 Cr. L. J. 115 : 140 I. C. 902 : 13 P. L. T. 609 : 12 Pat. 87 : I. R. 1933 Pat. 35 (2) : A. I. R. 1932 Pat. 366.

—S. 145—Foundation of jurisdiction.

Preliminary order is suitable if dispute likely to cause breach of peace exists and actual breach is likely to occur two or four months later. *Baliram Patil v. Gangoo*.

33 Cr. L. J. 937 :
140 I. C. 231 : 28 N. L. R. 154 :
I. R. 1932 Nag. 142 : A. I. R. 1932 Nag. 134.

—S. 145—Fresh proceedings.

An order passed in previous proceedings under S. 145 does not legally bar initiation of fresh proceedings if there be reasonable grounds for such initiation as contemplated by law. *Hari-pado Mazumdar v. Dhani Ahmad Sarkar*.

157 I. C. 674 : A. I. R. 1935 Cal. 494.

—S. 145—Fresh proceedings—Dispute as to immovable property—Possession once declared—Duty of Magistrate to uphold that order and not to make further enquiry—Order, whether binding on third parties—Remedy of aggrieved party to go to Civil Court.

Once proceedings with regard to land have been taken under S. 145, and possession declared, then it is the duty of Criminal Courts to uphold that order and not to enter upon any further inquiry under that section. Once an order of the Magistrate has been made as regards a plot of land, then it is for the person, whether he be a party to the proceedings or not, who disputes that possession to take proceedings in a Civil Court. It is the duty of the Magistrate to uphold an order which has been made under S. 145, and for that purpose, if necessary, to bind over persons who interfere with the possession under S. 107 or any other provision of the Cr. P. C. *Jainath Pati v. Ramakhan Prasad*.

30 Cr. L. J. 840 :
117 I. C. 643 : I. R. 1929 Pat. 451 :
10 P. L. T. 689 : A. I. R. 1929 Pat. 505.

—S. 145—Fresh proceedings.

Order dropping proceedings merely because one of the parties has died is *ultra vires* and fresh proceedings are without jurisdiction. But Magistrate can continue enquiry by impleading legal representatives. *Misil Mirdha v. Abdul Rahim*.

36 Cr. L. J. 303 :
153 I. C. 174 : 38 C. W. N. 724 : 7 R. C. 354 (2) :
A. I. R. 1934 Cal. 787.

—S. 145—Fresh proceedings—Precious**Cr. P. CODE (1898), S. 145**

proceedings under section—Fresh proceedings in respect of same property, whether legal.

When a party has been declared to be in possession in proceedings under S. 145, fresh proceedings under that section cannot be started against him, unless it can be shown that the order has been either vacated in due course of law or possession has been surrendered amicably. If a Magistrate starts such proceedings, he acts without jurisdiction and his order is liable to be set aside. *Bajit Lal Pathak v. Harakh Singh*.

21 Cr. L. J. 753 :
58 I. C. 337 : 1 P. L. T. 557 :
2 U. P. L. R. Pat. 232 : A. I. R. 1920 Pat. 211.

—S. 145—Fresh Proceedings—Proceedings, ground for—Cancellation of proceedings—Fresh proceedings, institution of, whether permissible.

Proceeding under S. 145 of the Cr. P. C., can be instituted only upon overt acts or preparation by the parties showing a present and an imminent danger of the breach of the peace, and not merely upon an imaginary event that might lead to a breach of the peace. Where a proceeding under S. 145 of the Cr. P. C. has been once cancelled, a fresh proceeding can be instituted only when the Magistrate on further material, either on the report of the Police or any other information is satisfied that there is a likelihood of a breach of the peace. In that case the procedure prescribed by Cl. 1 of S. 145 of the Cr. P. C. should be observed. *Deonan Singh v. Ram Ajodhya Singh*.

18 Cr. L. J. 763 :
41 I. C. 139 : 2 P. L. W. 25 :
A. I. R. 1917 Pat. 368.

—S. 145—Fresh Proceedings—Proceedings under—Dispute settled—Proceedings whether can be renewed—Fresh proceedings.

Proceedings under S. 145 cannot be renewed after the dispute has been settled and an order has been made that the case be struck off, nor would a new proceeding be justified only on the materials upon which the previous proceeding was based. *Ghulam Mohammad v. Emperor*.

24 Cr. L. J. 160 :
71 I. C. 512 : 3 Lah. 401 :
A. I. R. 1923 Lah. 81.

—S. 145—Fresh proceedings.

There is no such qualification that Sub-s. (1) of S. 145, is to be available to the Magistrate only if there is no previous order under Sub-s. (6) between any parties whomsoever. Therefore the Magistrate can start fresh proceedings in respect of the same land when the parties to the proceedings are not the same as in the previous proceedings. *In the matter of : Inderdeo Singh v. Kesho Singh*.

39 Cr. L. J. 268 :
173 I. C. 10 : 18 P. L. T. 836 : 4 B. R. 211 :
10 R. P. 472 : A. I. R. 1938 Pat. 1.

—S. 145—Fresh proceedings under S. 145, when can be started.

Obiter.—Where in previous proceedings under S. 145, a party is declared to be entitled to possession, the Magistrate has jurisdiction to start fresh proceedings under S. 145 if the party to such proceedings was not a party to the pre-

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vious one. *Ambika Thakur v. Emperor.*

41 Cr. L. J. 191 :
185 I. C. 529 : 18 Pat. 544 : 21 P. L. T. 45 :
6 B. R. 203 : 12 R. P. 389 :
A. I. R. 1939 Oudh 611.

—S. 145, 435, 439—*Government of India Act, S. 107—Proceedings under S. 145—Revision—High Court, power of.*

Proceedings under Chapter XII, Cr. P. C. are not proceedings within S. 435 of the Code and cannot, therefore, be called up by the High Court under that section. *Semble.*—The High Court has no power under S. 107 of the Government of India Act to revise proceedings taken under Chapter XII of the Cr. P. C. *Sakhawat Ali v. Emperor.*

20 Cr. L. J. 449 :
51 I. C. 337 : 17 A. L. J. 321 : 41 All. 302 :
A. I. R. 1919 All. 357.

—S. 145, 439—*Government of India Act, S. 107—Revisional power of High Court—Initial want of jurisdiction—Improper exercise of jurisdiction—Rejection of evidence on erroneous grounds.*

Where there is initial want of jurisdiction, proceedings, though they may purport to be under S. 145 are not really proceedings under that section and the High Court can interfere under S. 439. But if the proceedings were properly started, the High Court can interfere only under S. 107 of the Government of India Act on the ground of irregularity amounting to improper exercise of jurisdiction or improper refusal to exercise it, serious enough to vitiate the order. Where in proceedings under S. 145, a perverse finding is arrived by a Magistrate after getting rid of the documentary evidence by incorrectly saying that it relates to the legal title only: and by getting rid of oral evidence by saying, without assigning any reason, that it is unnecessary to enter into it, there is no judgement or finding which a Court can accept and the High Court will interfere. *Thylayoe Aimal v. Srirangaraya Goundan.*

24 Cr. L. J. 100 :
71 I. C. 228 : 31 M. L. T. 202 : 10 L. W. 497 :
1922 M. W. N. 629 : 43 M. L. J. 624 :
A. I. R. 1923 Mad. 760 :

—S. 145—*Immovable property—Crops cut and severed from land, whether immovable property.*

Crops cut and severed from land are movable property and not 'immovable' within the meaning of S. 145, cl. (2), to which alone the provisions of S. 145 are applicable. *Rajindar Lall v. Brich Kurmi*

40 Cr. L. J. 125 :
178 I. C. 582 : 19 P. L. T. 728 : 5 B. R. 118 :
11 R. P. 276 : A. I. R. 1938 Pat. 527.

—S. 145—*Information—Dispute over property—Preliminary order—Omission to mention source of information—Jurisdiction.*

The jurisdiction of a Magistrate to take proceedings under S. 145 is not ousted by his merely omitting to mention in the preliminary order the source of information upon which he was satisfied that a dispute existed concerning certain property and was likely to cause a breach of the peace. *Sher Bahadur Singh v. Fazal Ali.*

28 Cr. L. J. 48 :
I. C. 736 : A. I. R. 1925 Oudh 46.

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—S. 145—"Information," meaning of.

The word "information" in S. 145 does not refer to any particular way in which a Magistrate's attention should be drawn. It is wide enough to cover the knowledge of the Magistrate derived by reading the petitions filed by the parties in another proceeding which satisfied him that a breach of the peace is imminent. *Jhaman Mahton v. Thakuri Mahton.*

21 Cr. L. J. 625 :
57 I. C. 449 : 1 P. L. T. 369 :
2 U. P. L. R. Pat. 192 : A. I. R. 7920 Pat. 319.

—S. 145—*Information, what is.*

There is no particular way of receiving information. Application setting forth facts of dispute and particulars likely to lead to breach of peace signed by party and pleaders, amounts to information. *Madho Kunbi v. Tilak Singh.*

35 Cr. L. J. 1460 :
151 I. C. 853 : 7 R. N. 73 :
A. I. R. 1934 Mad. 194.

—S. 145, Cl. 1—*Initial order—Grounds not stated expressly—Reference to petition containing grounds—Substantial compliance.*

Where the initial order under S. 145, Cl. 1, does not state in express terms the grounds upon which the Magistrate is satisfied that a dispute likely to cause a breach of the peace exists, but such grounds appear in the petition on which the order is founded and to which it makes reference and there is no denial of such grounds on the other side, there is a substantial compliance with the law. *Sayid Mohamed Ghous Saheb v. Sayid Khadir Badshaw Sahib.*

3 Cr. L. J. 487 :
16 M. L. J. 148.

—S. 145, Cl. I—*Initial order of—Magistrate—Grounds of the existence of a likelihood of a breach of the peace, omission to state—Order, if defective and illegal—Jurisdiction.*

An initial order made by a Magistrate under S. 145 is not defective because it is not self-contained and does not state in express terms the grounds upon which he is satisfied that a dispute likely to cause a breach of the peace exists when such grounds appear in the Police report, on which the order is founded and to which it makes reference. *Khosh Mahmed Sirkar v. Nazir Mohamed.*

2 Cr. L. J. 637 :
2 C. L. J. 259 : 9 C. W. N. 1065.

—S. 145—*Joint possession—Dispute, between parties, one of whom claims joint possession.*

In proceedings under S. 145 the dispute must be between parties, each of whom claims exclusive possession of the property in dispute. Where the dispute is between parties, one of whom claims joint possession of the property in dispute, proceedings cannot be taken under S. 145. *Sham Lal Mahton v. Rajendra Lal.*

21 Cr. L. J. 790 :
58 I. C. 518 : 1 P. L. T. 594 :
A. I. R. 1920 Pat. 513.

—S. 145—*Joint possession—Joint family—Property belonging to joint family—Exclusive possession of member—Jurisdiction of Magis-*

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trate—Title to possession, joint or separate, foreign to inquiry.

The question whether the parties have a joint title to the land is one which the Magistrate cannot investigate under S. 145. The only question for him is whether either party has actual possession of a defined area, and the other party has not, he can make an order irrespective of the titles of the parties. Co-sharers in an estate may by express or tacit agreement be each separately in actual possession of specified and demarcated portions of the estate. In that case there is nothing to prevent application of S. 145. When property is found as a fact to be, not constructively, but actually in the joint possession of the parties, the section cannot apply. But if it is found that one co-sharer is in actual possession and the other is not, the Magistrate may make an order under S. 145. *Basanta Kumari Dasi v. Mohesh Chandra Laha.*

14 Cr. L. J. 269 :
19 I. C. 541 : 17 C. W. N. 944 :
40 Cal. 982.

———S. 145—Joint possession—Jurisdiction of Magistrate.

Where parties have joint rights in a certain fishery, and neither of them can be considered as claiming exclusive possession, and a dispute arises with regard to its possession, S. 145 is inapplicable. *Obiter dictum.*—If what was in dispute was not a share in the fishery, but a share in its profits, it might have been dealt with under S. 145 by force of sub-s. (2). *Bhabanath v. Peary Sarma.*

11 Cr. L. J. 370 :
6 I. C. 544 : 11 C. L. J. 412.

———S. 145—Joint possession of property in dispute.

Where both parties to a dispute relating to immovable property are found to be in joint possession thereof, a Magistrate has no jurisdiction to issue an order under S. 145 prohibiting either the one party or the other from disturbing the possession of the other till evicted in due course of law. *Veerabhadra Pillai v. Shunmugam Pillai.*

17 Cr. L. J. 76 :
32 I. C. 668 : A. I. R. 1917 Mad. 509.

———Ss. 145, 146—Joint possession of property—Order of attachment, whether legal.

Where in a dispute concerning property which the Magistrate finds is joint property and in the joint possession of the parties, he has no jurisdiction to make an order under S. 145 or S. 146. *Nand Kishore Missir v. Kalika Missir.*

24 Cr. L. J. 869 :
75 I. C. 69 : 5 P. L. T. 45 :
A. I. R. 1923 Pat. 546.

———S. 145—Joint possession.

S. 145 does not apply when the parties have joint possession. *Thylayee Aramal v. Tiriranga roya Goundan.*

24 Cr. L. J. 103 :
71 I. C. 228 : 31 M. L. J. 202 :
10 L. W. 477 : 1922 M. W. N. 629 :
43 M. L. J. 624 : A. I. R. 1923 Mad. 60.

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———S. 145—Joint possession.

S. 145 does not cover cases where one party claims to hold joint possession and the other party contests such right. But where there is actual physical possession of definable and demarcated property action can be taken. *Emperor v. Ramzan.*

35 Cr. L. J. 1384 :
151 I. C. 728 : 30 N. L. R. 300 :
7 R. N. 63 : A. I. R. 1934 Nag. 196.

———Ss. 145, 146—Joint possession—Joint user by both parties, finding as to, legality of.

Ss. 145 and 146 authorize no recognition of joint possession and no order can be passed forbidding one of the parties to interfere with the joint enjoyment by both. *Sankara Kylasa Mudaliar v. Kuthalinga Mudaliar.*

19 Cr. L. J. 977 :
47 I. C. 877 : A. I. R. 1919 Mad. 812.

———S. 145—Jurisdiction.

A District Magistrate has no jurisdiction to direct a Magistrate subordinate to him to take proceedings under S. 145. *Bansidhar Marwari v. Indar Narain Singh.*

24 Cr. L. J. 545 :
73 I. C. 161 : 1 P. L. R. 93 Cr. :
A. I. R. 1923 Pat. 438.

———S. 145—Jurisdiction.

Before taking action under S. 145, the Magistrate must find that he is satisfied that a dispute existed which was likely to cause a breach of the peace within his jurisdiction. If the Magistrate does not state in his order that such a dispute exists, he has no jurisdiction to take action under S. 145. *Dan Pershad v. Ganesh Pandey.*

14 Cr. L. J. 495 :
20 I. C. 751 : 11 A. L. J. 699 :
36 All. 19.

———S. 145—Jurisdiction—Binding party under S. 107—Whether Magistrate can institute proceedings under S. 145.

The fact that one party had been bound down under S. 107, does not take away from a Magistrate his jurisdiction to act under S. 145 when the circumstances so require. *Baisnab Charan Manjhi v. Gati Nath Munshi.*

13 Cr. L. J. 142 :
13 I. C. 830 : 16 C. W. N. 384.

———S. 145—Jurisdiction.

Dispute regarding land—Police submitting report with recommendation that proceedings under S. 145 may be taken—Magistrate hearing parties and confirming possession of one party and restraining other from interference with a warning that otherwise proceedings under S. 207 would be taken against party interfering—Order held in substance one under S. 145 but must be set aside as passed without observing the indispensable formalities of S. 145 and, therefore, without jurisdiction. *Harbans Narain Singh v. Mohammad Sayeed.*

26 Cr. L. J. 1511 :
90 I. C. 295 : A. I. R. 1926 Pat. 51.

———S. 145—Jurisdiction.

Dispute relating to possession likely to lead to a breach of the peace—Though appropriate action would be under S. 145, the Magistrate can proceed under S. 107—If moved for the

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purpose, the Magistrate is bound to take steps under S. 145, while it is optional with him to proceed under S. 107. *In re: Muthia Moopan.* 14 Cr. L. J. 559 :

21 I. C. 159 : 36 Mad. 315.

———S. 145—*Jurisdiction of Magistrate—Jurisdiction—Existence of dispute likely to cause at some future time.*

In order to give jurisdiction to a Magistrate to exercise the *quasi* civil powers under S. 145, the dispute must be such as is likely to cause a breach of the peace at the time when the proceedings are drawn up and not in future. *W. Stewart v. Hubert Hughes.* 30 Cr. L. J. 977 :

118 I. C. 892 : 49 C. L. J. 394 :

33 C. W. N. 509 : I. R. 1929 Cal. 341 :
A. I. R. 1929 Cal. 341.

———S. 145—*Jurisdiction.*

First Class Magistrate having a particular *ilaga* under him, can hear case under S. 145 arising out of another *ilaga* of the District. *Ghulam Hussain v. Sajawal Shah.*

142 I. C. 430 : 34 P. L. R. 365 :

I. R. 1933 Lah. 204 : A. I. R. 1933 Lah. 204.

———S. 145—*Likelihood of breach of peace found against—Jurisdiction of Magistrate to continue attachment and custody of Receiver.*

The jurisdiction of a Magistrate to proceed under S. 145 is derived from the fact that he is satisfied that there is a likelihood of a breach of peace and the moment it is found that there is no likelihood of a breach of peace, his jurisdiction to proceed under S. 145 ceases. It is not competent to the Magistrate when the proceedings under S. 145 are dropped because of the absence of the likelihood of a breach of the peace, to pass an order that the lands in dispute should continue under attachment and in the custody and management of the Receiver. *Mamidapalli Sallaya v. Sankara Kutumbara Rao.*

29 Cr. L. J. 456 :

108 I. C. 904 : A. I. Cr. R. 51 :

A. I. R. 1928 Mad. 859.

———S. 145—*Jurisdiction, local limits of—Subject of dispute, situated partly without local limits of Magistrate's jurisdiction.*

S. 145 gives power to a Magistrate to institute proceedings under the section in regard to any land or water or the boundaries thereof, within the local limits of his jurisdiction. Therefore, where, a *jalkar*, the subject of a proceeding under S. 145 is situate partly within and partly without the local limits of a Magistrate, order with regard to the portion which lies outside it is *ultra vires*. Proceedings having been taken with regard to the *jalkar* as a whole, the entire order should be set aside. *Korban Moola v. Raja Srinath.* 2 Cr. L. J. 406 :

1 C. L. J. 329 : I. L. R. 32 Cal. 444.

———S. 145—*Jurisdiction, nature of.*

There is no warrant for the proposition that once a Court acquires that initial jurisdiction, that jurisdiction continues to cover decisions and orders which may be antagonistic, to the circumstances that arise subsequent to the inception of the jurisdiction. If the circumstances are such as merely allow a continuance

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of the jurisdiction, the jurisdiction would continue but if they are such as have the effect of destroying the jurisdiction, the jurisdiction must cease as soon as those circumstances come into being, no matter at what stage of the case they arise. If during the progress of proceedings under S. 145 circumstances intervene which have the effect of taking away the initial jurisdiction, anything done in spite of those circumstances in the exercise of the same jurisdiction must be treated as having been done without jurisdiction. *Arjun Singh v. Chandan Kuar.* 22 Cr. L. J. 625 :

63 I. C. 321 : 24 O. C. 167 :

A. I. R. 1921 Oudh 6.

———S. 145—*Jurisdiction of Magistrate, nature of—Duty to give opportunity to be heard.*

S. 145 gives a Magistrate a special jurisdiction to decide a dispute as to actual possession of immovable property, on his being satisfied that the dispute is likely to cause a breach of the peace, but a decision ought not to be arrived at arbitrarily, and should be a judicial decision arrived at after given each of the disputants an opportunity of being heard. *Velu Malavarayan v. Kappusawmi Pillai.* 22 Cr. L. J. 90 :

59 I. C. 378 : 12 L. W. 315.

———S. 145—*Jurisdiction of Magistrate—No opportunity given for examining Police Sub-Inspector.*

On an application of the petitioners, asking for summons against a Sub-Inspector as a witness, in a case under S. 145, the Magistrate ordered that the Sub-Inspector was to come with his diaries. On the date of hearing, the Sub-Inspector did not appear, whereupon an application was made by the petitioner asking for summons against him. The Magistrate rejected the application saying that it was vexatious as no process was asked for so long and proceeded to pass the final order under S. 145 : *Held*, that the order of the Magistrate was bad, as the petitioner was not given an opportunity of examining the Sub-Inspector of Police. *Gaizuddi Howladar v. Ainuddi Howladar.* 15 Cr. L. J. 79 :

22 I. C. 431 : 18 C. W. N. 94 :

A. I. R. 1914 Cal. 753.

———S. 145—*Omission to join party, whether defect of jurisdiction.*

Per Newbould, J.—The omission to join a party in proceedings under S. 145 is not an error of jurisdiction. *Moiram Bewah v. Mrijan Sardar.* 21 Cr. L. J. 25 :

54 I. C. 169 : 24 C. W. N. 96 :

31 C. L. J. 183 : 47 Cal. 438 :

A. I. R. 1920 Cal. 417.

———S. 145—*Jurisdiction—Omission to record preliminary order before summoning opposite party—Omission to affix copy on the property in dispute, effect of.*

An omission to record a preliminary order before issue of summons to the opposite party or to affix a copy of it to a conspicuous place at or near the subject of dispute, as required by Cls. (1) and (3) of S. 145, is not fatal to the jurisdiction of the Court to proceed with the case under S. 145, when an order directing

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the parties to put in written statements has been once recorded in the presence of the parties and they have understood the nature of the proceedings. *Muhammad Sharif v. Dhanpat Rai*.

15 Cr. L. J. 219 :
23 I. C. 487 : 15 P. W. R. 1914 Cr. :
65 P. L. R. 1914 : A. I. R. 1914 Lah. 295.

—S. 145—Jurisdiction—One tenant selling up tenancy against another—Jurisdiction of Magistrate.

An order under S. 145 passed in favour of one tenant as against other persons setting up their tenancy, is a good and valid order. *Gurudas Kundu v. Kedar Nath Kundu*. 12 Cr. L. J. 408 : 11 I. C. 592 : 38 Cal. 889 : 15 C. L. J. 185.

—S. 145—Jurisdiction—Order based on Police report—Interference by High Court—Jurisdiction—Possession at date of order—Finding not specific—Order, construction of.

A Magistrate gets jurisdiction to take action under S. 145, if he believes the Police report as to the likelihood of a breach of the peace. He need not assign further reasons. An order merely declaring a party in possession, though not a specific compliance with the provisions of S. 145 (1), may be construed as declaring the possession at the date of the order, if each party was only contending for its own possession at the date of the order and previous to it. The High Court will not examine the grounds of the Magistrate's order where it was passed to check an imminent danger and in the interests of the public peace. *Krishnappa Naidu v. Alamelu Ammal*.

18 Cr. L. J. 23 :
36 I. C. 855 : 5 L. W. 165 :
A. I. R. 1917 Mad. 610.

—S. 145—Jurisdiction—Parties jointly interested in subject-matter of dispute—Decision as to method of possession—Jurisdiction of Magistrate.

A Magistrate has no jurisdiction to pass any order under S. 145 in respect of the subject-matter of the dispute in which the parties claim to be jointly interested. He is entitled to decide which of the parties is in possession, but he cannot decide the method by which the possession is to be exercised, or the agency by which the person in possession is to collect the profits. *Akaloo Chandra Das v. Mohesh Lal*.

11 Cr. L. J. 28 :
4 I. C. 696 : 36 Cal. 986.

—S. 145—Jurisdiction—Petitioner, possession of on behalf of both parties—Jurisdiction to pass order.

A Magistrate has no jurisdiction to pass an order under S. 145 when the possession of the applicant is neither exclusive nor superior to that of the opposite party but is on behalf of both parties and the applicant merely wants a declaration to that effect. *Kandasami Asari v. Narayan Asari*.

16 Cr. L. J. 52 :
26 I. C. 644 : 2 L. W. 107 :
A. I. R. 1916 Mad. 495.

—S. 145—Jurisdiction—proceedings under—Jurisdiction, basis of—Breach of peace not likely—Proceeding not specifying subject-matter of dispute, defective.

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Inasmuch as the basis of jurisdiction in a case under S. 145 is the likelihood of a breach of the peace, a Magistrate acts without jurisdiction if he proceeds under that section after he is satisfied that a breach of the peace is not likely. In drawing up a proceeding under S. 145, the subject-matter of the dispute should be clearly specific. *Siv Narayan Mukherjee v. Satish Chandra Ghosal*.

21 Cr. L. J. 593 :
57 I. C. 161 : 24 C. W. N. 621 :
31 C. L. J. 369 : A. I. R. 1920 Cal. 344.

—S. 145—Jurisdiction proceedings under—Magistrate, jurisdiction of, to supplement final order at instance of one party without notice to other party.

Where a Magistrate has omitted to mention a part of disputed premises in his order, he cannot proceed to supplement and include that portion without giving the other side an opportunity of being heard. *Natabar Dutt v. Biseswar Rakhit*.

19 Cr. L. J. 732 (b) :
46 I. C. 412 : 22 C. W. N. 552 :
A. I. R. 1918 Cal. 238.

—S. 145—Jurisdiction—Refusal of Magistrate to look at documentary evidence of title, whether question of Jurisdiction—Revision.

Where a proceeding under S. 145 in which the dispute was as to the possession of unworked minerals underground, the Magistrate refuses to look at documents of title produced by the parties and decides the case in favour of one of the parties on evidence of possession which is not of a cogent nature the irregularity is not such as to call for interference in revision. *Sajauddin Mandal v. F. L. Cork*.

19 Cr. L. J. 681 :
46 I. C. 41 : 22 C. W. N. 499 :
27 C. L. J. 465 : A. I. R. 1919 Cal. 930.

—S. 145—Jurisdiction—Refusal to admit evidence, effect of.

In a proceeding under S. 145 documents of title are often of great assistance in arriving at a right conclusion upon the question of possession. Therefore, where a Magistrate refuses to admit documents of title proposed to be filed by a party he commits an error in the exercise of his jurisdiction. *Dwarka Rai v. Nathuni Koeri*.

19 Cr. L. J. 764 :
46 I. C. 604 : A. I. R. 1918 Pat. 658.

—S. 145—Jurisdiction.

The omission to draw up an order under S. 145 (1) has nothing to do with the question of jurisdiction at all. *Madan Mohan Lal v. Shearaj Kunwar*.

34 Cr. L. J. 156 :
141 I. C. 131 : 1932 A. L. J. 503 :
L. R. 13 All. 132 Cr. : I. R. 1933 All. 63 :
A. I. R. 1932 All 446.

—S. 145—Jurisdiction.

There is nothing either in S. 107 or in S. 145 warranting the conclusion that the proceedings under the proper section would preclude the Magistrate from proceeding under the latter section. *Faiyaz Als v. Ewaz Ali*.

13 Cr. L. J. 566 :
9 A. L. J. 693 : 15 I. C. 982

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———Ss. 145, 146—*Jurisdiction of Magistrate—Disposal of property.*

The “parties” contemplated in S. 146 are the parties concerned in the dispute relating to land or water. A District Magistrate, in a proceeding between certain parties, passed an order under S. 146 attaching the land in dispute the attachment to continue in force until a competent Court had determined the rights of the parties to the land. One of the parties applied for the produce of the land to be made over to him but the District Magistrate treated the profits as derelict and held that since the rights of any of the parties to the land in question had not been determined by any Court, the produce lapsed to Government : *Held*, that the order of the District Magistrate refusing to hand over the value of the produce in question to the petitioner was correct but the District Magistrate had no power to treat the profits as derelict and as the property of Government. *Mohar Singh v. Emperor.* 12 Cr. L. J. 403 : 11 I. C. 587 : 123 P. L. R. 1911.

———S. 147—*Jurisdiction—Proceedings under S. 145—Conversion into proceedings under S. 247.*

Where proceedings under S. 145 are instituted on the basis of a Police report which states that there is an imminent risk of a breach of the peace, but the Magistrate subsequently discovers that the question at issue is not one of possession under S. 145, but is one as to a right falling under S. 147, he has jurisdiction to convert the proceedings from those under S. 145 to those under S. 147. *Anath Bandhu v. Wahid Ali.* 26 Cr. L. J. 558 : 85 I. C. 654 : A. I. R. 1925 Cal. 1022.

———Ss. 145, 148—*Jurisdiction, failure to exercise, what amounts to.*

Where in a proceeding under S. 145 a Magistrate does not consider both the oral and documentary evidence, he fails to exercise his jurisdiction and his order is liable to be set aside. *Kailashbhari Lal v. Jai Narain Rai.* 21 Cr. L. J. 601 (a) : 57 I. C. 169 : 1 P. L. T. 291 : 1920 Pat. 288 : A. I. R. 1920 Lah. 91.

———Ss. 145 and 439—*Jurisdiction—Order respecting possession of immovable property—Revision.*

Where a Magistrate passed an order under S. 145 under circumstances in which the passing of such order was proper, the High Court declined to interfere in revision upon the ground merely that the preliminary order did not set forth as explicitly as it might have set forth the reasons which satisfied the Magistrate that there was a likelihood of a breach of the peace. *Har Prasad v. Pandurang.* 3 Cr. L. J. 48 : 25 A. W. N. 260.

———S. 145 (1)—*Legal order.*

Without compliance with the requirements of S. 145 (1), a Magistrate's order under the section is without jurisdiction and illegal. *Autar Kurmi v. Emperor.* 15 Cr. L. J. 424 : 24 I. C. 160 : A. I. R. 1914 All. 107.

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———S. 145 (1).

Jurisdiction—Likelihood of breach of a peace is sufficient. Raj Nandan Missir v. Chhedi Thakur. 34 Cr. L. J. 259 : 142 I. C. 157 : 13 P. L. T. 178 : I. R. 1933 Pat. 117 : A. I. R. 1932 Pat. 185.

———Ss. 145 (1), 192—*Jurisdiction of Magistrate to initiate proceedings in respect of land not within his local limits.*

A Sub-Divisional Magistrate has no jurisdiction to initiate proceedings under S. 145 (1), in respect of land not within the local limits of his jurisdiction, even if the case was transferred to him for the disposal under S. 192, Cr. P. C. by the District Magistrate. *Chellapathi Naidu v. Subba Naidu.* 30 Cr. L. J. 840 : 114 I. C. 625 : 55 M. L. J. 693 : 28 L. W. 604 : 1928 M. W. N. 921 : I. R. 1928 Mad. 305 : 52 Mad. 211 : A. I. R. 1928 Mad. 1230.

———S. 145 (1)—*Jurisdiction—Non-service of copy of order—Jurisdiction—Absence of imminent danger of breach of peace.*

Where a copy of the order, as contemplated by S. 145 (3) was not published in some conspicuous place at or near the subject of dispute, and there was no imminent danger of breach of the peace : *Held*, S. 145 (3) is mandatory and its non-compliance affects the jurisdiction of the Court : *Held*, further that proceedings under S. 145 are improper unless there is an imminent danger of a breach of the peace. *Janu Manjhi v. Manir-ud-Din.* 1 Cr. L. J. 529 : 8 C. W. N. 590 :

———S. 145, Cls. (3) and (4)—*Jurisdiction—Notice not published locally—Jurisdiction.*

The compliance with S. 145 (3) is a condition precedent to the exercise of jurisdiction under Cl. (4) of the section. *Nawab Khajah Solemolla Bahadur v. Ishan Chandra Das Sarkar.* 2 Cr. L. J. 569 : 9 C. W. N. 909.

———S. 145 (4)—*Jurisdiction—Delegation of enquiry.*

A Magistrate holding an enquiry as to possession under S. 145, Cl. 4, is bound to take the evidence himself and cannot delegate it to a Subordinate Magistrate. *Baliarsimbuni v. Gadagamma.* 33 Cr. L. J. 536 : 138 I. C. 68 : 35 L. W. 390 : 1932 M. W. N. 415 : I. R. 1932 Mad. 496 : A. I. R. 1932 Mad. 368.

———S. 145, Cl. (4)—*Jurisdiction—Presumption of possession—Actual possession.*

The jurisdiction of a Magistrate, to initiate proceedings under S. 145 is not determined by the date of dispossession of one of the parties claiming the land. It is determined by an apprehension, based on reliable information, that a dispute likely to cause a breach of the peace exists. The proviso to cl. 4 of S. 145 merely recites a circumstance under which presumption of possession may be made in favour of one of the disputants. A Magistrate does not act without jurisdiction if he decides the question of actual possession on grounds

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other than the presumption referred to in S. 145.
(4). *Shcoraj Singh v. Emperor*. 14 Cr. L. J. 223 :
19 I. C. 319 : 11 A. L. J. 305.

—S. 145 (5), (6)—*Jurisdiction of Magistrate to deal with lands not subject-matter of dispute.*

In a proceeding under S. 145 the Magistrate has no jurisdiction to deal with land which is not in dispute between the parties and to declare the same to be in possession of persons who are not parties to the proceedings. *Radha Mohan Rai v. Naimuddi Molla*.

19 Cr. L. J. 653 :
45 I. C. 845 : A. I. R. 1918 Cal. 117.

—S. 145, cl. (6)—*Jurisdiction of the Magistrate to maintain parties in separate possession of shares of land in dispute.*

Where in a proceeding under S. 145, the Magistrate finds that one party has been in possession of a portion of the land in dispute, and the other party in possession of the rest, and the possession of the one is not likely to interfere with the enjoyment of the possession of the remaining portion by the other, the Magistrate can maintain both the parties in possession of their respective portions. *Kangali Das v. Moti Lal*.

5 Cr. L. J. 490 :
11 C. W. N. 743.

—S. 145—*Large area—Dispute relating to immovable property—Magistrate's duty to take prompt action—Finding as to likelihood of breach of peace, necessity of—Preliminary order, contents of—Order regarding larger area, whether valid—Date for determining possession.*

Prompt preventive action is necessary in cases under Chap. XII of the Cr. P. C. In proceedings under Chap. XII, Cr. P. C., a Magistrate must himself be satisfied of the likelihood of a breach of the peace. He should form his own judgment and not proceed automatically upon the mere opinion of the Police or the direction of some other officer. The fact that the Magistrate is so satisfied and the grounds thereof must, therefore, appear in the first order directing the issue of notice. A Magistrate has no jurisdiction to pass an order under S. 145, in respect of a larger area of land than is included in the proceedings. The critical date for determining the possession of the parties is the date of preliminary order. *Emperor v. Ganikhan*.

28 Cr. L. J. 929 :
105 I. C. 449 : A. I. R. 1928 Nag. 81.

—S. 145—*Large area—Order passed by Magistrate including land outside proceedings—Effect.*

Where in proceedings under S. 145, the Magistrate passes an order which includes lands outside the proceedings, he acts in excess of his jurisdiction and the order is liable to be set aside. *Kirpal Singh v. Hari Choudhury*.

40 Cr. L. J. 629 :
182 I. C. 54 : 5 B. R. 710 : 12 R. P. 5 :
A. I. R. 1939 Pat. 565.

—S. 145—*Limitation—Order, binding, value of.*

Dispute between Trust and third parties

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—Order under S. 145 binds Trust—Suit by succeeding trustee is governed by Art 47, Limitation Act. *Jugathambal Anni v. Peria-thambi Nadar*.

161 I. C. 234 :
43 L. W. 496 : 70 M. L. J. 441 :
1936 M. W. N. 458 : 8 R. M. 804 :
A. I. R. 1936 Mad. 188.

—Ss. 145, 539-B—*Local inquiry—Proceedings—Local inquiry—Memorandum, not recorded—Effect.*

There is no universal rule that a disobedience of a mandatory provision in a Statute has the consequence of nullification of all proceedings irrespective of the question of prejudice. Where in a proceeding under S. 145, the Magistrate makes a local inquiry in the presence of the Pleaders of the parties, who know where the Magistrate goes and the points to which his attention is drawn, but they do not ask the Magistrate to record a memorandum as required by S. 539-B, Cr. P. C., and are content to go on to judgment without seeing the memorandum, or even ascertaining whether one has been made, it is not open to any of the parties subsequently to say that the proceedings should be set aside for this formal defect unless it is shown that prejudice has been caused. *Forbes v. Muhammad Ali Haidar Khan*.

26 Cr. L. J. 1524 :
90 I. C. 308 : 42 C. L. J. 131 : 53 Cal. 46.
A. I. R. 1925 Cal. 1216.

—S. 145—*Meaning of words—"Actual," meaning of—Possession through tenants, whether actual—Order, nature of—Person not party, whether bound.*

The word "actual" in S. 145 used in relation to possession must be interpreted in the sense of only such possession as the nature of the property is susceptible of. Possession through the exercise of a right of collecting rent from the tenants in possession cannot, from a juristic point of view, be regarded as actual. A person who is not a party either to the proceedings or to the order under S. 145, is entitled to challenge the propriety of it and may even defy it though only by lawful act. An order under S. 145 does not put any one in possession but is merely a declaration of the then existing state of possession on the materials before the Court in those proceedings. *Mahesh Singh v. Emperor*.

26 Cr. L. J. 398 :
84 I. C. 942 : 11 O. L. J. 743 : 1 O. W. N. 549 :
A. I. R. 1925 Oudh 251.

—S. 145—*Meaning of words—Dispossession 'within two months before the date of such order', meaning of—Period of two months, calculation of.*

The words 'two months before the date of such order' in the proviso to S. 145 mean two months from the date of the preliminary order and not two months from the date of the complaint. *Emperor v. Baij Nath*.

31 Cr. L. J. 678 :
124 I. C. 363 : 6 O. W. N. 957 :
5 Luck. 440 : A. I. R. 1929 Oudh 526.

—S. 145—*Meaning of words—Proceedings under—Dispute as to possession*

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—Decree of Civil Court in favour of one party—Delivery of possession to such party by Civil Court—Jurisdiction of Criminal Court to take proceedings under S. 145—'Dispute', 'Actual possession,' meaning of.

Held, by the Full Bench (*Rankin, C. J. and Suhrawardy, Ghose and Cammiade, JJ.*).—The words 'actual possession' in Sub-s. (1) of S. 145 means actual physical possession even though wrongful, *e. g.*, that of a recent trespasser in actual physical possession at the time of the proceedings under S. 145. The word 'dispute' in the same section means actual disagreement existing between the parties at the time of the proceedings under S. 145 even though the question as to the right to possession has already been decided by a Civil Court. Per *Mukerjee, J.*—The words 'actual possession' in Sub-s. (1) of S. 145 means actual physical possession even though wrongful, *e. g.*, that of a recent trespasser in actual physical possession provided the dispute as to possession has not been determined by a Civil Court. The word 'dispute' in the same section means actual disagreement existing between the parties at the time of the proceedings under S. 145 even though the question as to the right of possession has already been decided by a Civil Court if the decision of the Civil Court amounts only to a determination of the right to possession but not in cases where such right and a consequent claim to possession have been negated by a decree which is either *inter partes* or may be treated as such and in cases in which *khas* or actual possession has been delivered by the Civil Court either *inter partes* or between parties who may in effect be regarded as parties to the proceedings. The first party took a mortgage from M and his wife, and obtained a mortgage-decree against M and the heirs of M's wife. upon an application for execution of the decree it was found that the decree was time-barred as against the minor heirs of M's wife. The property was thereafter sold as against M and purchased by the first party. An application to set aside the sale was dismissed but the question whether the property was owned by M or his wife or as to what their shares in it were was left open. The first party was put in possession by the planting of a bamboo. In proceedings under S. 145 between the first party and the heirs of M's wife about 15 months after the date of the delivery of possession: *Held*, by the Full Bench: (1) that the Magistrate had jurisdiction to take action under S. 145, in spite of the order of the Civil Court for delivery of possession; (2) that he was not bound in law to find that the applicant was in possession by reason of the delivery of possession given by the Civil Court. *Agni Kumar Das v. Mumtazuddin.*

30 Cr. L. J. 69 :

113 I. C. 181 : 48 C. L. J. 193 :

32 C. W. N. 1173 : I. R. 1929 Cal. 82 :

56 Cal. 290 : A. I. R. 1928 Cal. 610.

—S. 145—Meaning of words—Dispute as to sugar factory—Power of Magistrate to sell molasses—Molasses whether 'produce' of factory—'Produce,' meaning of.

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The word 'produce' in S. 145 (8) is not necessarily confined in its meaning to what is grown from the ground but includes also a finished or semi-finished article made from raw material, Molasses produced in a sugar factory can, therefore, be fairly treated as the produce of the factory, and, being subject to speedy decay, may be sold by a Magistrate pending proceedings in respect of the factory building under S. 145. *Nihal Chand v. Jai Ram.*

31 Cr. L. J. 688 :

124 I. C. 441 : 6 C. W. N. 1070 :

5 Luck. 462 : A. I. R. 1930 Oudh 165.

—S. 145—Meaning of words—Dispute with regard to immovable property—"Forcibly and wrongfully," meaning of—Order confirming possession, duration of.

Per *Martin, J.*—The distinction drawn in the first proviso of Sub-s. (4) of S. 145 is between forcible entries which are rightful and forcible entries which are wrongful; and that depends on whether the person entering was entitled to use force, and not merely on whether he had a legal right to possession. Per *Pratt, J.*—The phrase "forcibly and wrongfully" used in the first proviso to Sub-s. (4) of S. 145 has the same meaning as forcible entry without due warrant of law; in other words "wrongfully" means no more than "otherwise than in due course of law." Possession taken by a show of force is a forcible dispossession within the meaning of the first proviso to Sub-s. (4) of S. 145. Per *Fawcett and Madgaokar, JJ.*—Sub-s. (6) of S. 145 and the connected form No. 22 of Sch. V to the Code allow a Magistrate to give directions as to possession with a legal effect that is valid until actual eviction or ouster by due course of law and not merely until the institution of a civil suit for the purpose of determining the legal right to the property. *Bai Jiba v. Chandulal Ambalal.*

27 Cr. L. J. 661 :

94 I. C. 709 : 27 Bom. L. R. 1353 :

A. I. R. 1926 Bom. 91.

—S. 145—Meaning of words—Land—Mining rights, whether land.

Mining rights fall within the definition of the term land in S. 145. *Andrew Yule v. Skone.*

20 Cr. L. J. 199 :

49 I. C. 657 : 4 P. L. J. 154 :

A. I. R. 1919 Pat. 210.

—S. 145—Meaning of words—"Parties concerned in such disputes," meaning of—Servant, order against—Jurisdiction.

The words "parties concerned in such dispute" in S. 145 include persons who are interested in or claim a right to the property in dispute. An order for possession cannot be made under S. 145 against a mere servant without his master being on the record. *Nagoji Raw v. Subbarayulu Naidu.*

18 Cr. L. J. 44 :

36 I. C. 876 : 5 L. W. 118 :

A. I. R. 1917 Mad. 742.

—S. 145—Meaning of words—Words of Proviso to Sub-s. (4) means two months before date of preliminary order under Sub-s. (1).

An inquiry under Sub-s. (4) of S. 145 is as to possession on the date of the preliminary order under Sub-s. (1) and the words of the

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proviso "within two months next before the date of such order" are precise and unambiguous. These words afford no scope for holding that in those cases where a Magistrate does not make a preliminary order within two months of the dispossession, the party complaining is still entitled to proceed under S. 145. Those words mean two months before the date of the preliminary order. *Muhammad Ali Yar Muhammad v. Shamsul Haq Pir Zail-din Shah*. 41 Cr. L. J. 486 :

187 I. C. 636 : 1940 Kar. 162 : 12 R. S. 255 : A. I. R. 1940 Sind 33.

—Ss. 145, 146—*Meaning of words—Definition—"Crops or other produce of land"—Crops severed from land, attachment of.*

The words "crops or other produce of land" as used in S. 145 (2) do not include crops which have been severed from the land upon which they grew. A Magistrate has, therefore, no jurisdiction to attach under S. 146 a crop of mahua no longer growing on the trees. *Chaurasi v. Rama Shankar*.

3 Cr. L. J. 52 :
25 A. W. N. 278 : I. L. R. 23 All. 266 :
3 A. L. J. 13.

—Ss. 145, 146—*Meaning of words—"Land," meaning of—House, furnished, dispute concerning furniture—Attachment of.*

In a proceeding under S. 145 the jurisdiction of the Magistrate to attach the subject of dispute is confined to "land," and where this "land" consists of a furnished house he can attach the house but not the furniture or other movable property in it. *Gajraj Singh v. Emperor*.

24 Cr. L. J. 85 :
71 I. C. 213 : 20 A. L. J. 906 :
A. I. R. 1922 All. 528.

—Ss. 145, 195 (1) (c)—*Meaning of words—"Produced", meaning of—Document attached to to Police report, whether produced by either party—Prosecution in respect of such document—Sanction of Court, whether necessary.*

Where in a proceeding under S. 145 a document comes into Court attached to a Police report prior to the proceeding, the document is not "produced"; but even if it is, neither of the parties to the proceeding is a party to its production : consequently, the sanction of the Court under S. 195 of the Code is not necessary as a condition precedent to the institution by the aggrieved person of criminal proceedings against the opposite party upon a charge under S. 403 of the Penal Code. *Janabdan Thakar v. Baldeo Prasad Singh*.

21 Cr. L. J. 272 :
55 I. C. 288 : 1 P. L. T. 129 :
5 P. L. J. 135 : 1920 Pat. 137 :
A. I. R. 1920 Pat. 147.

—S. 145, 360—*Meaning of words—"Accused" meaning of—Proceedings under S. 145—Deposition of witnesses, whether must be read over.*

Per *Buckland and Cuming, JJ.*—Parties to proceedings under Ch. XII of the Cr. P. C. are not persons referred to by the word "the accused" in S. 360 (1) of the Code. S. 360 of the Cr. P. C. has no application to proceedings

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under Ch. XII of the Code, and in such proceedings it is not obligatory on the Court to read over the depositions to the witnesses. *Ishan Chandra Samanta v. Hirdoy Krishna Bose*.

26 Cr. L. J. 915 :
86 I. C. 979 : 29 C. W. N. 475.
41 C. L. J. 357 : A. I. R. 1925 Cal. 1040 :

—Ss. 145, 439—*"Actual possession" meaning of—Possession through tenant, whether such possession.*

The words "actual possession" found in S. 145 mean actual physical possession, even though wrongful. The words are sufficiently clear and they can only mean possession in fact as distinguished from possession implied by law, or constructive possession. A party cannot be said to be in possession of land within the meaning of S. 145, when it is the possession claimed through his tenant, i.e. constructive possession. *Penumatsa Ranga Razu of Vempa v. Kandregula Sreenivasa Jagannatha Rao Pantulu Bahadur Garu*. 39 C. L. J. 922 :
177 I. C. 584 : 1938 M. W. N. 252 :
47 L. W. 340 : 1938 1 M. L. J. 453 :
11 R. M. 346 : A. I. R. 1938 Mad. 654.

—S. 145 (2)—*Meaning of words—"Crops," whether includes crops cut and stored.*

The word "crops" in S. 145, cl. (2) is not restricted to standing crops but includes cut and stored crops about which there is a dispute likely to cause a breach of the peace. *Rahim-dino v. Emperor*.

28 Cr. L. J. 989 :
105 I. C. 313 : A. I. R. 1926 Sind 68.

—S. 145 (4)—*Meaning of words—"Forcible and wrongful dispossession," meaning of—Inquiry under S. 145, scope of—Right to possession, a matter for the Civil Court.*

Where the tenants of a village refuse to pay rent to the lawful *Lambardar* and willingly pay the rent to another, the *Lambardar* cannot be held to have been forcibly and wrongfully dispossessed and S. 145 (4) cannot be applied to the case. In a proceeding under S. 145 the enquiry is limited to "the fact of actual possession of the subject of dispute," by the parties, and this enquiry is to be without reference to the merits or the claims of any such parties to a right to possess the subject of dispute. Wrongful possession is not necessarily forcible dispossession. *Ata Husain v. Latif Hussain*.

28 Cr. L. J. 437 :
101 I. C. 469 : L. R. 8 All. 64 Cr. :
4 A. I. Cr. R. 433 : A. I. R. 1927 All. 476.

—S. 145 (4)—*Meaning of words—"Hear the parties", meaning of—Magistrate's duty to hear arguments.*

The expression "hear the parties" in S. 145 (4) means hear the evidence of the parties and arguments of Counsel of parties and if the Magistrate refuses to hear arguments he is not complying with the provisions of the law which are imperative. *Ghulam Sibtain v. Kaniz Khatoon*.

21 Cr. L. J. 572 :
57 I. C. 92 : 5 P. L. J. 246 : 1 P. L. T. 608 :
A. I. R. 1920 Pat. 383.

—S. 145 (4) — *Meaning of words—"Hear the parties," meaning of—Magis-*

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trate refusing to hear arguments—Final order, validity of—Jurisdiction—Procedure.

The words "the Magistrate shall hear the parties" S. 145 (4) include the argument on the conclusion of the evidence on both sides, and the refusal of the Magistrate to hear the arguments of the parties vitiates the final order passed as being in excess of jurisdiction. The procedure under S. 145 is that prescribed for summons cases. *Dhabari Mian v. Gorakh Prasad.* 19 Cr. L. J. 741 : 46 I. C. 517 : 5 P. L. W. 103 : A. I. R. 1918 Pat. 301.

———S. 145 (4)—*Meaning of words—"Within two months", meaning of—Proviso—Interpretation.*

The words 'within two months next before the date of such order' clearly mean within two months of the date of the preliminary order. *Emperor v. Parashram.* 32 Cr. L. J. 476 : 130 I. C. 153 : 26 N. L. R. 377 : I. R. 1931 Nag. 57 : A. I. R. 1931 Nag. 38.

———S. 145 (4)—*Proviso I—Meaning of words—Wrongful dispossession, what is—Forceful possession, meaning of.*

For the purposes of the first proviso to Sub-s. (4) of S. 145 dispossession may be wrongful and yet not forcible, and to hold that 'wrongful' connotes absence of right or title would be to defeat the purpose of the section and to require the Magistrate to enter into questions which by the section itself are expressly excluded from his consideration. A dispossession otherwise than in due course of law is wrongful. It is not necessary that actual force or violence should have been used to some person or persons before a dispossession can be said to be 'forcible'. When the dispossession is effected by a show of criminal force sufficient to intimidate those in possession and to deter them from resistance, the latter are said to have been forcibly dispossessed. *Sita Nath Saha v. Harvey.* 22 Cr. L. J. 637 : 63 I. C. 333 : 33 C. L. J. 353 : 25 C. W. N. 601.

———S. 145 (6)—*Meaning of words—"Due course of law," meaning of.*

The phrase "due course of law" in S. 145 (6) does not necessarily mean a decree of a Civil Court, but an order which evicts a party must either be an order of a Civil Court or of a Court acting under statutory authority. In the latter case, there must be a clear indication, express or implied, in the terms of the Statute itself, to show that the order has the effect of a decree. *Krishna Deyal Gir v. Nirmal.* 18 Cr. L. J. 682 : 40 I. C. 330 : 1 P. L. W. 642 : A. I. R. 1917 Pat. 220.

———S. 145—*Movable property.*

Movable property in building—Dispute regarding both—Order to police to take charge of both is proper. *Prem Kaur v. Beniarsi Das.* 34 Cr. L. J. 342 : 142 I. C. 207 : 34 P. L. R. 368 : I. R. 1933 Lah. 177 : A. I. R. 1933 Lah. 409.

———S. 145—*Nature of proceeding—Ex parte proceeding—Revision.*

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The proceeding under S. 145 being a quasi civil proceeding, if it is held *ex parte*, the High Court may set it aside and allow both the parties an opportunity to adduce their evidence. *Banke Ali v. Reja Ullah.* 25 Cr. L. J. 303 : 76 I. C. 975 : A. I. R. 1925 Cal. 263 (1).

———S. 145—*Nature of proceedings—Civil Court's remedy.*

An order under S. 145 is passed as the result of a summary proceeding and the aggrieved party can always have recourse to the Civil Court to establish his right. *Kunj Behari Das v. Emperor.* 37 Cr. L. J. 694 : 162 I. C. 736 : 1936 A. L. J. 310 : 8 R. A. 892 : A. I. R. 1936 All. 322 :

———Ss. 145, 342 (4), 256—*Nature of proceedings—Dispute as to immovable property—Parties whether in position of accused—Oath, administration of—Inquiry, nature of.*

None of the parties litigating under S. 145 can be called an accused person and consequently the provisions of S. 342 (4) of the Code, that no oath shall be administered to an accused person, do not prevent their examination on oath. An inquiry under S. 145 is of a quasi-civil nature and neither the procedure of warrant cases nor that of summons cases applies, S. 356, Cr. P. C. prescribing the manner in which evidence in such cases is to be recorded. *Mohammad Ayub v. Sarfaraz Ahmad.* 26 Cr. L. J. 70 : 83 I. C. 630 : A. I. R. 1925 Oudh 286.

———Ss. 145, 350—*Nature of Proceedings—Case under S. 145—Enquiry—Evidence partly recorded by one Magistrate and partly by another.*

S. 350, Cr. P. C. is in its terms wide enough to cover every trial or enquiry under the Code, and the proceedings under S. 145 is an enquiry. Therefore S. 350 applies wherever a Magistrate has ceased to exercise jurisdiction therein. *Anu Sheikh v. Jitu Sheikh.* 11 Cr. L. J. 440 (1) : 7 I. C. 54.

———S. 145 (1)—*Nature of proceeding—Preliminary order, necessity of recording—Reasons of the rule.*

The powers conferred upon Courts by S. 145 are somewhat of an exceptional character because they enable the Magistrate mentioned in the section to partially deal with a matter over which Civil Courts have jurisdiction. Therefore, the requirements of the section must be strictly followed and a Magistrate is bound to make an order in writing giving the grounds of his being satisfied that dispute likely to cause a breach of the peace exists. *Dhaniram v. Kaliram.* 28 Cr. L. J. 973 : 105 I. C. 685 : 26 P. L. R. 712.

———S. 145—*Notice—Proceedings—Notice.*

In a case under S. 145 service of notice on the spot under the second part of S. 145 (3), does not dispense with ordinary service upon the respondent as required by the first part of that sub-section. *Surab Ali Khan v. Shromani Parbandhak Committee.* 34 Cr. L. J. 616 : 143 I. C. 477 : I. R. 1933 Lah. 356 : A. I. R. 1933 Lah. 145.

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—S. 145 — *Notice proceeding under—Finality of proceeding—Magistrate, duty of.*

A proceeding under S. 145 is binding on the whole world. Under clause (3) of the section, the order initiating the proceeding is to be published by a copy of it being affixed to some conspicuous place at or near the subject-matter of the dispute. This provision is intended to give notice to all persons interested in the subject-matter of the dispute to come forward and be made parties to the proceeding. Therefore, when the proceeding is over, the question of possession is, so far as the Magistrate is concerned, set at rest once for all, and thereafter he should maintain the order by taking action under Ss. 107 and 144 of the Code, as the case may be, against persons interfering with the possession of the party declared to be in possession whether or not they were parties to the proceeding under S. 145. *Raghunandan Pandey v. Kishin Mohan Singh.* 25 Cr. L. J. 541 : 77 I. C. 1005 : A. I. R. 1922 Pat. 210.

—S. 145—*Notice under—Omission to state grounds or specify property—Failure to publish notice—Irregularity.*

A notice under S. 145 which does not state the grounds on which the Magistrate is satisfied about the probability of a breach of the peace, or specify the plots in regard to which the dispute exists, though irregular, does not vitiate the proceedings. Failure to publish the notice under Sub-s. 3 of S. 145 is not fatal to the Magistrate's jurisdiction. *Parbhu Dyal v. Emperor.* 25 Cr. L. J. 1139 : 81 I. C. 963 : A. I. R. 1925 Oudh 152.

—S. 145—*Notice.*

Where a Magistrate issues a notice under S. 145, he cannot proceed under S. 147. *Surab Ali Khan v. Shromani Gurdwara Parbandhak Committee.* 34 Cr. L. J. 616 : 143 I. C. 477 : I. R. 1933 Lah. 356 : A. I. R. 1933 Lah. 145.

—Ss. 145, 147, 438, 439—*Notice — Ultra vires—Opportunity to produce evidence—Non-exercise of right for three months before enquiry.*

Where the procedure, laid down in S. 147 has not been complied with, e.g., no notice to show cause, or no opportunity to produce evidence, has been given to the opposite side, or the right contemplated therein is not proved to have been exercised within three months before the commencement of the proceedings, the order passed thereunder is *ultra vires* and liable to set aside on revision. *Bhana v. Emperor.* 11 Cr. L. J. 61 : 4 I. C. 860 : 11 P. W. R. 1909 Cr. : 105 P. L. R. 1909 : 12 P. R. 1909 Cr..

—S. 145, Cl. 3—*Jurisdiction—Notice on spot, omission to issue—Jurisdiction—Irregularity—Charter Act (24 & 25 Vict. c. 105) sec. 15—Superintendence, power of, when and how to be exercised. S. 145, cl. 4, "then," meaning of.*

The provision as to publication of the order mentioned in S. 145 (3) is directory and omission to comply with it does not destroy the jurisdiction of the Court which arises as soon as the

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provisions of Sub-s. 1 of the section have been complied with. The object of publishing a notice on the subject of dispute is to reach all persons interested therein and unless it to be shown that some one interested has been materially prejudiced by the omission to serve the notice, the High Court ought not to interfere under S. 15 of the Charter Act. The omission to publish a notice under S. 145 (3), at some conspicuous place at or near the subject of dispute is not an illegality which deprives the Magistrate of his jurisdiction. The power of interference under S. 45, Charter Act, is discretionary and ought, in relation to cases under S. 145, Cr. P. C., to be exercised with every caution. If the Subordinate Court has proceeded with irregularity, the High Court will not interfere unless some one has been materially prejudiced thereby : If, however, the Subordinate Court has acted without jurisdiction, the High Court will interfere. The term 'then' in Sub-s. 4, S. 145, Cr. P. C., has reference only to the time or order of the Magistrate's proceedings. *Sukh Lal Sheikh v. Tara Chand Ta.* 2 Cr. L. J. 618 : 2 C. L. J. 241 : I. L. R. 33 Cal. 68 : 9 C. W. N. 1046.

—Ss. 145 (3), 148 (3)—*Notice—Proceedings under S. 145 started in presence of parties—Notice, whether necessary.*

During the course of proceedings under S. 144, the Magistrate intimated to the parties his intention to draw up proceedings under S. 145. On the following day he drew up proceedings under the latter section in the presence of the parties, who thereafter filed their written statements and adduced evidence in support of their respected cases : *Held*, that the Magistrate was not guilty of any irregularity in proceeding with the case as he did and that the proceedings were not vitiated by want of formal notice to the parties. *Chadhari Ahir v. Raja Ram Singh.* 19 Cr. L. J. 396 : 44 I. C. 748 : 4 P. L. W. 234 : A. I. R. 1918 Pat. 481.

—S. 145 (4)—*Nature of proceedings—Possession.*

An enquiry under S. 145 (4) should relate to the question of actual possession and not to the question of right to possession. *Baliarsimhuni v. Gadagamma.* 33 Cr. L. J. 536 : 138 I. C. 68 : 35 L. W. 390 : 1932 M. W. N. 425 : I. R. 1932 Mad. 496 : A. I. R. 1932 Mad. 368.

—S. 145—*Object—Dispute as to management of property—Magistrate, jurisdiction of.*

The object of S. 145 is limited strictly to the prevention of violent self-help even by a true owner. The provisions of the section belong to the criminal and not to the civil law and should not be resorted to unless there is in fact a real apprehension of occurrence of offences against the public order. Under S. 145, the question in each case will be, *first*, whether the dispute is a dispute concerning land or water or the boundaries thereof, within the meaning of the section, and *secondly*, whether the acts found to have been exercised are such as to justify a finding of possession. The mere

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fact that the word management is used to describe the acts of possession which each party claims to have exercised would not exclude the jurisdiction of the Magistrate. *Ghasi Ram v. Amrit Lal*. 13 Cr. L. J. 858 :

41 I. C. 826 : 2 P. L. W. 94 :
1917 Pat. 350 : A. I. R. 1917 Pat. 606.

—S. 145—Object—Joint possession.

The actual purport of S. 145 is to declare possession with the sole object of avoiding breach of peace. But when both parties are in joint possession, to declare them so to be in possession is contrary to the object of S. 145, as such an order would, in no way, be conducive to public tranquility. The proper procedure in such a case would be to take action under S. 107, Cr. P. C., against the party intending to oust the other's possession. *Larman Appa v. Gannsingh*. 17 N. L. J. 216 :

A. I. R. 1935 Nag. 44.

—S. 145—Object—Likely—Imminent or probable—Discretion of Magistrate in fit cases.

Per *Lucas, J. C.*, and *Crouch, A. J. C.*, (*Pratt A. J. C.*, dissenting)—(1) The word "likely" in S. 145, does not imply that the breach of the peace complained of must be imminent or likely to happen immediately. It simply denotes, that there should be a probability or likelihood of a breach of the peace; (2) The intention of a Legislature in enacting this section clearly was to leave it to the Magistrate's discretion to determine whether or not the conditions precedent to the exercise of his jurisdiction, as laid down in the section, had arisen, but where he held that such conditions did exist, he had no option of refusing to exercise his jurisdiction. The word "shall" cannot be interpreted to give the Magistrate discretion to refuse to act when the conditions precedent to the exercise of his jurisdiction have been complied with. *Balmukund Jaganath v. Emperor*. 8 Cr. L. J. 170 :

1 S. L. R. 50.

—S. 146—Object—Magistrate discharging parties claiming to be in possession on the ground that they claim only as tenants—Legality of—Tenants in possession, if necessary parties to dispute under S. 145.

The essence of proceedings under S. 145 is the determination of the question as to who is in possession. Although a Magistrate is entitled to rescind a preliminary order under S. 145 if he is satisfied that no likelihood of a breach of the peace exists, but in discharging parties to the proceedings who claim to be in possession on the ground that they claim to be in possession as tenants only and are, therefore, not necessary parties, the Magistrate is acting with great irregularity and in a manner not contemplated by the provisions of the section. He is in fact envisaging a decision on the question who has the right to possession, which is a matter for a Civil Court and not for a Criminal Court at all. To say that tenants in possession are not necessary parties is to preclude persons who claim to be in possession from giving evidence that they are in possession. *Nagarmal*

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Rudmal Agarwal v. Rudmal Gangabisan Agarwal. 38 Cr. L. J. 395 :

167 I. C. 500 : 9 R. N. 188 :

I. L. R. 1937 Nag. 288 :

A. I. R. 1937 Nag. 93.

—S. 145—Object of—Breach of peace, apprehension of—Possession—Title, inquiry as to.

The object of the provision contained in S. 145 is to bring to an end by a summary process disputes relating to land, which are in their nature likely, if not suppressed, to end in breaches of the peace. The mere circumstance that the dispute is one of a religious nature is not sufficient to justify a Magistrate to take action under S. 145. There must be positive evidence on the record that a breach of the peace is likely to occur if proceedings under the section are not taken. S. 145 is concerned solely with the fact of actual physical possession whether lawful or unlawful, and questions as to title are quite irrelevant and entirely outside the scope of the section. *Bhagwan Das v. Maula Dad Khan*. 25 Cr. L. J. 78 :

75 I. C. 990 : A. I. R. 1924 Lah. 678.

—S. 145—Object of—Factum of possession—Magistrate, whether can refer to other proceeding.

An order under S. 145 is made for the purpose of keeping the peace pending the parties' legitimate appeal to the Civil Tribunal, and should not be lightly disturbed. A Magistrate when adjudicating upon the factum of possession under this section, should not concern himself with other proceedings pending before himself but should confine himself to the actual evidence adduced by the parties. *In re : Lingaraja Misro*. 17 Cr. L. J. 143 :

33 I. C. 319 : A. I. R. 1917 Mad. 204.

—S. 145—Object of—One party claiming exclusive possession and other joint possession—Proceedings under S. 145, if appropriate.

Proceeding under S. 145 can be started in a case in which one party claims exclusive possession while another party claims to be in joint possession along with them as the question in such a case is no less a question of disputed actual possession than if each party claimed exclusive possession of the entire area. *Zafar Ahsan v. Jugeshwar Bux Roy*. 41 Cr. L. J. 171 :

185 I. C. 346 : 6 B. R. 155 :

12 R. P. 369 : A. I. R. 1940 Pat. 135.

—S. 145—Object of—Order under—Effect on third parties.

The binding character of an order passed under S. 145 is not, under all circumstances, to be confined to the persons who were actually made parties to the proceeding; but may, under certain circumstances, extend to persons other than the parties themselves. *Satya Charan De v. Emperor*. 31 Cr. L. J. 945 :

125 I. C. 858 : 33 C. W. N. 1002 :

A. I. R. 1930 Cal. 63.

—S. 145—Object of—Party forbidden to disturb possession of Successful Party—If can plead that he is still in possession.

The whole object of S. 145 is to stop a breach .

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of the peace by deciding which party is to remain on the land and which party is to seek his remedy in the Civil Court. Breaches of the peace will continue, and the object of the Legislature will be frustrated if the party who is not in possession, is allowed to interfere with the possession of the successful party and to plead once more that whatever the order might have been, he is still in possession or has been able to regain possession by force, and thus either compel the successful party to go to the Civil Court or to coerce a Magistrate to proceed again under S. 145. *Ambika Thakur v. Emperor*.

41 Cr. L. J. 191 :
185 I. C. 529 : 18 Pat. 544 : 21 P. L. T. 45 :
6 B. R. 203 : 12 R. P. 389 :
A. I. R. 1939 Pat. 611 .

—S. 145—Object of—Penal Code, S. 379—Charge for theft of crops—Previous order declaring complainant in possession, effect of—Accused, whether can prove actual possession—Question of title, relevancy of.

Per Cuming, J. (*Graham, J. dubitante.*)—An order under S. 145 is only a piece of evidence to be taken into consideration when the question of possession arises between the parties on a subsequent occasion and though it would go to show that the party in whose favour it was passed was in possession on the date of the order, it is open to the other party to prove that, in spite of the order, he was actually in possession or regained possession after the order. In a charge of theft of crops, the question of title to the land is irrelevant. *Rakhal Dolui v. Makham Lal Ghose*.

28 Cr. L. J. 827 :
104 I. C. 443 : 31 C. W. N. 964 :
A. I. R. 1927 Cal. 701.

—S. 145—Object of—Preservation of peace—Process fees, payment of—Protection of property—Use of force—Recovery of property—Police report.

The sole object of S. 145 is to prevent an imminent breach of peace and a decision in regard to it, right or wrong, must be made at once; the protection or maintenance of anybody's possession is not one of the objects of the section. Under S. 145 the Magistrate takes action on behalf of the Crown on a report made to him, against all other parties concerned and all processes should issue at Government expense and the parties originally mentioned and any others that may come in later should be ranged on one side as the first party and the second party and so on. Any person is entitled to use force within limits for the protection of his property against forcible invasion and also to say that he intends to do so in the event of an apprehended forcible invasion being made. But he has no right to use force for the recovery of his property, and must go to a Civil Court to regain possession or to get his possession confirmed. It is a safe general rule for a Magistrate to refuse to take action at all under S. 145 except on a report from the Police which should not be a mere forwarding of a report made to the Police by one of the parties, but a definite statement of opinion by a responsible officer that he apprehends a disturbance which

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he cannot prevent himself and, therefore, desires the exercise of powers of the Magistrate to prevent it. The absence of such a report is almost conclusive indication of the absence of any likelihood of a breach of the peace. *Phulania v. Emperor*.

25 Cr. L. J. 1109 :
81 I. C. 933 : A. I. R. 1925 Nag. 142.

—S. 145—Object of—Proceedings, nature of—Inquiry into title, whether allowed.

Proceedings under S. 145 are intended to be summary proceedings for the prevention of a breach of the peace and not elaborate inquiries into questions of title. *Emperor v. Man Kunwar*.

25 Cr. L. J. 1031 :
81 I. C. 905 : A. I. R. 1925 Oudh 149.

—S. 145—Object of—Proceedings, object of—Portion of property made subject-matter of dispute—Mistake in law—Non-joinder of party—Order giving party more than his claim, validity of—Revision—High Court, interference by.

The purpose of a proceeding under S. 145 is merely to prevent a breach of the peace and if the Magistrate thinks that it is sufficient to prevent a breach of the peace to include in his proceeding only a portion of the land which is the subject of the Police report, there is nothing to prevent him doing so. The rule that if a suit is brought only in respect of a portion of the land claimed, a subsequent suit for the remainder might be barred is not applicable to proceedings under this section. A mistake of law is not a ground upon which the High Court can interfere with proceedings under S. 145 unless the mistake goes to the jurisdiction. Failure to add a party interested in the land in dispute as a party to the proceedings under S. 145 is not a ground for interference by the High Court. A Magistrate goes beyond his jurisdiction if by an order under S. 145 he awards to a party more than that party has claimed, and in such a case, the High Court will interfere with the order. *Mukhal Singh v. Ramsarup Singh*.

18 Cr. L. J. 692 :
40 I. C. 692 : A. I. R. 1917 Pat. 435.

—S. 145—Object of—Proceeding under—Decision of Criminal Court, effect of—Proceedings, whether can be stopped.

The object of S. 145 is to finally terminate the dispute between the parties so far as the Criminal Court is concerned, so as to effectively put a stop to any breach of the peace. It is with this object that the decision of the Magistrate under S. 145 is declared to be final and conclusive until it is set aside by a competent Civil Court and the rights of the parties are determined by a competent Court. The existence of a decision incidentally arrived at by a Criminal Court with regard to the possession of any party does not *per se* cause a cessation of the dispute between the parties as to possession so as to justify a Magistrate before whom a proceeding under S. 145 is pending to put an end to the proceeding. *Abdul Shakur v. Abu Sayeed*.

26 Cr. L. J. 870 :
16 I. C. 806 : 6 P. L. T. 710 :
A. I. R. 1925 Pat. 593.

—S. 145—Object of—Proceedings under, object of—Opportunity to show cause—Court, duty of.

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The object of the proceedings under S. 145 is to put an end to disputes as to possession of immovable properties so as to prevent a breach of the peace. This object cannot be gained until all the contending parties are on the record and an opportunity is given to them to put forward their respective claims. Where, therefore, a Magistrate refuses to admit the written statement filed by certain parties, his decision is not binding on those parties and will be set aside. *Raghunath Kuer v. Rajkishore Kuer*.

25 Cr. L. J. 906 :
81 I. C. 442 : 5 P. L. T. 458 :
A. I. R. 1924 Pat. 783.

—S. 145—Object of—Proceedings under.

The object of S. 145 is to prevent a breach of the peace by a summary decision as to the possession of the contending parties, leaving them to decide their title and right to possession in a competent Civil Court. It is incumbent upon Magistrates to dispose of proceedings under S. 145 as quickly as possible and with due regard to the rules of procedure prescribed by that self-contained section. The procedure for the trial of a case under this section is that laid down for the trial of summons-cases. *Moti Singh v. Dhanukdhari Singh*.

24 Cr. L. J. 595 :
73 I. C. 339 : A. I. R. 1923 Pat. 53.

—S. 145—Object of—Summary remedy—Speedy disposal—Necessity—Procedure.

The idea of S. 145 is that it is a short and summary manner of awarding possession until other cases connected with the subject-matter of the suit are decided. It is S. 145 case that has got to be finished quickly in order that there may not be breach of the peace until the other cases whose order may overrule S. 145 decision may be brought to a close. *Ma Nyain Mya v. Mang Po Htaik*.

30 Cr. L. J. 344 :
114 I. C. 677 : I. R. 1929 Rang. 69 :
A. I. R. 1928 Rang. 314.

—Ss. 145, 147—Object—Proceedings—Nature of—Dispute between two communities over a well—Procedure.

An order under Ch. XII of the Cr. P. C., is more or less an executive order and it is designed to avoid a breach of the peace. Where there is a dispute between two communities and proceedings are taken under S. 145, the Magistrate is justified in selecting persons who should represent each community, and after hearing whom, he should either permit a community to do a certain thing or to prevent from doing it till a Civil Court has decided upon the rights of the parties. A well is not such a property as can be said to be in the exclusive possession of any one particular person so long as the public or a part of it is allowed access to it. Where it is admitted that a particular community has been using a well, and the question for decision before a Magistrate is whether another community has also a right to use the same, the proceedings should be under S. 147 and not under S. 145. *Nanhe Mal v. Jamil ur-Rahman*.

26 Cr. L. J. 683 :
86 I. C. 59 : 23 A. L. J. 41 :
L. R. 6 All. 94 Cr. : A. I. R. 1925 All. 316.

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—Ss. 145, 439—Object of—Order under S. 145, defective—Both parties cognizant of the facts in dispute—Danger of a breach of the peace—Jurisdiction—Revision.

The only object of causing the Magistrate to set forth his reasons for the initial order, under S. 145 is to enable the parties to know what case they have to meet. Therefore where both parties to proceedings, under the said section, themselves inform a Magistrate that there is a danger of the breach of the peace and the Magistrate acting on that information makes the initial order without recording the reasons in full, his final order is not without jurisdiction, inasmuch as the parties are not prejudiced in any way. *Ganga Saran Singh v. Bhagwat Prasad*.

11 Cr. L. J. 141 :
5. I. C. 471 : 7 A. L. J. 53.

—S. 145 (4)—Object of—Proceedings—Point for determination is actual possession at time of preliminary order.

The only point for determination in proceedings under S. 145 is which party was in possession at the time of the preliminary order. It does not matter whether such possession was wrongful or not. Actual possession is all that matters, subject of course to Proviso 1, Sub-s. (4), S. 145. The Magistrate should not base his order on the respective merits of the claims of the parties to title and thus arrogate to himself functions of the Civil Court. *Nag v. Masood Khan*.

18 Cr. L. J. 100 :
A. I. R. 1936 Nag. 3.

—S. 145 (6)—Object of—Order under S. 145 (6), if binding on whole world.

It cannot be argued that because Sub-s. (3) of S. 145 provides for local publication, the question of possession is set at rest once for all and the final order under Sub-s. 6 is binding on the whole world. *In the matter of Inderdeo Singh v. Kesho Singh*.

39 Cr. L. J. 268 :
173 I. C. 101 : 18 P. L. T. 886 :
4 B. R. 211 : 10 R. P. 372 :
A. I. R. 1938 Pat. 1.

—S. 145—Order without jurisdiction—Applicant in actual possession of land—Direction to restore cemeteries to their old state and allow Muhammadans to have access.

It is beyond the powers of a Sub-Divisional Magistrate to give a direction under S. 145 requiring the applicant who is found to be in actual possession of the land in dispute to restore the old cemeteries to their old state and allow access to Mussalmans if they should desire to go near the cemetery to invoke the blessing of God. *A. M. Balakrishna Reddiar v. Syed Jalaluddin Sahib*.

41 Cr. L. J. 18 :
184 I. C. 451 (1) : 1939 N. W. N. 737 (1) :
50 L. W. 338 (2) : 1939 2 M. L. J. 111 :
12 R. Mad. 452 : A. I. R. 1939 Mad. 791.

—S. 145—Order without Jurisdiction—Dispute concerning land—Magistrate, dealing with larger area—Jurisdiction.

In a proceeding under S. 145 as regards a

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dispute concerning land, a Magistrate acts in excess of his jurisdiction if he deals with a larger area of land in his order than what is included in the proceeding, and his order is liable to be set aside. *Sukhari Nonia v. Ramkhetawan*. 24 Cr. L. J. 309 :

72 I. C. 60 : 4 P. L. T. 372 :
1 P. L. R. 255 Cr. : A. I. R. 1923 Pat. 528.

—S. 145—Order without Jurisdiction—Disputed plot found to be in possession of one party—Order that certain paths should remain intact and remainder to be in possession of party, legality of.

In a proceeding under S. 145 the Magistrate found that the disputed land was in possession of the second party, but directed that two pathways should remain intact and that only the remainder of the disputed plot should remain in possession of the second party: *Held*, that the order was without jurisdiction for there was nothing in S. 145 which gave a Magistrate power to pass an order of the kind, and that portion of the order which directed the pathways to remain intact must be set aside. *Asit Mohan Ghose Moulik v. Sarat Chandra Ghose Moulik*. 14 Cr. L. J. 391 :

20 I. C. 215 : 17 C. W. N. 793.

—S. 145—Order without Jurisdiction—Dispute regarding immovable property—Jurisdiction of Magistrate.

In order that a Magistrate may have jurisdiction to act under S. 145, he must be satisfied from a Police report or other information that a dispute likely to cause a breach of the peace exists concerning any land, &c. S. 145 (5) lays down that nothing in that section shall preclude any party required by a preliminary order to attend at the Magistrate's Court, from showing that no dispute likely to cause a breach of the peace existed or had existed and it is consequently not open to the Magistrate to refuse to receive any such evidence tendered to him. *Raja of Karvanthagar v. Lodd Govinda Das*. 5 Cr. L. J. 91 :

1 M. L. T. 405 : I. L. R. 29 Mad. 561.

—S. 145—Order without Jurisdiction—Division of crops—Magistrate, jurisdiction of.

A Magistrate has no jurisdiction to order a division of the crops on the land, subject-matter of proceeding under S. 145 between the parties. *Ram Narain Sahu v. Kailash Singh*. 8 Cr. L. J. 387 :

8 C. L. J. 242.

—Ss. 145, 146—Order without Jurisdiction—Appointment of Receiver before completing inquiry under S. 145—Jurisdiction.

An order by a Magistrate, appointing a Receiver under cl. (2) of S. 146 before completing the inquiry under S. 145 is *ultra vires* and without jurisdiction. *Laksaminarayana Reddi v. Gnanaprakasa* 13 Cr. L. J. 536 :

15 I. C. 808.

—S. 145 (1), (6)—Order without Jurisdiction—Dispute as to immovable property—Preliminary order under S. 145 (1), necessity of—Want of objection by parties, effect of.

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Unless there is a preliminary order under S. 145 (1), the Magistrate has no jurisdiction to pass any order under S. 145 (6) and the conduct of the parties in allowing the Magistrate to go on without objection, though reprehensible, cannot validate an order under S. 145 (6) which is without jurisdiction. *Mariasusia Udayan v. Mahmud Azcaudeen*. 37 Cr. L. J. 953 :

164 I. C. 689 (2) : 1936 M. W. N. 647 :
44 L. W. 305 : 71 M. L. J. 305 :
9 R. M. 158 : A. I. R. 1936 Mad. 824.

—S. 145, Cl. (4)—Order without Jurisdiction—Evidence taken by Subordinate Magistrate on direction.

A Magistrate dealing with a case under S. 145 is not competent to direct evidence to be taken by Subordinate Magistrate; and an order passed on evidence taken not by himself but by the Subordinate Magistrate is one passed without jurisdiction and is liable to be set aside. *Arumuga Gounden v. Venkatasubbier*. 6 Cr. L. J. 384 :

17 M. L. J. 535 : 3 M. L. T. 108 : 31 Mad. 82.

—S. 145—Order without notice.

Dispute between two persons—Complaint by agent of one of them—Notice to agent of other—Master not called upon to file written statements—Case proceeding between agents—Magistrate ordering possession of property to be given from one master to another—Order is not valid—Irregularity is not cured by S. 537. *Pearce Lal v. Emperor*. 36 Cr. L. J. 114 :

153 I. C. 500 :
1934 A. L. J. 650 : 7 R. A. 351 :
A. I. R. 1934 All. 853.

—S. 145—Order without Notice—Notice relating to land—Minor interested in land, whether essential party—Notice issued to minor, non-service of, effect of—Order, validity of, as against other parties—Prejudice.

A question of misjoinder or non-joinder of parties does not ordinarily affect jurisdiction. Whether a party has been wrongly included or excluded is a question of procedure by which jurisdiction is not affected. Where proceedings are taken under S. 145, a minor who is interested in the property in dispute, although a proper party to the proceedings, is not an essential party inasmuch as he would not be a likely person to cause a breach of the peace. Where service of notice is not properly effected on the minor in such a case, an order passed in the proceedings, although it might be open to objection on behalf of the minor, cannot be said to have been made without jurisdiction so far as the other parties to the proceedings are concerned, if no prejudice has resulted to them owing to the absence of service of notice on the minor. *Nandan Singh v. Siaram Singh*. 26 Cr. L. J. 1287 :

89 I. C. 151 : 7 P. L. T. 156 :
A. I. R. 1926 Pat. 67.

—S. 145—Order without Notice—Ex parte proceedings—Want of proper service of notice—Absence of knowledge of party—Proceedings, validity of.

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Ex parte orders under S. 145 passed without proper service of notice are liable to be set aside at the instance of a party who was not aware of the proceedings and had not been served with notice thereof. *Sego Patel v. Parashram*.

28 Cr. L. J. 418 :

101 I. C. 450 : A. I. R. 1927 Nag. 234.

———S. 145—Order without Notice, legality of.

Where no summons is served personally on the respondent or on an adult member of his family or affixed to his house, this in itself is sufficient to vitiate all subsequent proceedings. *Surab Ali Khan v. Shromani Gurdwara Parbhandhak Committee*.

34 Cr. L. J. 616 :

143 I. C. 477 : I. R. 1933 Lah. 356 :

A. I. R. 1933 Lah. 145.

———S. 145—Order without Notice—Notice of the date fixed for the trial and copy of the order under S. 145 (1), allegation of non-service of—Magistrate bound to satisfy himself that the notice and copy of the order were duly served—Determination of the matter under S. 145 on the written statement of one party—*Ex parte* proceedings.

Where in a proceeding under S. 145, the party proceeded against alleged that neither a notice of the date fixed for the trial, nor a copy of the order under the first paragraph of the said section had been served, but the Magistrate, without making any investigation whatsoever as to the truth or otherwise of the allegation, proceeded to determine the matter on the written statement of the other party and made an order in favour of that party : *Held*, that the Magistrate, before proceeding with the matter and making an order in favour of the other party, was bound to have been satisfied that the notice of the proceeding and the copy of the order drawn up by him, were duly served upon the party proceeded against. The Magistrate had proceeded as it were *ex parte* in the matter. His order, therefore, was set aside. *Sripati Charan Mundle v. Ram Kumar Bagdi*.

1 Cr. L. J. 44 :

8 C. W. N. 76.

———S. 145—Order without Notice—Omission to give notice and to record finding that there was danger of breach of peace—Effect.

An order under S. 145 cannot be upheld where no notice was issued as required by the section and there is no finding that there was danger of a breach of the peace. *Emperor v. Sis Ram*.

32 Cr. L. J. 139 (b) :

128 I. C. 313 : 95 I. R. 1931 Lah. 41 :

12 L. L. J. 147 : A. I. R. 1930 Lah. 895.

———S. 145—Order without notice—Order under—Grounds of dispute not stated—Party in possession not served with notice—Legality of proceedings.

An order recorded by a Magistrate under S. 145 is not void merely because it does not state the grounds on which the Magistrate came to the conclusion that there was a dispute likely to cause a breach of the peace. The proceedings would, at the most, be an irregularity, and the High Court would not interfere in revision unless either party has been prejudiced in the conduct of the enquiry. An order

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under S. 145 is not bad even though the person admittedly in possession of the property in dispute, is not served with notice, so long as he does not take that objection. *In re : Chinnappudayan*.

7 Cr. L. J. 28 :

3 M. L. T. 18 : 30 Mad. 548.

———Ss. 145, 147—Order without notice—Notice given under S. 147—Eventual order under S. 145, legality of.

A Magistrate gave notice to the parties under S. 147. On the date of hearing, objection was taken; that the case did not fall under S. 147. The Magistrate proceeded to deal with the case without deciding or informing the parties that the case fell under S. 145. Eventually, he passed an order purporting to be under S. 145 : *Held*, that the Magistrate acted without jurisdiction in passing a final order under S. 145 without first making an order under the first paragraph of that section. *Subramania Pillai v. Sannasia Pillai*.

9 Cr. L. J. 565 :

2 I. C. 310 : 5 M. L. T. 103 : 19 M. L. J. 18.

———Ss. 145, 537—Order without notice—Failure of Magistrate to make order under S. 145 (1) or failure to serve notice on opposite party or to affix copy of order to conspicuous place near land or to record finding in final order that danger of breach of peace exists, are defects curable by S. 537.

Omission by Magistrate to make initial order under S. 145 (1) failure to serve notice on the opposite party or failure to affix a copy of the order made by the Magistrate to some conspicuous place at or near the subject of dispute ; and failure to record a finding even in the final order that there was a danger of a breach of the peace about the land in dispute, are all defects which S. 537, Cr. P. C. can cure and are not therefore sufficient to vitiate proceedings under S. 145 when the parties are not in any manner prejudiced. *Ratan v. Tika*.

40 Cr. L. J. 784 :

183 I. C. 351 : 41 P. L. R. 188 :

12 R. L. 112 : A. I. R. 1939 Lah. 233.

———Ss. 145 (3), (4), 439—Order without Notice—Notice, failure of service of—Effect—Revision—High Court, power of interference of.

Want of service of notice under S. 145 (3) is a grave irregularity which vitiates the proceedings. The High Court has jurisdiction to set aside an order under S. 145, cl. (4) where the provision in cl. (3) of that section is not complied with and the parties are prejudiced thereby. *Ram Sahai Chowdhury v. Deonandan Prasad*.

19 Cr. L. J. 71 :

43 I. C. 103 : 4 P. L. W. 183 :

A. I. R. 1918 Pat. 578.

———S. 145 (6)—Order without notice—Legality.

A final order under S. 115 (6) made against a person without serving any notice upon him is entirely without jurisdiction. *Sheonandan Ptasad Singh v. Wahidul Haq*.

19 Cr. L. J. 112 :

43 I. C. 336 : 1917 Pat. 200 : 5 P. L. W. 251 :

A. I. R. 1917 Pat. 71.

———S. 145—Parties—Tenants.

A tenant who is in possession of a portion of

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the land in dispute is not a necessary party to a proceeding under S. 145. *Ram Narain Singh v. Dhonrai Gope.* 23 Cr. L. J. 125 :

65 I. C. 557 : 3 P. L. T. 291 :

A. I. R. 1922 Pat. 371.

———Ss. 145, 146—Parties—Manager made party—Irregularity—Jurisdiction—Easement or other right—Encroachment.

To make the manager, instead of his employer the Zamindar, a party to proceedings under S. 145 is a mere irregularity, or at most an error of law which does not affect a Magistrate's jurisdiction. Where a person claims no easement or customary right, any intermittent encroachment on his part would not affect the title or possession of the superior landlord. *Bholanath Singh v. Wood.* 2 Cr. L. J. 202 :

I. L. R. 32 Cal. 287.

———S. 145, 537—Parties present—Notice not pasted—Irregularity—Effect of order.

Where parties to a proceeding under S. 145 had notice of the proceedings and had their cases fully heard by the Magistrate, the order should not be set aside in revision even though the provisions of the section were not strictly complied with and the parties were not personally served and no notice was fixed at the disputed property. *Debi Prasad v. Sheodat Rai.* 6 Cr. L. J. 352.

4 A. L. J. 705 : 27 A. W. N. 265 :

I. L. R. 30 All. 41.

———S. 145, Cl. (3)—Parties to be dealt with—All persons concerned in dispute are bound by order.

The parties whom the Magistrate has to deal with under S. 145 are not merely the actual parties to, but all persons who may be concerned in the dispute, the object being to prevent a breach of the peace. Therefore, all persons who may have notice of the proceedings are bound by a Magistrate's order. *Nathubhai Brijlal v. Emperor.* 14 Cr. L. J. 64 :

2 I. C. 517 : 11 Bom. L. R. 377.

———S. 145—Party.

Both parties jointly entitled to land. *Dan Pershad v. Ganesh Pandey.* 84 Cr. L. J. 495 : 20 I. C. 751 : 11 A. L. J. 696 : 36 All. 19.

———S. 145—Party in possession of property—Danger of breach of peace—Power of Magistrate to maintain possession.

Where a Magistrate in proceedings under S. 145 finds on the evidence that one party is already in possession, and that if no order is passed continuing him in possession, there is likely to be a breach of the peace, he is justified in passing an order maintaining the possession of such party without regard to the merits of the claim of the other party to share in the property. *Jailal v. Chhanganlal.* 28 Cr. L. J. 877 :

104 I. C. 717 : 1 Luck. Cas. 201 :

9 A. J. Cr. R. 43 : A. I. R. 1927 Oudh 316.

———S. 145—Party placed in possession by Civil Court—Duty of Criminal Court—Onus of possession.

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The Criminal Court is bound to support persons placed in possession of property by the Civil Court and whose possession has been wrongfully disturbed. The other party must show that they subsequently came into possession by some lawful means. The Magistrate is not only bound to look into events occurring within two months of the date when the proceedings were drawn up but he should consider the whole history of the dispute from the date when the first party was put in possession by the Civil Court. His failure to do so vitiates his findings. *Chandeshwar Prasad Narayan Singh v. Dinkar Singh.*

38 Cr. L. J. 1096 :

171 I. C. 593 : 4 B. R. 41 : 10 R. P. 223 :

A. I. R. 1937 Pat. 557.

———S. 145—Pendency of Civil Suit.

When a Civil suit is pending, proceedings under S. 145 should be dropped. *Ramchandra v. Dr. Shankarrao.* 33 Cr. L. J. 556 :

138 I. C. 38 : 15 N. L. J. 28 :

I. R. 1932 Nag. 71 : A. I. R. 1932 Nag. 83.

———Ss. 145, 561-A—Pendency of Civil suit—Proceedings—Receiver appointed—Civil suit filed.

Proceedings under S. 145—Institution of civil suit for declaration—Appointment of Receiver in respect of property in dispute—Criminal proceedings can be quashed—Inherent powers under S. 561-A will be exercised. *Makhana Devi v. Kamla Pat Ram.* 36 Cr. L. J. 464 :

154 I. C. 121 : 1935 O. W. N. 239 :

7 R. O. 438 : A. I. R. 1935 Oudh 255.

———S. 145—Period of possession—Period of two months, if can be extended—Proviso, if mandatory—Main order is to be based on possession at date of preliminary order—Questions of title, if relevant.

There is no provision allowing for extension of the period of two months laid down in S. 145 whatever the cause of delay may be. The proviso to S. 145, is only permissive and not a mandatory one. The Magistrate may treat the party forcibly and wrongfully dispossessed within two months as if he had been in possession. The main order is to be based on possession at the date of the preliminary order and the words used with reference to it are positive. Questions of title are irrelevant under the section. *Emperor v. Sunderlal.*

38 Cr. L. J. 375 :

167 I. C. 359 : 9 R. N. 179 :

I. L. R. 1937 Nag. 174 : A. I. R. 1936 Nag. 271.

———S. 145—Period of possession, calculation of.

Period of two months should not be counted from the date of the complaint but from the date of the preliminary order. *Meharban Singh v. Bhola Singh.* 36 Cr. L. J. 102 :

153 I. C. 496 : 1934 A. L. J. 1157 :

L. R. 16 All. 1 Cr. : 7 R. A. 316 :

A. I. R. 1935 All. 35.

———S. 145—Period of possession—Proceedings under—Right claimed mentioned in Wajib-ul-arz—Presumption that it has been exercised within 3 months of enquiry, if arises.

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In proceedings under S. 145, where it is shown that a right claimed by a party is mentioned in the *Wajib-ul-arz*, it is for the party denying it to establish that such a right had been abandoned. In the absence of any reliable evidence regarding abandonment, it must be held that the right has been exercised within 3 months of the institution of the enquiry. *Fajju v. Sirya*. 38 Cr. L. J. 881 :

170 I. C. 270 : 10 R. Rang. 71 :
A. I. R. 1937 Rang. 272.

—Ss. 145, 146—*Period of possession—Dispute as to possession—Allegation by petitioner that he had been dispossessed a few days before his petition—Attachment, legality of—Power to restore possession if petitioner was dispossessed within two months.*

The petitioner applied for an order under S. 145, for restoring him to possession of land alleging that he had been dispossessed by the respondents five days before the date of the petition. The latter alleged that they had been in possession for a long time. The Magistrate holding that it was impossible on the evidence to find out who was in possession on the date of the preliminary order, attached the property under S. 146 : *Held*, (i) that the Magistrate was wrong in holding that it was impossible to find which party was in possession on the date of the preliminary order as it was admitted by the petitioner himself that he had been dispossessed by the respondents, and the Magistrate had, therefore, no jurisdiction to take action under S. 146 ; (ii) that if the Magistrate was of opinion that the petitioner had been dispossessed within two months of the date of his preliminary order, he had power to restore the possession of the petitioner. *Gurdas v. Narain Das*. 31 Cr. L. J. 1075 :
126 I. C. 577 : A. I. R. 1930 Lah. 422.

—Ss. 145, 146—*Period of possession—Disputed land under water—Recent possession, determination of—Impossible procedure.*

Where in a proceeding under S. 145, the Magistrate finds that none of the parties was in undisturbed possession of the land in dispute within two months preceding the date of the proceeding owing to the land remaining under water, the proper order for him to make is one under S. 146, and not to make an order in favour of the party who was in possession during the previous year. *Satyendra Nath v. Krishnadhan Adhikari*. 18 Cr. L. J. 80 :
37 I. C. 64 : 20 C. W. N. 1014 :
A. I. R. 1917 Cal. 82.

—S. 145—*Police Report jurisdiction to take action on Police report.*

The question whether a Magistrate has jurisdiction to take action under S. 145, on a Police report, depends upon what that Police report contains, and when a Police report sets out the subject-matter of dispute, the cause of dispute, its nature, the apprehension that unless action is taken the breach of the peace will ensue, then the report contains sufficient material for the Magistrate to act upon. *Mahammad Araf v. Satramdas Sukhimal*. 37 Cr. L. J. 1030 :
164 I. C. 969 : 9 R. S. 60 (2) :
A. I. R. 1936 Sind 143.

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—S. 145—*Police report must be result of their enquiry and not copy of reports received—Magistrate's order, contents of.*

For initiation of proceedings under S. 145, it is the result of the enquiry by the Police and not merely a copy of reports which they may have received that is to be communicated to the Magistrate. In such a case, however, it is not sufficient to refer to a police report as giving information that a dispute likely to cause a breach of the peace exists without stating the Magistrate's satisfaction that the report is correct. The provisions of Sub-s. (1), S. 145 must be observed and the making of a preliminary order should not be allowed to lapse into mere routine as if it were the filling up of a printed form. *Emperor v. Munna Lal*.

17 N. L. J. 231 :
A. I. R. 1935 Nag. 78.

—S. 145—*Police report—Magistrate, whether restricted to properly mentioned in Police report.*

A Magistrate taking action under S. 145 is not restricted to the letter of the Police report or information on which he takes action. He should consider as a whole the police report or information given to him and satisfy himself as to the real subject-matter of the dispute between the parties. *Mahadeo Dutt v. J. N. Sarkar*. 24 Cr. L. J. 263 :
71 I. C. 871 : 1922 Pat. 122 :
A. I. R. 1922 Pat. 340.

—S. 145—*Police report—Proceedings initiated on Police report—Jurisdiction.*

A Magistrate does not act without jurisdiction when he initiates proceedings under S. 145 upon a Police report that there is a dispute likely to cause a breach of the peace. *Isri Prasad Chaudhri v. Warasat Hussain*. 22 Cr. L. J. 205 :
60 I. C. 61 : 1 P. L. T. 738 :
A. I. R. 1920 Pat. 745.

—S. 145—*Police report—Proceedings initiated on Police report—Police report, proof of.*

Where a proceeding under S. 145 is initiated upon a Police report, that report is inadmissible in evidence upon the *factum* of possession, which must be proved by other independent evidence. *Kulbans Narain Singh v. Ramsidh Singh*. 21 Cr. L. J. 735 :
58 I. C. 159 : 1 P. L. T. 501 :
A. I. R. 1920 Pat. 483.

—S. 145—*Police report—Proceedings under—Police report, absence of—Statement of interested party—Magistrate, jurisdiction of.*

Where in a proceeding, under S. 145 there is no Police report, the statement of interested parties as to a probable breach of the peace ought to be received with great caution, but if the Magistrate has reason to believe such a statement, he does not act without jurisdiction in taking proceedings under the section. *Joy-mangal Singh v. Kanta Gope*. 24 Cr. L. J. 304 :
72 I. C. 32.

—Ss. 145, 146—*Police report—Likelihood of breach of peace—Interference by High Court—Subject-matter of dispute not clearly defined—Trees, dispute as to.*

The High Court may interfere in a proceeding

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instituted by a Magistrate under S. 145, when the Police report on which the proceeding is based states in the vaguest terms that each of the parties claims a certain right, and that inasmuch as both the parties are men of substance, there might be a breach of the peace. Before a proceeding is drawn up under S. 145, the subject-matter of the dispute must be clearly determined. *Maharaja Sujakanta v. Maharaja Jagadindra Roy*. 5 Cr. L. J. 32 : 11 C. W. N. 198.

Ss. 145, 147—Police report, use of.

Where the only use which a Magistrate makes of a Police report is that contemplated by S. 147 (1), it is not necessary for him to call on the Police Officer to give evidence as to the correctness of the report. *Todar Mal v. Emperor*. 32 Cr. L. J. 309 :

129 I. C. 441 (2) : L. R. 11 All. 190 Cr. : 1930 A. L. J. 437 : I. R. 1931 All. 169 : A. I. R. 1931 All. 14.

———S. 145, Cl. 4—Police report—Order under—Police report—Breach of peace, likelihood of—Notice—Subsequent finding of no breach without inquiry, legality of.

When once on the perusal of a Police report, a Magistrate passes an order under S. 145 that there is a likelihood of a breach of the peace, he cannot afterwards say that there is no likelihood of such breach without an enquiry and without taking the evidence which the parties are willing to offer. *Velyuda Kone v. Narayana Kone*. 16 Cr. L. J. 789 : 31 I. C. 645 : 2 L. W. 1208 : A. I. R. 1916 Mad. 917.

———S. 145—Possession.

An isolated act of trespass does not constitute possession of the wrong-doer as against the rightful owner in possession. *Mahabir Singh v. Emperor*. 36 Cr. L. J. 146 :

153 I. C. 591 : 15 P. L. T. 819 : 7 R. P. 208 : A. I. R. 1934 Pat. 515.

———S. 145—Possession—Debutter estate—Dispute amongst shebais regarding management—Shebait entrusted with sole management—Possession as agent—Joint possession—Jurisdiction of Magistrate.

Possession that can be pleaded in a proceeding under S. 145, must be possession based on a claim of right to possession. The possession of an agent or a servant which is permissive cannot give a party to a proceeding a *locus standi* as against his principal or master. The possession of one of several co-shebais who for convenience has been entrusted with the sole management of the *debutter* estate is as regards the *shebaiti* right of his co-shebais, that of an agent. The agency can be withdrawn. A dispute between such a person claiming sole-management and his co-shebais who have withdrawn the agency and claim to have joint management with him is not a fit subject for a proceeding under S. 145. *Debutter* property being by nature impartible and inalienable, the possession of co-shebais must necessarily be always joint, and as such, beyond the scope of an order under S. 145. *Nritta Gopal Singh v. Chandi Charan Singh*. 4 Cr. L. J. 215 : 10 C. W. N. 1088.

Cr. P. CODE (1898), S. 145**———S. 145—Possession.**

Decree-holder's possession lawful against one but unlawful against another—Possession can be maintained under S. 145. *Emperor v. Hakim Khan*. 36 Cr. L. J. 52 :

152 I. C. 28 : 17 N. L. J. 261 :

31 N. L. R. 97 : 7 R. N. 84 :

A. I. R. 1934 Nag. 217.

———S. 145—Possession, decree for, by Civil Court—Adverse party in possession—Criminal Court,—Directing continuance of possession—Revision.

Although a Criminal Court is bound to respect the decree of a Civil Court and delivery of possession and cannot go behind the decree, yet when, in a proceeding under S. 145, it is shown by evidence that, notwithstanding such a decree, the party affected adversely thereby has continued in possession, and the Criminal Court has declared that party should continue in possession until evicted in due course of law, the High Court will not interfere. *Manindra Kishore Jha v. Clairsmith*. 22 Cr. L. J. 238 : 60 I. C. 430 : A. I. R. 1920 Pat. 810.

———S. 145—Possession—De facto—Possession, meaning of.

De facto possession, with which alone S. 145 proceedings are concerned, means effective occupation or control. *Ram Narain Singh v. Dhonrai Gope*. 23 Cr. L. J. 125 :

65 I. C. 557 : 3 P. L. T. 291 :

1922 A. I. R. Pat. 371.

———S. 145—Possession—Delivery of possession in execution of warrant—Possession is at an end.

When a person knows that possession had been delivered in execution of a warrant obtained against him, his possession is at an end. *Thakurdas v. Narayan*. 38 Cr. L. J. 307 :

166 I. C. 709 :

I. L. R. 1936 Nag. 205 : 9 R. N. 144 :

A. I. R. 1936 Nag. 192.

———S. 145—Possession, how to be determined—Delivery of symbolical possession by a Civil Court, effect of.

In proceedings under S. 145, the Magistrate will enquire into the fact of actual possession of the subject of dispute regardless of delivery of its symbolical possession to a party by a Civil Court under the provisions of R. 96, O. XXI, C. P. C. *Rumalingam Pillai v. Raja of Ramnad*. 16 Cr. L. J. 736 :

31 I. C. 176 : A. I. R. 1916 Mad. 640.

———S. 145—Possession.

In a proceeding under S. 145, the servant cannot set up that possession by him for his master or superior is his own possession. *Perumal Konam v. Tirumalai*. 34 Cr. L. J. 88 : 140 I. C. 900 : 1932 M. W. N. 1079 : 37 L. W. 143 : I. R. 1933 Mad. 63 : A. I. R. 1933 Mad. 245.

———S. 145—Possession—Kist receipts and pallas as evidence of possession.

Kist receipts and pallas are not only evidence of legal right but strong evidence of possession

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which a Court cannot lightly disregard.
Thylayee Ammal v. Srirangaroya Goundan.

24 Cr. L. J. 100 :
71 I. C. 228 : 31 M. L. T. 202 : 10 L. W. 497 :
1922 M. W. N. 629 : 43 M. L. J. 624 :
A. I. R. 1923 Mad. 60.

———S. 145—*Possession—Magistrate, duty of, to decide question—Entry of name in Collectorate Register, whether conclusive.*

In a proceeding under S. 145 in which one of the parties claims to hold the property in his own right and not as a servant or manager, the Magistrate is bound to determine which of the parties is in actual physical possession and although a presumption of possession may be legitimately made in favour of a person whose name is recorded as in possession in Register D of the Collectorate, that entry is not conclusive. *Babula Missir v. Manager, Bettiah Estate.*

21 Cr. L. J. 785 :
58 I. C. 513 : 1 P. L. T. 588 :
A. I. R. 1920 Pat. 717.

———S. 145—*Possession.*

Magistrate is not bound to accept the evidence that delivery of possession was made by Civil Court officers—Finding that delivery of possession was given—Presumption in favour of continuance of possession, arises.

35 Cr. L. J. 154 :
146 I. C. 631 : 6 R. P. 279 :
A. I. R. 1933 Pat. 586.

———S. 145—*Possession—Mortgagee in possession—Deposit of mortgage-money, effect of.*

In a proceeding under S. 145, a Magistrate has no power to disturb the possession of an usufructuary mortgagee at the instance of a depositor of the mortgage-money under S. 83 of the Transfer of Property Act. *Shahid Husain Khan v. Mohammad Zahurul Huq.*

22 Cr. L. J. 561 (a) :
62 I. C. 577 : A. I. R. 1923 Cal. 135.

———S. 145—*Possession, nature of, contemplated—Criminal Court, finding of, as to possession, effect of—Recent possession given under Civil Court decree, effect of—Magistrates, duty of.*

Possession found by a Criminal Court is not such as can be treated in the manner in which recent possession given under a decree of a Civil Court is treated in cases under S. 145. In proceedings under S. 145 Magistrates should uphold possession given by a Civil Court, so that a person, who has obtained a decree declaring his right to possession and had been put in possession, might not find himself again forced to litigate his title. *Kedar Prasanna Lahiri v. Lalit Mandal.*

2 Cr. L. J. 572.
2 C. L. J. 147.

———S. 145—*Possession of agent or servant whether can be pleaded against principal or master.*

The possession of an agent or a servant which is permissive cannot give a party to a proceeding under S. 145 a *locus standi* against his principal or master. The possession that can be pleaded in such a proceeding must be possession based on a claim of right to possession. *Bajirao v. Dadibai.*

27 Cr. L. J. 212 :
92 I. C. 164 : A. I. R. 1926 Nag. 286.

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———S. 145—*Possession of auction-purchaser on date of initiatory order and two months before—Subsequent dispossession—Proper order.*

In execution of a decree obtained against the predecessor-in-interest of the first party to the proceedings under S. 145, a tank and a house were purchased at an auction sale by the second party. The auction-purchasers obtained possession of the tank in November 1918 through the Civil Court five days before the death of the judgment-debtor. It was found, however, that, notwithstanding the delivery of possession, the first party continued to be in possession up to the day when proceedings were instituted. It was found further that the auction-purchaser took possession of the residential house in May, 1920, but that on the date when the proceedings were instituted and for more than two months preceding that date, the members of the first party were in possession : *Held*, (1) that so far as the tank was concerned, the Magistrate ought to have declared the first party and not the second to have been in possession : (2) that so far as the house was concerned, there must have been a dispossession of the auction-purchasers giving rise in their favour to a fresh cause of action and the Magistrate should have declared the first party to be in possession. *Shahabaj Mandal v. Bhajahari Nath.*

24 Cr. L. J. 875 :
75 I. C. 75 : 25 C. W. N. 743 : 49 Cal. 177 :
A. I. R. 1922 Cal. 364.

———S. 145—*Possession of Manager or Agent—Jurisdiction to make an order in favour of such Manager or Agent.*

There is jurisdiction in the Court under S. 145 to make an order in favour of a person who claims to be in possession of the disputed land, as Agent to, or Manager for, the proprietors, when the actual proprietors are not residents within the Appellate Jurisdiction of the High Court. *Dhondhai Singh v. Follet.*

1 Cr. L. J. 49 :
I. L. R. 31 Cal. 49 : 7 C. W. N. 825.

———S. 145—*Possession of successful party whether can be put to an end by unsuccessful party by violence or surreptitious invasion.*

Though an order under S. 145 confers no title, the fact of possession remains and the person in possession can only be evicted by a person who can prove a better title to possession himself. The possession of the party which succeeds in proceedings under S. 145, cannot be put to an end to by the unsuccessful party by mere violence or surreptitious invasion. Therefore, even if the unsuccessful party in proceedings under S. 145 is able on some occasions either surreptitiously or forcibly to cultivate the lands in possession of the successful party, these would be no more than isolated acts of trespass—and offences punishable under S. 188, I. P. C., but not acts amounting to the dispossession of the other side and constituting the juridical possession of the offenders unless the other side refrain from asserting their possession for a sufficiently long period and give up the protec-

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tion of the order under S. 145 in their favour. *Ambika Thakur v. Emperor*. 41 Cr. L. J. 191 : 185 I. C. 529 : 18 Pat. 544 : 21 P. L. T. 45 : 6 B. R. 203 : 12 R. P. 389 : A. I. R. 1939 Oudh 611.

———S. 145—Possession—Omission to examine witnesses and inquire into the question of possession—Absence of a party—Signature of Judicial Officer in judicial order.

Where in a proceeding under S. 145, one of the parties being absent though served with notice, the Magistrate on the written statement of the other party declared them to be in possession : *Held*, that the order of the Magistrate was without jurisdiction. It was his duty to inquire into the question of possession, and in the absence of the parties, he would have been well advised to abstain from passing any order. A Magistrate should sign his name in full in a judicial order made under S. 145, and should also note his official position. *Nojem Mirdha v. Jamalali Khalifa*. 8 Cr. L. J. 27 : 12 C. W. N. 771.

———S. 145—One party taking forcible possession—Proceedings initiated by other party—Preliminary order passed more than two months from date of forcible dispossession, effect of.

A party taking possession by force need not be retained in possession under S. 145, if owing to delay, after the dispossessed party has asked the Court to take action, on the part of the Court taking action, over two months have elapsed before the Court finally makes up its mind to issue a preliminary order. *Chinchilada Krishnam Raju v. Chintalsawami Naidu*. 28 Cr. L. J. 782 : 104 I. C. 110 : 8 A. I. Cr. R. 574 : A. I. R. 1927 Mad. 816.

———S. 145—Possession—One set of co-sharer landlords, whether can represent entire body in a proceeding under S. 145.

In a case of co-sharer landlords, possession of one is the possession of all and one set is capable of representing the entire body in a proceeding under S. 145. *Raja Gope v. Sukan Singh*. 40 Cr. L. J. 749

187 I. C. 286 : 20 P. L. T. 145 : 5 B. R. 894 : 12 R. P. 120 : A. I. R. 1939 Pat. 353.

———S. 145—Possession adjudged—Disturbance of possession—Maintenance of peace—Fresh proceedings under S. 145—Wrong exercise of judicial discretion—Government of India Act, 1915 (5 & 6 Geo. V. c. 61), S. 107—Abuse of process of Court—Interference by High Court.

Where by an order passed under S. 145, the possession of a party has been once adjudged, the duty of the Magistrate is to see that the unsuccessful party does not disregard the order and disturb the possession without having recourse to law. Therefore, if, instead of maintaining the possession, he initiates fresh proceedings under S. 145, for maintaining the peace, he does not exercise a proper judicial discretion. When legal proceedings are taken which amount to an abuse of process of the Court and the object of which is only to harass the party who has got a previous order of the Magistrate in his favour, the High Court has

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ample jurisdiction to interfere and ought to interfere under S. 107 of the Government of India Act. *Aran Sardar v. Hara Sundar Majumdar*. 24 Cr. L. J. 97 :

71 I. C. 225 : 27 C. W. N. 171 : 37 C. L. J. 39 : A. I. R. 1923 Cal. 95.

———S. 145—Possession.

Possession given by the Court, even though there be no overt act beyond the actual taking of possession under the orders of the Courts, breaks a previous continued possession of another party. *Emperor v. Hakimkhan*.

36 Cr. L. J. 52 : 153 I. C. 28 : 17 N. L. J. 261 : 31 N. L. R. 97 : 7 R. N. 84 : A. I. R. 1934 Nag. 217.

———S. 145—Possession—Proceedings under—Numerous claimants for possession—Joint trial, legality of.

There is nothing to prevent a Magistrate from joining together numerous claims for possession in proceedings under S. 145 and dealing with the matter at one hearing. The only objection which can really be taken to such a course is, if it can be shown, that the objector is adversely prejudiced by such proceeding. *Gajadhar Mull v. Thakur Singh*. 26 Cr. L. J. 424 :

58 I. C. 40 : 1 Pat. L. R. 135 Cr. : A. I. R. 1923 Pat. 545.

———S. 145—Possession, question of—Evidence, documentary, necessary to support plea of possession—Adjournment to procure and produce refused, effect of.

Where in a proceeding under S. 145 any proper appreciation of oral evidence regarding possession is impossible, in the absence of important documents touching the question of status, an order refusing an adjournment for the purpose of procuring and producing such documents is an arbitrary order constituting a denial of justice, and is liable to be set aside in revision. *Biswambhar Roy v. Aminuddin*.

22 Cr. L. J. 335 (a) : 61 I. C. 63 : 25 C. W. N. 602 : 33 C. L. J. 507 : A. I. R. 1921 Bom. 394.

———S. 145—Possession—Record of Rights recently published, entries in—Presumption—Possession—Revision.

Presumption raised by recently published Record of Rights, does not, in itself, establish the *factum* of possession ; and if the Magistrate decides the *factum* of possession wrongly in a proceeding under S. 145, that is not a question with which the High Court can interfere under the Charter Act, it not being a question of jurisdiction. *Chitamani Jena v. Jagannath Ramanuja Das*. 16 Cr. L. J. 315 :

28 I. C. 651 : 19 C. W. N. 123 : A. I. R. 1915 Cal. 644.

———S. 145—Possession—Sale certificate—No possession, either actual or symbolical.

Where there was neither actual nor symbolical delivery of possession but only the issue of a sale-certificate, the right of certificate-holder cannot be protected by proceedings

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under S. 145. *Raghava Aiyengar v. Krishnasami Aiyer*. 8 Cr. L. J. 392 : 4 M. L. T. 189 : 31 Mad. 416.

———S. 145—*Possession — Specific tangible property, what is—Annual produce of mango grove.*

Property which comes into existence anew each season and the extent of which may grow or shrink in comparison with the crop of the previous season, cannot be held to be specific tangible property capable of such demarcation as would render it susceptible of exclusive possession and a share in the annual produce of such property (a share in annual produce of mango-grove) cannot be held to be a specified or demarcated portion of it. *Appa v. Ganu Singh*. A. I. R. 1935 Nag. 44 : 17 N. L. J. 216.

———S. 145—*Possession—Stale delivery of possession by Civil Court, whether conclusive proof of present possession.*

The law is that the Criminal Court ought to hold that if on a given date the plaintiff has been put into possession by the Civil Court then on that date the plaintiff got possession as against the defendant. But where a considerable period elapses between the date of delivery of possession and the date on which possession of the land is disputed, a stale delivery of possession cannot be conclusive as to present possession. *Zafar Ahsan v. Jugeshwar Bux Roy*.

41 Cr. L. J. 171 : 185 I. C. 346 : 6 B. R. 155 : 12 R. P. 369 : A. I. R. 1940 Pat. 135.

———S. 145—*Possession—Title, evidence of, whether can be looked into.*

In a proceeding under S. 145, if there is substantial evidence of possession or a conflict of evidence on that question, the Magistrate is justified in looking to the evidence of title in corroboration of the evidence of possession. *Subh Narayan Kuer v. Lakshmi Narain Kuer*.

19 Cr. L. J. 717 : 46 I. C. 301 : A. I. R. 1918 Pat. 650.

———S. 145—*Possession—Trespasser obtaining possession and sowing crops—Title, if established.*

Possession is not lost because trespassers go without license and plough the land. If trespassers obtain possession for a sufficient length of time to sow crops themselves, they cannot be said to have established a title to remain in possession and are not amenable to the sanctions of the criminal law. *Thakurdas v. Narayan*.

38 Cr. L. J. 307 : 166 I. C. 709 : I. L. R. 1936 Nag. 205 : 9 R. N. 144 : A. I. R. 1936 Nag. 192.

———S. 145—*Possession, value of.*

Under S. 145 as between the rival claimants, the actual *factum* of possession is a vital question for determination. *Ritbaran Singh v. Emperor*.

19 Cr. L. J. 789 : 46 I. C. 709 : 4 P. L. W. 120 : A. I. R. 1918 Pat. 146.

———S. 145—*Possession, what is.*

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Dispute as to possession—Symbolical delivery of possession by Court, whether gives actual possession or mere right to possess—Dispossession within two months, effect of—Land Revenue Sales. *Meher Ali Mia v. Bidyut Barar Mukerjee*.

34 Cr. L. J. 810 : 144 I. C. 708 : 37 C. W. N. 652 : 6 R. C. 1 : A. I. R. 1933 Cal. 424.

———S. 145—*Possession, what is.*

Under the proviso to S. 145 (4) if it appears to the Magistrate that any party has within two months next before the date of such order been forcibly and wrongfully dispossessed, he may treat the party so dispossessed as if he had been in possession at such date. *Meher Ali Mia v. Bidyut Barar Mukerjee*.

34 Cr. L. J. 810 : 144 I. C. 708 : 37 C. W. N. 652 : 6 R. C. 1 : A. I. R. 1933 Cal. 424.

———Ss. 145, 146—*Possession—Dispute as to immovable property—Fallow land—Presumption of possession by owner—Occasional acts of user, as evidence of possession—Attachment, legality of.*

Possession under S. 145 must be absolute and continuous and not occasional. But by continuous possession is meant such possession which a party in possession may have occasion to exercise and has exercised and exercises whenever he likes. Continuity of possession should be understood with reference to the object over which it is exercised. With respect to lands which are fallow and liable to be submerged, possession must be presumed to be with the owner until the contrary is proved. Occasional acts of user of such land by the owner constitute possession for the purposes of S. 145 of the Code. *Loke Nath Roy v. Bazlal Gani Patari*.

28 Cr. L. J. 343 : 100 I. C. 823 : 31 C. W. N. 334 : 7 A. I. Cr. R. 556 : A. I. R. 1927 Cal. 313.

———Ss. 145, 146—*Possession, enquiry into—Attachment of property under S. 146—Cancellation of order.*

An order for attachment passed under S. 146 (1) must be kept in force till the adjudication of the rights of the parties by a competent Civil Court. A Magistrate has no jurisdiction to cancel the attachment as a result of further enquiry and adjudication by him as to the right to possession. *Gurvanna Gowd v. Govindappa*.

19 Cr. L. J. 443 (a) : 44 I. C. 971 : A. I. R. 1919 Mad. 953.

———Ss. 145, 146—*Possession given in pursuance of a Civil Court decree—Dispute as to possession—Attachment order, legality.*

It is the duty of a Magistrate to find possession in accordance with the decree of a Civil Court. Where possession of a plot of land was given to a party in execution of the decree of a Civil Court, an order of attachment under S. 146 of the Cr. P. C. of the said plot was without jurisdiction. *Gulraj Marwari v. Sheikh Bhattoo*.

2 Cr. L. J. 761 : I. L. R. 32 Cal. 796.

———Ss. 145, 146—*Possession of fishery extending over several miles, dispute as to—*

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Magistrate unable to satisfy himself as to possession of whole fishery—Procedure—Local investigation, whether necessary in every case.

In a proceeding under S. 145 regarding the possession of a fishery extending over several miles in length, if on the evidence the Magistrate is unable to satisfy himself as to the possession of the whole length in question, he should ascertain, so far as he can, the possession of some portion or portions thereof. As to the portion of which he is able to say "so and so is in possession," he should proceed under S. 145 and only as to the remainder should he proceed under S. 146. There is no hard and fast rule of law that in every case under S. 145 a local investigation must be held, whether the parties desire it or not. A Magistrate who attaches the property in dispute under S. 146 without holding a local investigation, cannot be said to have exercised his jurisdiction erroneously. *Upendra Nath Bhattacharjee v. Prasanna Kumar Ghose*. 20 Cr. L. J. 17 : 48 I. C. 497 : A. I. R. 1919 Cal. 884.

—Ss. 145, 148, 439—*Possession of land, dispute as to—Delegation of enquiry to Subordinate Magistrate, scope of—Order final, on evidence partly recorded by Subordinate Magistrate, whether regular—Revision.*

Where a 1st class Magistrate passes a final order under S. 148 on evidence partly recorded by a Subordinate Magistrate under his directions and partly recorded by himself, he cannot be deemed to have acted without jurisdiction so as to call for interference by the High Court in revision. The essential requisite to give a Magistrate jurisdiction under S. 145 is that he must be satisfied that a dispute exists likely to cause a breach of the peace concerning land or water or the boundaries thereof. Once he is so satisfied, his jurisdiction is complete and his subsequent action must be considered in relation to procedure, not jurisdiction. An enquiry by a Subordinate Magistrate, to whom a matter is referred under the provisions of S. 145, is not confined to a mere inspection of the locality and a report thereon. *Vellanki Srinivasa Jagannadha Rao v. Gopal Krishna Rao*. 20 Cr. L. J. 773 : 53 I. C. 613 : 10 L. W. 447 : 37 M. L. J. 589 : A. I. R. 1919 Mad. 166.

—S. 145, 148, 439—*Possession proceedings—Award of costs—Discretion of Magistrate—High Court, revisional jurisdiction of.*

A Magistrate should, in awarding costs in proceedings under S. 145, hold an enquiry as to the expenditure in costs actually incurred by the party in whose favour the order is made. The High Court, however, has no jurisdiction to interfere with an award of costs in such proceedings either under S. 107 of the Government of India Act, 1915, or under S. 439, Cr. P. C. *Nemdhari Singh v. Ram Tahal Rai*. 17 Cr. L. J. 348 : 35 I. C. 514 : A. I. R. 1916 Pat. 396.

—Ss. 145, 439—*Possession—Removal of tharra—Defective inquiry—Revision.*

Under S. 145 the Magistrate has no power to remove any superstructure on the disputed

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land and is not concerned with the question of title. All that he can do is to maintain possession after due inquiry in strict compliance with its provisions. Where there is no evidence showing a likelihood of a breach of the peace and no inquiry is made in the case, an order under S. 145 cannot be sustained. *Bogha v. Emperor*. 14 Cr. L. J. 138 : 18 I. C. 890 : 6 P. L. R. 1913 : 2 P. W. R. 1913 Cr.

—Ss. 145, 439—*Possession, few days before preliminary order—Order, silent as to possession at date of preliminary order—Revision.*

Where, a preliminary order under S. 145 contains a finding that a party was in possession a few days before the date of the order, but contains no finding who was in possession on the actual date of the order, the order is illegal but if there is nothing on the record to suggest that there was any change of possession in the interval, a High Court is not bound in revision, to vacate the order. *Mahomed Husain v. Pachayappa Chetty*. 23 Cr. L. J. 92 : 65 I. C. 444 : 14 L. W. 678 : 1921 M. W. N. 866 : 42 M. L. J. 147 : A. I. R. 1922 Mad. 356.

—Ss. 145 (1), (4), 439—*Possession for more than two months during which opposite party restrained by injunction, effect of—Evidence, sufficiency of—High Court—Revision.*

In a proceeding under S. 145 a party who entered into possession more than two months next before the date of the preliminary order under the section and retained such possession by virtue of an order under S. 144 directing his opponent to abstain from entering upon the land in question, should be declared to be entitled to possession thereof until evicted in due course of law, as the period during which the injunction was in force against his opponent cannot be excluded. The High Court in revision of a proceeding under S. 145 ought not to enter into the question of the sufficiency of evidence in support of a finding arrived at by the lower Court. *Srinath Roy v. Probhat Chandra*. 18 Cr. L. J. 301 : 38 I. C. 333 : A. I. R. 1917 Cal. 100.

—S. 145 (4)—*Proviso—Possession, what is.*

Under the proviso to Sub-s. (4) of S. 145, a Magistrate cannot treat a party who has been forcibly dispossessed more than two months before the date of the preliminary order as if he had been in possession on the date of the preliminary order, even if his dispossession had taken place within two months of the date of his complaint. 32 Cr. L. J. 476 : 130 I. C. 153 : 26 N. L. R. 377 : I. R. 1931 Nag. 57 : A. I. R. 1931 Nag. 38.

—S. 145—*Power of Magistrate—District Magistrate, whether competent to direct Subordinate Magistrate to draw up proceedings under S. 145—Proceedings drawn under directions of District Magistrate, whether illegal.*

A District Magistrate has no authority in law to direct a Subordinate Magistrate to institute proceedings under S. 145. Whether such proceedings should or should not be taken is

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entirely within the Magistrate's own discretion. But proceedings under S. 145, drawn up by a Magistrate under the directions of a District Magistrate cannot be held to be illegal where the Magistrate had ample materials before him for drawing up such proceedings and does not base his proceedings entirely on the order of the District Magistrate. *Nripendra Chandra Sen v. Sasadhar Saha*. 31 Cr. L. J. 923 : 125 I. C. 750 : 34 C. W. N. 82 : 50 C. L. J. 287 : A. I. R. 1929 Cal. 805.

———S. 145—Power of Magistrate—Magistrate, if and when can cancel his order under S. 145 (1) or terminate proceedings.

Sub-s. (4) and (5) of S. 145 are not exhaustive and are not intended to prevent a Magistrate from terminating proceedings under S. 145, when he is satisfied that the very cause and reason of proceedings under S. 145 has ceased to exist. The Magistrate can cancel his order under Sub-s. (1) or terminate the proceedings when, upon other information, or on his own information he is satisfied that no dispute likely to cause a breach of peace exists. *Mohammad Ayoob Saifuddin v. Gulzar Mehar*.

41 Cr. L. J. 507 : 187 I. C. 752 : 1939 Kar. 775 : 12 R. S. 265 : A. I. R. 1940 Sind. 51.

———S. 145—Power of Magistrate—One party offering to give up claim on opposite party's taking special oath—Refusal to do so—Consideration of.

Where in a proceeding under S. 145 one of the parties offers to give up his claim to property in dispute, if the opposite party would take special oath but the opposite party refuses to do so, the refusal although it cannot be treated as anything conclusive, is yet a matter which the Court is entitled to take into consideration along with the other evidence and it is open to the trial Court to draw such inference from this conduct of the party as it thinks fit. *Nandkishore Singh v. Bijan Lohar*.

41 Cr. L. J. 101 : 184 I. C. 817 : 6 B. R. 81 : 21 P. L. T. 306 : 12 R. P. 281 : A. I. R. 1940 Pat. 113.

———S. 145—Power of Magistrate—Order declaring possession of more lands than claimed—Jurisdiction—Revision—Error in order—Magistrate, power of, to correct error.

In a proceeding under S. 145, eight out of eleven persons forming the second party filed written statements claiming possession of a portion of the lands in dispute, but the Magistrate in his final order declared the possession of the whole of the lands to be with the second party : *Held*, that the defect in the Magistrate's order was not a question of jurisdiction, but that the case should go back to the Magistrate to see whether in fact any error had been committed and that, if so committed, it was for him to correct it. *Gagan Chand Naskar v. Peary Mohan Naskar*. 18 Cr. L. J. 995 : 42 I. C. 723 : A. I. R. 1918 Cal. 472.

———S. 145—Power of Magistrate—Order directing erection of boundary marks, legality of—Removal of marks—Offence.

A Magistrate is not authorized to direct

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boundary marks to be erected while making an order under S. 145, and the removal of boundary marks, erected in pursuance of such an order is not an offence under S. 434, Penal Code. *Rameshar v. Emperor*. 1 Cr. L. J. 991 : 1 A. L. J. 619 : I. L. R. 27 All. 300.

———S. 145—Power of Magistrate—Order discharging party—Review whether lies—Jurisdiction—Proceedings, nature of—Party in possession of part of property in dispute—Order, whether illegal—Party joined at late stage—Order based on evidence previously recorded, legality of.

A Magistrate has no jurisdiction to review an order passed under S. 145 discharging a party from the proceedings. So far as the party discharged from the proceedings is concerned, the order is final. It is the initial duty of a Magistrate under S. 145 to find out what parties are concerned in the dispute that has arisen, and he should also determine what parties are in actual possession: Proceedings under S. 145 are not without jurisdiction because some of the parties are concerned only with possession of a portion of the lands in dispute. An order under S. 145 is illegal, if it is based upon evidence some of which was recorded behind the back of a person who was at the time not a party to the proceedings but who is nevertheless sought to be bound by the order. *Narayan v. Chandrabhaga*.

26 Cr. L. J. 1289 : 89 I. C. 153 : A. I. R. 1925 Nag. 457.

———S. 145—Power of Magistrate—Order restoring possession, validity of.

All that a Magistrate is empowered to do under S. 145 is to declare that a certain party is entitled to possession of the property in dispute. He has no jurisdiction to order restoration of possession. At the same time, if a party is declared to be entitled to possession, and the world at large is forbidden to disturb his possession, he would be entitled to take possession and no one would have any right to interfere with his doing so. *Bahawala v. Duni Chand*.

24 Cr. L. J. 461 : 72 I. C. 621.

———S. 145—Power of Magistrate—Postponement of case sine die—Solennamah deciding right to possession, whether Magistrate bound to follow.

A Magistrate can postpone a proceeding under S. 145 *sine die* when he expects that settlement proceedings in respect of the land in dispute were soon to commence. When a previous *solennamah* between the parties did not decide possession but the right to possession, the Magistrate is not bound to act in accordance with it in a proceeding under S. 145. *Guru Das Hazara v. Weatheral*. 11 Cr. L. J. 7 : 4 I. C. 537 : 13 C. W. N. 601.

———S. 145—Power of Magistrate to drop proceedings after filing of written statements—Magistrate, whether bound to take evidence—Revision—Interference.

Under S. 145 (5) a Magistrate has power to drop the proceedings at any stage if he is satisfied that no dispute likely to cause a

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breach of the peace exists, even after the parties have filed their written statements. It is not obligatory on a Magistrate to take evidence before dropping a proceeding under S. 145. When a Magistrate strikes off a proceeding under S. 145, on the ground that a likelihood of breach of the peace did not exist, no party to the proceeding can challenge the propriety of such an order. *Abdur Rahman Bhutia v. Dinesh Haldar*. 31 Cr. L. J. 409 : 122 I. C. 296 : 33 C. W. N. 399 : A. I. R. 1929 Cal. 328.

—S. 145—Power of Magistrate—Proceedings under—Adjournment sine die—Legality.

It is not legal for a Magistrate to adjourn proceedings under S. 145 *sine die*, pending settlement of the tract under Regulation VII of 1822. *Abdul Rauf Mia v. Rahamuddin*. 9 Cr. L. J. 35 : 13 C. W. N. 104 : 8 C. L. J. 564.

—S. 145—Power of Magistrate—Proceedings under—Jurisdiction of Magistrate to stop proceedings.

A Magistrate has, at any stage of an enquiry under S. 145, full jurisdiction to drop proceedings on being satisfied that there is no apprehension of a breach of the peace. *Kamulammal Avargal v. Vavu Rowthar*. 17 Cr. L. J. 138 : 33 I. C. 314 : 4 L. W. 57 : A. I. R. 1917 Mad. 237.

—S. 145—Power of Magistrate—Proceedings under—Question of title, relevancy of—Unworked minerals—Possessions, nature of—Person having heritable and transferable rights in land under patta—Sub-soil rights not granted by patta—Ownership of minerals—Unworked minerals, how can be possessed—Possession and ouster—Possession by holder of patta—Operations carried on by pattadar did not constitute ouster of proprietor's possession over unworked minerals.

The Court, in proceedings under S. 145, can properly consider questions relating to title where such is necessary in order to ascertain who is in possession. Unworked minerals are not capable of such possession as is the surface of land or a house. Minerals can be possessed by actual working ; but where a large portion of the mineral area has not been worked, it is necessary that the Magistrate should consider who is the owner of the minerals in order to decide the question of possession. In the case of unworked minerals, possession follows title and the owner of unworked minerals is in possession of them though he is not actually engaged in working them. If the owner of unworked minerals under a defined area sinks a shaft and begins to work the minerals in that area, he can properly be said to be in actual physical possession of the whole of the minerals in that area. In the same way, if the owner of minerals under a defined area grants to third parties mining leases of the minerals under portions of such area, he exercises acts of ownership over those minerals and he can truly be said to be in possession of the whole of the minerals under that defined area. A person was in possession of certain land under a *patta* which did not expressly grant right to the minerals therein. He caused to be made

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a geological survey of some portion of the land. He had been mining bauxite and had stacked quantities of ore obtained near these sites. He had also built a road up to the nearest railway station for carting the bauxite for transit by rail and built a *bhandar* for the use of the coolies working on the site. He had, however, not worked over the whole area. The evidence showed that intensive working had only taken place for a very short period of time before proceedings under S. 145 were started and up to the time of these proceedings, work had only taken place on the extreme western edge of the hill situated in those lands : *Held*, that the person was in possession of the minerals at the places which were actually being worked by him : *Held*, also that the operations carried on by the person did not, however, constitute an ouster of the possession of the proprietor of the land over the unworked minerals in that area. Where a proprietor holding a permanently settled estate grants a permanent heritable and transferable interest in certain lands by a *patta*, but the *patta* does not grant in express terms the right in the minerals, the person holding the land under the *patta* cannot found a title to the sub-soil right. In such a case, the proprietor shall be deemed to be the owner of the minerals underlying the land. *Ranchi Zamindari Co., Ltd. v. Pratub Udainath Sahi Deo*. 40 Cr. L. J. 631 : 182 I. C. 89 : 20 P. L. T. 105 : 18 Pat. 215 : 5 B. R. 711 : 11 R. P. 657 : A. I. R. 1939 Pat. 209.

—S. 145—Power of Magistrate—Successful possession, if can be guaranteed.

The Magistrate cannot guarantee keeping the successful party in peaceful possession, even as against the other party or parties to the proceeding, nor can he prevent that party from parting with the land and afterwards changing his mind. *In the matter of : Inderdeo Singh v. Kesho Singh*. 39 Cr. L. J. 268 : 173 I. C. 107 : 8 P. L. T. 886 : 4 B. R. 211 : 10 R. P. 372 : A. I. R. 1938 Pat. 1.

—S. 145—Power of Magistrate—Temporary order pending decision of question of possession, legality of.

A Magistrate has no power to pass a temporary order pending his decision of the question of possession under S. 145. *Ram Ditta v. Dyal Mal*. 22 Cr. L. J. 48 : 59 I. C. 160 : 4 P. L. R. 1921 : 2 P. W. R. 1921 Cr. : A. I. R. 1921 Lah. 205.

—S. 145—Power of Magistrate—Title—Possession—Handing over profit to party.

In a case under S. 145, the Magistrate has no jurisdiction to enquire into the rights of parties. What he has got to look to is the fact of possession only. A Magistrate in a case under S. 145 passed the following order :—" I further order that if any fruit has been gathered on any of the said land attached by order of this Court, the proceeds of such fruit, minus expenses, shall be handed over to A : *Held*, there is no authority in S. 145 or any other section

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to justify such an order. *Arju Mea v. Arman Mea*.
7 Cr. L. J. 336 :
7 C. L. J. 369.

———**S. 145—Power of Magistrate.**

When a Magistrate finds that both parties are jointly entitled to the land, he cannot hold that one of them is in possession to the exclusion of the other and so maintain that one party's possession. *Dan Pershad v. Ganesh Pandey*.
14 Cr. L. J. 495 :
20 I. C. 751 : 11 A. L. J. 696 :
36 All. 19.

———**S. 145—Power of Magistrate—Witness summoning of, whether obligatory—Refusal to summon witnesses, effect of.**

It is not obligatory on a Magistrate to assist the parties to a proceeding under S. 145 to produce their witnesses, and they cannot claim as a matter of right that processes should be issued by the Court to enable them to bring forward their evidence. The refusal by a Magistrate to issue summonses to witnesses is not tantamount to refusing a fair trial. *Arjun Mahlon v. Juggarnath Singh*. 23 Cr. L. J. 275 :
66 I. C. 419 : 3 P. L. T. 473 :
A. I. R. 1922 Pat. 226.

———**Ss. 145, 146—Power of Magistrate—Dispute relating to immovable property—Attachment of property—Receiver, appointment of, legality of—Proceedings dropped after attachment—Disposal of property, whether legal—Procedure.**

A Magistrate has no power to appoint a Receiver under S. 145, and an order appointing a Receiver under that section is *ultra vires* and illegal. It is, however, competent to him in his administrative capacity to appoint some person to manage on his behalf the property so attached and that subject to his control and supervision. The person so appointed is in no sense a Receiver but merely a servant of the Magistrate and has no powers which a Receiver appointed under S. 146 (2) can exercise. If after attachment of the property under S. 145, the proceedings are dropped as the Magistrate comes to the conclusion that there is no likelihood of a breach of the peace, he has no jurisdiction to direct that the attached property should be delivered to one of the parties to the proceedings, as the effect of such an order would be to decide the question at issue between the parties. The proper order is to direct that the property should remain in his custody and management pending the decision of a Civil Court. *Dashrath v. Tara Chand*.
26 Cr. L. J. 1378 :
89 I. C. 514 : 8 N. L. J. 69 : 21 N. L. R. 191 :
A. I. R. 1925 Nag. 297.

———**Ss. 145, 147—Power of Magistrate—Dispute regarding immovable property—Magistrate, power of, to grant right of way.**

In a proceeding under S. 145, the Magistrate has power to elect to proceed under S. 147 of the Code where it appears that the provisions of that section are more appropriate than that of the former. He may also, in a proceeding under S. 145, give to one of the parties the right to pass over a plot of land in the posses-

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sion of the other party in order to get their own land. *In re : Amarsang Shivasangi*.
26 Cr. L. J. 772 :
86 I. C. 404 : 26 Bom. L. R. 436 :
48 Bom. 512 : A. I. R. 1924 Bom. 452.

———**Ss. 145, 148—Power of Magistrate—Magistrate, jurisdiction of, to depute Commissioner to survey and report—Report wrongly relied—Jurisdiction—"Local inquiry," meaning of—Estoppel.**

A Magistrate who has drawn up proceedings under S. 145, is not empowered to delegate any of his judicial functions to any persons other than a Magistrate or to direct any person to report as to who is in possession of the lands in dispute, but he has jurisdiction to direct a Pleader Commissioner to survey the disputed lands and report. If a report is wrongly relied on by a Magistrate taking proceedings under S. 145, that would not amount to an error or want of jurisdiction which would warrant an interference of a High Court. A mere survey of lands in dispute in a proceeding under S. 145, after inquiry from all the parties as to what land is in dispute, does not amount to a "local inquiry" within the meaning of S. 148 of the Act but is a mere ministerial act. A party who throughout asserts that the lands mentioned in the proceedings under S. 145 could be identified, cannot be allowed on the judgment being against him to assert the contrary in High Court. *Chulai Mahto v. Surendra Nath Chatterji*. 23 Cr. L. J. 152 :
65 I. C. 616 : 3 P. L. T. 17 : 1 Pat. 75 :
A. I. R. 1922 Pat. 224.

———**Ss. 145, 148 (2)—Power of Magistrate—Order based on local enquiry—Legality.**

In a case under S. 145 an application for time for filing written statements by the parties was rejected. The Magistrate then directed a local inquiry, and on the report of the person deputed to make the inquiry, decided the case : *Held*, that the Magistrate acted within his jurisdiction. *Pisiruddin Mollah v. Totajannisa Bibi*.
14 Cr. L. J. 302 :
19 I. C. 958.

———**Ss. 145, 438—Power of Magistrate—Order under S. 145—Power of District Magistrate.**

A District Magistrate has no power to set aside an order made by a Magistrate under S. 145. If the District Magistrate is of opinion that the order is erroneous, he should refer the matter to the High Court under S. 438. *Escruddi Howaldar v. Olaruddi Akon*.
26 Cr. L. J. 1166 :
88 I. C. 526 : A. I. R. 1925 Cal. 1234.

———**Ss. 145, 439—Power of Magistrate—Proceedings—Courses open to Magistrate,—Refusal to proceed—Revision—Possession, delivery of, on written statement to party—Magistrate, jurisdiction of.**

A Magistrate, who has initiated proceedings by a preliminary order under S. 145, can pursue one of three courses : he can cancel the preliminary order under Sub-s. (5) if he is satisfied that no dispute of the nature mentioned in the section exists or he can find who is in possession and issue an order under

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Sub-s. (6) or he can attach the property under S. 146 of the Code. Where a Magistrate starts proceedings under S. 145, he cannot refuse to proceed with the enquiry on the ground that proceedings had already been taken by another Court in which the question of possession had been incidentally decided. The High Court has jurisdiction to set aside such an order in revision. *Palani Goundan v. Kulandavelu Goundan*, 24 Cr. L. J. 429 :

72 I. C. 541 : 1922 M. W. N. 484 :

43 M. L. J. 716 : A. I. R. 1922 Mad. 437.

—Ss. 145, 439—*Power of Magistrate—Proceedings—Preliminary finding, necessity of—Findings as to possession—Order without jurisdiction—Revision.*

In the absence of the preliminary finding as to the existence of a dispute concerning land likely to cause a breach of the peace, a Magistrate is not justified in taking any action under S. 145. In a proceeding under S. 145, the scope of Magistrate's inquiry is limited to a finding as to possession, and on that finding the only order which he legally can pass is one declaring which of the disputing parties is entitled to possession and forbidding all disturbances of his possession until evicted in due course of law. A finding with respect to the merits of the claims of the respective parties to a right of possession of the subject of dispute is a finding wholly without jurisdiction. *Nga Po Tin v. Nga Po Saung*, 24 Cr. L. J. 740 :

74 I. C. 68 : 1 Rang. 53 : 2 Bur. L. J. 32 :

A. I. R. 1923 Rang. 211.

—Ss. 145, 517, 520—*Power of Magistrate—Cancellation of proceedings under S. 145—Order allowing one party to reap the crops, illegal.*

When a Magistrate cancels proceedings under S. 145 on the ground that there is no likelihood of a breach of the peace, he has no jurisdiction to allow one of the parties to reap the crops to the exclusion of the other. Such an order, if passed under S. 517, Cr. P. C. is fit to be set aside under S. 520 of the Code. *Karimuddin Fakir v. Naimuddi Kaviraj*, 3 Cr. L. J. 466 :

3 C. L. J. 573.

—S. 145. (1)—*Power of Magistrate—District Magistrate, power of, to cancel order under—Revision—High Court, power of, to interfere.*

Where a District Magistrate, upon information received, is satisfied that there is no probability of any breach of the peace, he is competent to cancel an order, made by his predecessor, under Sub-s. (1) of S. 145 and a High Court has no jurisdiction to interfere in revision, as the Magistrate's order is not without jurisdiction. *Santokh Singh v. Ram Singh*, 23 Cr. L. J. 292 :

66 I. C. 516 : 2 Lah. 364.

—S. 145, Cl. (4)—*Power of Magistrate—Refusal to examine witnesses—Discretion of Magistrate.*

A Magistrate acting under S. 145, has a discretion in the matter of examination of witnesses. He is not bound to examine all the witnesses adduced by the parties, but may

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limit the number for good and sufficient reason. *Samir Sheikh v. Jahed Sheikh*, 3 Cr. L. J. 423 : 3 C. L. J. 478.

—S. 145—*Preliminary order—Absence of grounds.*

The failure of a Magistrate to set forth explicitly the grounds of his being satisfied will not vitiate the proceedings if there was otherwise a substantial compliance with the requirements of S. 145. *Matho Khan v. Emperor*, 34 Cr. L. J. 216 :

141 I. C. 628 : 26 S. L. R. 353 :

I. R. 1933 Sind 67 : A. I. R. 1932 Sind 145.

—S. 145—*Preliminary order, contents of—Duty of Magistrate.*

It is desirable for a Magistrate to record reasons how he was satisfied that dispute likely to cause breach of peace exists. But omission is irregularity curable by S. 537. *Emperor v. Narsingdas Gangadhar*, 35 Cr. L. J. 1381 :

151 I. C. 348 : 30 N. L. R. 311 : 7 R. N. 60 :

A. I. R. 1934 Nag. 112.

—S. 145—*Preliminary order, defective—Effect.*

Omission to comply with S. 145 (1) does not deprive Magistrate of jurisdiction to proceed—Illegality is curable under S. 537 (F. B.). *Kapoor Chand v. Suraj Prasad*, 34 Cr. L. J. 414.

142 I. C. 537 : 1933 A. L. J. 188 :

L. R. 14 All. 48 Cr. : I. R. 1933 All. 125 :

A. I. R. 1933 All. 264.

—S. 145—*Preliminary order, defective.*

Magistrate's omission to record order in compliance with S. 145 (1)—Subsequent proceedings will not be vitiated unless such omission has caused failure of justice. *Burmala Singh v. Emperor*, 34 Cr. L. J. 425 :

142 I. C. 532 : 1932 A. L. J. 865 :

L. R. 13 All. 154 Cr. : 54 All. 1002 :

I. R. 1933 All. 131 : A. I. R. 1932 All. 681.

—S. 145—*Preliminary order, failure to record.*

Omission to record preliminary order is objectionable, but when final order definitely states that there was an apprehension of breach of peace, omission is cured by S. 537. *Mohan Lal v. Morni*, 34 Cr. L. J. 1138 :

145 I. C. 868 : 6 R. Pesh. 10 :

A. I. R. 1933 Pesh. 88.

—S. 145—*Preliminary order—Failure to record reasons.*

The failure by a Magistrate to record his reasons for being satisfied that there is a danger of the breach of the peace, though a serious irregularity, does not effect his jurisdiction. *Velu Malavarayan v. Kuppuswami Pillai*, 22 Cr. L. J. 90 :

59 I. C. 378 : 12 L. W. 315.

—S. 145—*Preliminary order—Grounds, failure to record.*

Magistrate can take action merely on sworn testimony of complainant—Omission to record grounds for being satisfied of likelihood of breach of peace is cured by S. 537 and such omission is not a ground for setting aside

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Magistrate's final order. *Bibi Asghari Khanam v. Emperor*. 36 Cr. L. J. 656 :

155 I. C. 169 : 1935 O. W. N. 454 :

7 R. O. 554 : A. I. R. 1935 Oudh 316.

————S. 145—*Preliminary order.*

Magistrate has no power to pass order restraining both parties from entering property in dispute until further orders. *U Pyinnya v. U Wilatha*. 32 Cr. L. J. 637 :

131 I. C. 63 : I. R. 1931 Rang. 127 :

A. I. R. 1931 Rang. 51 (2).

————S. 145—*Preliminary order, necessity of.*

Where no order under S. 145 (1), Cr. P. C. has been passed, the first proviso to S. 145 (4) cannot be resorted to. *Ghulam Hussain v. Sajawal Shah*. 142 I. C. 430 :

34 P. L. R. 365 : I. R. 1933 Lah. 204 :

A. I. R. 1933 Lah. 143.

————S. 145—*Preliminary order—No finding as to possession—Revision.*

Where in a preliminary order made by a Magistrate in a proceeding under S. 145, there is no finding regarding possession of the property in dispute, but there are very general observations in regard to the ownership of the property, the order constitutes an infringement of the provisions of Ss. 145 and 146, and being without jurisdiction, the High Court is justified in setting aside such order, in the exercise of its revisional jurisdiction, as null and void. The mere fact that the order purports to be passed under S. 145, will not bring it within that section. *Sinanani Shukulathi Rowther v. Gulam Moidcen*. 24 Cr. L. J. 156 :

71 I. C. 508 : 16 L. W. 338 :

1922 M. W. N. 689 : A. I. R. 1923 Mad. 24.

————S. 145—*Preliminary order, omission to pass, effect of—Magistrate, duty of—Trees severed from land, order in respect of, validity of.*

In order to give jurisdiction to a Magistrate to take proceedings under S. 145, it is essential that he should be satisfied that a dispute likely to cause a breach of the peace exists, and the first step is the recording of the initial order, the contents of which are specified in the first clause of S. 145. But the mere omission to record the preliminary order is not a fatal defect, if no prejudice has been caused thereby. Trees which have been severed from the land do not come within the purview of S. 145, Sub-s. (2). *Sajad Hussain v. Nanak Chand*. 18 Cr. L. J. 461.

39 I. C. 301 : 22 P. W. R. 1917 Cr. :

A. I. R. 1917 Lah. 35.

————S. 145—*Preliminary order—Proceeding under—Preliminary order, contents of—Order, cancelled—Proceeding, whether can be revived—Procedure—Enquiry as to possession, nature of—Evidence, right to adduce—Final order, form of.*

A proceeding under S. 145 can only be drawn up, when the Magistrate is satisfied from a Police report or other information that a dispute likely to cause a breach of the peace exists. The Magistrate is bound to set forth the ground on which he is satisfied as to the existence to the danger of a breach

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of the peace. When an order passed by a Magistrate under S. 145 (1) is cancelled by him on the ground that he is satisfied that no dispute likely to cause a breach of the peace exists, the Magistrate is not competent subsequently to revive the proceeding. He can only take action to start a fresh proceeding upon fresh materials under cl. (1) of the section. So far as the question of possession is concerned, an enquiry under S. 145 should be as full as that in a summons-case, entitling each party to adduce evidence. The final order in a proceeding under S. 145 ought to declare the party in whose favour the Magistrate finds possession to be, and to direct that that party shall continue in possession of the property until evicted therefrom in due course of law, forbidding all disturbance of such possession until such eviction. A mere warning to the opposite party not to interfere with the possession of the party in whose favour the order is made is not sufficient. *Khubi Singh v. Darbari Mahton*.

22 Cr. L. J. 481 :

62 I. C. 177 : 2 P. L. T. 267 : 1921 Pat. 167 :

A. I. R. 1921 Pat. 176.

————S. 145—*Preliminary order—Proceedings under—Preliminary order made and property attached—Cancellation of order—Delivery of property to a party—Proper order.*

Where in proceedings under S. 145 a Magistrate has issued a preliminary order under Sub-s. (1) and has attached the property in dispute, the Magistrate has jurisdiction under Sub-s. (5) to cancel the original order subsequently where the circumstances justify this. The Magistrate, however, has no power after cancelling the preliminary order to order delivery of the property attached to one of the parties to the proceedings. The proper order in such a case is to direct that the property should remain in his custody and management pending decision of a Civil Court on the question of title. *Sahabzada Daljit Singh v. Mian Tej Singh*. 40 Cr. L. J. 930 :

184 I. C. 290 : 1939 O. W. N. 891 :

1939 O. L. R. 602 : 12 R. O. 97 :

A. I. R. 1939 Oudh 284.

————S. 145—*Preliminary order—Reference to Police report, sufficiency of.*

Where while passing a preliminary order under S. 145, the Magistrate has relied on the Police report which is on the record, his reference to that constitutes sufficient ground for the order. Even if the source of information is not recorded, that would be an irregularity curable by S. 537, Cr. P. C. *Sheoprasad v. Govindram*. 41 Cr. L. J. 799 :

189 I. C. 774 : 1940 M. L. J. 375 :

13 R. N. 78 : A. I. R. 1940 Nag. 265.

————S. 145—*Preliminary order, requirements of—Likely, meaning of.*

It is necessary for making an order under S. 145, that the Magistrate should be satisfied at the time of drawing up the proceedings that there is then existing a likelihood of breach of the peace arising from the disputes between the parties with regard to the land in question. The word 'likely' in S. 145 in-

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icates some degree of futurity and may be treated as synonymous with 'probable.' *Anadi Lal Mukherjee v. Sukh Chand Mandal.*

32 Cr. L. J. 398 :
129 I. C. 610 : I. R. 1931 Cal. 226 : 58 Cal. 388 :
34 C. W. N. 899 : A. I. R. 1930 Cal. 715.

—S. 145—Preliminary order—Statement of reasons—Defects in procedure.

Magistrate must state in writing the grounds of his being satisfied of dispute likely to cause breach of peace—Otherwise proceedings will be vitiated. *Emperor v. Hira Lal.*

34 Cr. L. J. 449 :
142 I. C. 775 : 1932 A. L. J. 1087 :
L. R. 14 All. 18 Cr. : I. R. 1933 All. 151 :
A. I. R. 1933 All. 96.

—Ss. 145, 439—Preliminary order, absence of—Revision.

Where a Magistrate fails to pass an order as required by Sub-s. (1) of S. 145 subsequent proceedings under that section are vitiated and the final order is liable to be set aside in revision. *Ram Bushan Das v. Ram Lakhan Sahu.*

26 Cr. L. J. 630 :
85 I. C. 918 :
1 O. W. N. 701 : A. I. R. 1925 Oudh 414.

—S. 145, Cl. (1)—Preliminary order—Omission to state grounds—No defect of jurisdiction.

The omission to state in the preliminary order issued under S. 145, Cl. (1) of the grounds upon which the Magistrate was and is satisfied of the existence of a dispute likely to lead to a breach of the peace, though it makes the order defective, does not affect the jurisdiction of Court. *Posuka Kulla v. Chikka Hina.*

6 Cr. C. J. 345 :
17 M. L. J. 449.

—S. 146 (1)—Preliminary order, condition precedent of—Jurisdiction.

The condition precedent authorizing a Magistrate to issue an order under S. 145 (1) is that he should be satisfied that a dispute likely to cause a breach of the peace exists. The fact that the complaint shows that the complainant was out of possession of the property in dispute for over two months does not vitiate the proceedings under S. 145. *Shesharao Nagorao Patil v. Emperor.*

19 Cr. L. J. 444-A. :
44 I. C. 972 : A. I. R. 1918 Nag. 197.

—S. 145, Cl. (1)—Preliminary order defective—Jurisdiction of Magistrate.

Where the preliminary order under S. 145 (1) does not set forth the grounds upon which the Magistrate is satisfied that there is a dispute likely to cause a breach of the peace, the Magistrate has acted without jurisdiction. *Posuka Kulla v. Tandalgara Chikka Hina.*

8 Cr. L. J. 399 :
4 M. L. T. 213.

—S. 145 (1), (4)—Preliminary order—Dispossession for more than two months—Presumption, whether can be extended—Magistrate, duty of, before preliminary order.

S. 145 (4) makes it incumbent on the Magistrate to decide which of the parties was in possession on the date of the preliminary order

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and the proviso only applies if any other party had been forcibly dispossessed within two months thereof. The presumption of possession in favour of a particular party raised under the proviso of S. 145 (1) does not arise if the party has been out of possession for more than two months previous to the date of the preliminary order. The fact that proceedings were first started under S. 107 and the Magistrate came to the conclusion that proceedings under S. 145 would be more suitable after a long time, would not extend the time under the proviso. Though it is competent to a Magistrate to rely on mere Police report in order to pass a preliminary order under S. 145, if he came to the conclusion that there is an imminent danger of a breach of the peace, it is advisable that the Magistrate should have and carefully scrutinize other evidence before passing an order under the section as the misuse of provisions of Ss. 107 and 145 requires to be discouraged. *Nago v. Atmaram.*

27 Cr. L. J. 68 :
91 I. C. 244 : A. I. R. 1926 Nag. 371.

—S. 145—Procedure.

An application was made to a Magistrate to take action under S. 145. The Magistrate passed an order that the opposite party be summoned and the complainant should produce his evidence. On the date fixed, the Magistrate merely examined the *Pakwari* and passed the final order : *Held*, that as the Magistrate had not followed the procedure laid down in Chapter XII of the Code, his order was without jurisdiction. *Bitau Rai v. Bisheshar Rai.*

11 Cr. L. J. 47 :
5 I. C. 128.

—S. 145—Procedure.

Complaint under Ss. 107, 145—Magistrate's omission to draw up original order under S. 145 (1) and affix its copy under S. 145 (3), vitiates all proceedings. *Chanan Singh v. Emperor.*

39 Cr. L. J. 702 :
176 I. C. 124 : 40 P. L. R. 20 :
11 R. L. 165 : A. I. R. 1938 Lah. 345.

—S. 145—Procedure.

Concurrent proceedings under Ss. 107 and 145 may go on between the same parties. *Nasiruddin Sircar v. Gofuruddin Mohamad.*

18 Cr. L. J. 129 :
37 I. C. 481 : 21 C. W. N. 160 :
A. I. R. 1917 Cal. 226.

—S. 145—Procedure—Delivery of possession on basis of written statement—Jurisdiction.

In a proceeding under S. 145, the Magistrate has no jurisdiction to hand over the possession of the property in dispute to one of the parties to the proceeding merely on the basis of his written statement without taking evidence. *Palani Goundan v. Kulandavelu Goundan.*

24 Cr. L. J. 429 :
72 I. C. 541 : 1922 M. W. N. 484 :
43 M. L. J. 716 : A. I. R. 1922 Mad. 437.

—S. 145—Procedure—Dispute concerning immovable property—Question of title, whether can be inquired into—Procedure.

In proceedings under S. 145, it is not the duty

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of the Magistrate to declare who is entitled to possession, the declaration must be as to who is actually in possession and entitled to remain in possession till a decision is given by a competent Court. A proceeding under S. 145 should be decided on the question of possession and not on the question of title, and a party in actual possession of the land in dispute is entitled to have its possession maintained even although it may be liable to vacate such possession at the result of a civil suit. *Sabdu Santal v. Kushal Santal*. 27 Cr. L. J. 784 : 95 I. C. 320 : 1926 Pat. 160 : 7 P. L. T. 873.

—S. 145—Procedure.

High Court has no power to direct Magistrate to initiate proceedings under S. 145. *Imperator v. Lakhano*. 10 Cr. L. J. 231 : 2 S. L. R. 18.

—S. 145—Procedure.

In proceedings under S. 145, an order cannot be made under S. 107. *Shambhu Nath v. Emperor*. 17 Cr. L. J. 527 :

35 I. C. 832 : 14 A. L. J. 656 : 38 All. 468 : A. I. R. 1916 All. 100.

—S. 145—Procedure.

In proceedings under S. 145, Courts should only follow the procedure prescribed for summons-cases where it is convenient to do so. There is no provision in the Code which prescribes that the same procedure should be followed, and the provisions of S. 145 clearly indicate that the same procedure cannot always be followed throughout. *Raquma v. Ghir Rai*.

41 Cr. L. J. 96 (b) :

184 I. C. 751 : 1939 O. W. N. 974 :

1939 O. L. R. 651 :

12 R. O. 142 : A. I. R. 1940 Oudh 22.

—S. 145—Procedure—Magistrate's duty to parties.

Where in a proceeding under S. 145 proper opportunity is not given to one of the parties to represent his case and to cross-examine the witnesses examined on behalf of the opposite party or to produce his documentary evidence, he is entitled to have the proceedings transferred to the Court of some other Magistrate. *Gouri Shanker v. Collector of Muzaffarpur*.

26 Cr. L. J. 965 :

87 I. C. 421 : 6 P. L. T. 215 :

3 Pat. L. R. 127 Cr. :

A. I. R. 1925 Pat. 553.

—S. 145—Procedure.

Per *Nanavutty, J.*—Omission of Magistrate to satisfy himself as to existence of dispute vitiates entire proceedings and defect is not cured by S. 537. *Bibi Asghari Khanam v. Emperor*.

36 Cr. L. J. 656 :

155 I. C. 169 : 1935 O. W. N. 454 :

7 R. O. 554 : A. I. R. 1935 Oudh 316.

—S. 145—Procedure—Proceedings, simultaneous, whether proper—Dispute as to possession of land—Proceedings, proper.

Where on the application of the petitioners for the assistance of the Magistrate in the matter of possession of a piece of land, an injunction was issued under S. 144 and the petitioners were called on under S. 107 : *Held*, (1) that the

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procedure was bad, as in effect, it debarred the petitioners from giving evidence of possession ; (2) that if on the expiry of the injunction under S. 144, there was any apprehension of a breach of the peace, the more appropriate procedure would be to take proceedings under S. 145, Cr. P. C., rather than under S. 107. *Abinash Chandra Mandal v. Lokenath Gani*.

19 Cr. L. J. 367 :

44 I. C. 591 : A. I. R. 1919 Cal. 465.

—S. 145—Procedure.

Proceedings under S. 107 converted into one under S. 145. The Magistrate must call for written statements of parties, record evidence under S. 145. His failure to do this renders order passed under S. 145 illegal. *Sabdeb v. Jumon Jolaba*. 19 Cr. L. J. 320 :

44 I. C. 336 : 4 P. L. W. 195 :

A. I. R. 1918 Pat. 625.

—S. 145—Procedure—Proceedings under S. 145.

In proceedings under S. 145 what is important is that an order should be passed quickly ; it does not matter if the finding in regard to possession is wrong. *Ganpat Kunbi v. Dewaji*.

29 Cr. L. J. 676 :

110 I. C. 228 : 10 A. I. Cr. R. 411.

—S. 145—Procedure.

Proceeding under S. 145 should not be combined with proceedings under S. 107. *Farid v. Piru*. 16 Cr. L. J. 235 :

27 I. C. 907 : 8 S. L. R. 207 :

A. I. R. 1914 Sind 8.

—S. 145—Procedure—Proceedings, whether can be dropped by Magistrate—Sale-proceeds deposited in Court, disposal of.

It is open to a Magistrate at any stage to drop proceedings under S. 145 on being satisfied that no dispute likely to cause a breach of the peace exists. Where in such proceedings, standing crops have been attached and sold and the sale-proceeds have been deposited in Court, the proper order to make when further proceedings are dropped, is to direct that the money be kept in deposit till one party or the other obtains an order from the Civil Court in its favour. *Gothipathi Suryanarayana v. Aukenced Prasad*.

25 Cr. L. J. 978 :

81 I. C. 626 : 46 M. L. J. 565 :

20 L. W. 58 : 47 Mad. 713 :

A. I. R. 1924 Mad. 795.

—S. 145—Procedure—Property attached—Cancellation of order—Disposal of property—Proper order.

Where, after attaching certain properties under S. 145 the order is, on inquiry, cancelled on the ground that there is no immediate danger of a breach of the peace, the Magistrate has no jurisdiction to direct that the attached properties should be delivered to one of the parties, as that would be in effect deciding the question at issue between the parties. He should keep them or their sale-proceeds, if perishable, in deposit until one of the parties establishes its rights in a Civil Court. *Chenga Reddi v. Ramasami Gounden*. 16 Cr. L. J. 104 :

27 I. C. 152 : 1 L. W. 1032 :

A. I. R. 1915 Mad. 588.

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—S. 145—*Procedure—Refusal to grant time for filing written statement—Final order made on trial ex parte, propriety of—Further enquiry—Procedure.*

In a proceeding under S. 145 the land in dispute having been attached, the 16th January was fixed as the date of hearing. On that date the first party, who had not been served with notice until the 8th of January, applied for time to file a written statement, but the Magistrate refused the application and trying the case practically *ex parte*, made an order in favour of the second party: *Held*, (1) that the proceedings were not conducted quite fairly to the first party, inasmuch as the land being under attachment, there was no immediate prospect of a breach of the peace; (2) that the order of the Magistrate must be set aside and the case sent back to him for further inquiry and trial according to law. *Ramesh Chandra Sen v. Aijuddi Sheikh.* 19 Cr. L. J. 799-A: 46 I. C. 719: A. I. R. 1918 Cal. 158.

—S. 145—*Procedure—Report stating one party is in possession and recommending injunction against other—Initiation of proceedings under S. 145, whether illegal.*

A Police report stated that there was an immediate apprehension of the breach of the peace but recommended that as the first party was in possession and the second party was trying to oust him, an injunction may be issued against the second party under S. 144. The Magistrate, however, considered that it was better to start proceedings under S. 145: *Held*, that there was nothing illegal in the procedure adopted by the Magistrate. *Ahmed Ali Sheikh v. Sahed Sardar.* 30 Cr. L. J. 1027: 119 I. C. 372: 49 C. L. J. 428: 33 C. W. N. 858: I. R. 1929 Cal. 788: A. I. R. 1929 Cal. 468.

—S. 145—*Procedure—Proceedings.*

Slipshod procedure is to be condemned even though it does not necessarily result in vitiating the whole proceeding. *Bibi Asghari Khanam v. Emperor.* 36 Cr. L. J. 656: 155 I. C. 169: 1935 O. W. N. 454: 7 R. O. 554: A. I. R. 1935 Oudh 316.

—S. 145—*Procedure—Summoning of witnesses cited by parties—No ground of Magistrate being satisfied—Non-compliance with S. 145 (1)—Proceeding, if vitiated.*

When making an order on an application under S. 145, the Magistrate ought to comply with the provisions of S. 145, Cl. 1, and he ought to make an order in writing stating the grounds of his being satisfied that a dispute likely to cause a breach of the peace existed. This failure, together with the fact that the Magistrate actually has no grounds whatsoever for being so satisfied, vitiates his whole proceeding. *Dr. A. Meah v. Steel Brothers & Co., Ltd.* 39 Cr. L. J. 708: 176 I. C. 266: 11 R. Rang. 40: A. I. R. 1938 Rang. 229.

—S. 145—*Procedure—Summons Case, procedure for, not applicable—Witness, summons or processes for.*

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Procedure laid down for summons cases is not applicable to proceedings under S. 145 and the parties cannot claim it as a matter of right that the Magistrate should assist them to produce their evidence by issuing summons or other processes upon their witnesses. *Tarapada Biswas v. Nural Haque Mia.* 2 Cr. L. J. 679: I. L. R. 32 Cal. 1093: 2 C. L. J. 280.

—S. 145—*Procedure—Trial as in a civil suit—Procedure.*

The Magistrate should not deal with a proceeding under S. 145 as if it is a civil suit. The only question the Magistrate has to decide in the case is who is in actual possession of the land in dispute and where he does not do so, his order is entirely without jurisdiction. *Kochai Fakir v. Romesh Chandra Biswas.* 8 Cr. L. J. 28: 12 C. W. N. 773: 35 Cal. 795.

—S. 145—*Procedure.*

Where proceedings under S. 145 of the Cr. P. C. are started and evidence is recorded, the proceedings can only be terminated by a decision upon the evidence as to the possession of the contending parties under Cl. (4) of S. 145. Under Cl. (5) of S. 145, a Magistrate can drop proceedings upon the only ground mentioned therein, viz., that there no longer exists any imminent danger of a breach of the peace. *Himmat Mian v. Emperor.* 19 Cr. L. J. 712: 46 I. C. 296: A. I. R. 1918 Pat. 500.

—S. 145—*Procedure—Writs for delivery of possession taken out by landlord in execution of rent decree against various holdings—Only one proceeding common to all holdings—Landlord alone appearing and filing written statement of his claim—Proceedings held not proper.*

In execution of his rent decrees in respect of various holdings, the landlord took out writs of delivery of possession. On resistance by the tenants, the Police lodged information with Magistrate calling for action under S. 145. The Magistrate did not draw up one proceeding in respect of each holding but a single proceeding covering the whole number of *khata*s comprising the several holdings dealt with. The proceedings called on the parties to attend the Court of the Magistrate, and to put in written statements of their respective claims. The landlord put in a written statement of his claim but not one of the tenants put in any written statement. The Magistrate did not proceed *ex parte* and hear evidence on the side of the landlord nor did he grant time to the tenants to file their written statements. He went into evidence without first ascertaining which of the tenants were claiming what lands, and he decided the proceedings as if the entire lands in suit had been claimed by the whole body of the tenants jointly: *Held*, that the Magistrate should have dealt with the case of each holding separately and should have given the tenants opportunity of producing evidence to show which of the holdings was

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claimed by each one. *Ram Kishun Singh v. Faujdar Gop.* 38 Cr. L. J. 842 : 170 I. C. 90 : 3 B. R. 659 : 10 R. Pat. 75 : 18 P. L. T. 824 : A. I. R. 1937 Pat. 413.

———Ss. 145, 146—*Procedure—Order “not to obstruct” without taking evidence, if final—Procedure.*

In a proceeding under S. 145, the preliminary order was made, the statements of the parties as required by Cl. (4) of the section were put in, but the Magistrate without examining the parties or taking any evidence, ordered a party “not to obstruct”: *Held*, that the order was not a final order under the section and that if there was still a danger of a breach of the peace, the Magistrate must complete the proceedings as required by S. 145 and make a proper order either under that section or under S. 146. *In re : Dyawappa Basgunda Patil.*

16 Cr. L. J. 434 : 29 I. C. 66 : 17 Bom. L. R. 382 : A. I. R. 1915 Bom. 98.

———Ss. 145, 146—*Procedure—Proceedings—Attachment—Subsequent application by third party to re-open proceedings—Procedure—Magistrate, duty of.*

Proceedings under S. 145 were instituted between two parties, and the Magistrate being unable to satisfy himself as to which of them was in possession of the land in dispute, attached it under S. 146. Subsequently petitioner appeared and pointed out that the land in dispute belonged to his ward, a minor, and applied to be allowed to prove his ward's possession, but the Magistrate declined to accede to the application: *Held*, that the course adopted by the Magistrate was bad and that he ought to have given petitioner an opportunity to make out his case for the protection of his rights. *Clair Smith v. Abid Hussain.* 18 Cr. L. J. 637 : 39 I. C. 1005 : 1 P. L. W. 373 : A. I. R. 1917 Pat. 661.

———Ss. 145, 146—*Procedure—Proceedings under S. 145—Magistrate indecisive about possession—Continuance of attachment, legality of.*

When a Magistrate before whom proceedings under S. 145 have been initiated is in an indecisive state of mind as to which of the two parties to the proceeding was in possession, he should record under S. 146 finding that he is unable to satisfy himself as to which of the two parties was in possession on the date of the preliminary order and then proceed, to attach the property, if it has not been already attached under the second proviso to Cl. (4) of S. 145. When a Magistrate attaches in cases of emergency the property which is the subject of dispute, under the second proviso to Cl. (4) of S. 145, and after receiving all the evidence adduced by the parties is unable to satisfy himself as to which of the parties was in possession at the date of the preliminary order, it is quite open to him to continue the attachment already made till a competent Court has determined the rights of “the

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parties or the person entitled to possession. *Jan Mohammad v. Jivan Khan.*

29 Cr. L. J. 861 : 111 I. C. 445 : A. I. R. 1928 Nag. 325.

———Ss. 145, 146—*Procedure under S. 145 whether can be struck off—Procedure.*

Where proceedings under S. 145 have once been started, the Magistrate has no jurisdiction to strike them off. He must pass an order either under S. 145 or under S. 146. *Trilochan Das v. Jogeshwar Das.*

20 Cr. L. J. 464 : 51 I. C. 352 : A. I. R. 1919 Pat. 37.

———Ss. 145, 203—*Procedure—Proceedings under S. 145—Procedure to be followed—Evidence recorded in another revenue case pending in Court, consideration of.*

S. 203, Cr. P. C., has nothing to do with proceedings under S. 145 and where an application is made under S. 145, the Magistrate ought to proceed with the case according to the provisions of S. 145. The only case in which a Magistrate can refuse to take action under S. 145 is when he is not satisfied that there is a danger of a breach of the peace. In case he is satisfied by the Police report that there was a danger of a breach of the peace, his duty is to proceed under S. 145 and to issue notices to the parties. If notices are issued to the parties and written statements filed by them, it is again his duty under Sub-s. 4 of S. 145 to receive all such evidence as might have been produced by the parties. The procedure of the Magistrate in considering the evidence given in another case as evidence in S. 145 case even though the other case was pending in his own Court as a Revenue Court is entirely unauthorised and illegal. *Emperor v. Subhan.*

40 Cr. L. J. 33 : 178 I. C. 252 : 1938 O. W. N. 1099 : 1938 O. L. R. 475 : 11 R. Oudh 104 : A. I. R. 1938 Oudh 15.

———Ss. 145, 350, 360—*Procedure—Power of Magistrate to rely on evidence taken by his predecessor.*

In a proceeding under S. 145, the Magistrate is within his jurisdiction to decide the case upon the evidence partly recorded by his predecessors and partly by himself even though one of the parties demands a *de novo* hearing. *Sondhi Singh v. Govind Singh.* 25 Cr. L. J. 89 : 76 I. C. 25 : 5 P. L. T. 237 :

2 Pat. L. R. 108 Cr. : A. I. R. 1924 Pat. 786.

———Ss. 145, 356—*Procedure—Order under S. 145—Procedure under S. 356 not complied with, effect of.*

The provisions of S. 356 (3) of the Cr. P. C. apply only to cases in which the evidence recorded under the first sub-section is not recorded in the Magistrate's own hand. The provisions of sub-section are imperative and where a Magistrate in a proceeding under S. 145 does not follow this procedure, his order cannot be sustained. *Sadananda Mandal v. Krista Mandal.* 16 Cr. L. J. 192 :

27 I. C. 672 : 19 C. W. N. 124 : 42 Cal. 381 : A. I. R. 1915 Cal. 664.

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—Ss. 145, 537—*Procedure—Dispute as to immovable property—Preliminary order, service and publication of—Irregularity.*

Under Sub-s. (3) of S. 145 a copy of the preliminary order made by the Magistrate must be served on the parties and must also be published by being posted on the land itself. The failure to serve and publish the order in this manner is, however, an irregularity which is curable under the provisions of S. 537 of the Code and does not by itself vitiate the proceedings. *Nawng Maung v. Maung Po Yon.*

27 Cr. L. J. 660 :
94 I. C. 708 : 3 Rang. 169 :
A. I. R. 1925 Rang. 270.

—S. 145—*Question of title.*

Criminal Court could not ordinarily, in proceedings under S. 145, go into question of title but should concern itself with the question of title. *In re : Mallappa Basappa Kurnaballu.*

27 Cr. L. J. 734 :
95 I. C. 62 : 28 Bom. L. R. 488 :
A. I. R. 1926 Bom. 313.

—S. 145—*Question of title, if can be considered—Order as regards future possession, legality of—Proceedings, if can be compromised or referred to arbitration—Preliminary order, cancellation of, when matters are referred to arbitration.*

In proceedings under S. 145 no question of title can be taken into consideration nor can any order be passed as regards future possession without reference to the actual possession at the date of the preliminary order. *Gangadhar v. Balakrishna.*

31 Cr. L. J. 191 :
121 I. C. 47 : A. I. R. 1929 Nag. 285.

—Ss. 145, 148 (3)—*Question of title—Order for removal of a bundh—Costs—Damages for crops.*

Where in a case under S. 145 the Magistrate tried the question of title as in a civil case, directed the removal of a bundh and awarded damages for crops as well as costs in the case : *Held*, (1) It was the duty of the Magistrate to enquire as to which party was in possession and not to treat the case if the matter before him was solely one of title; (2) He had no power to make an order under S. 145 directing the bundh to be removed; (3) The Magistrate was not entitled to make an order under S. 148 (3) except as to costs incurred for witnesses or pleader's fees or both. He could not award damages for crops. *Prayag Marton v. Gobind Marton.*

2 Cr. L. J. 552 :
9 C. W. N. 862 : I. L. R. 32 Cal. 602.

—S. 145—*Receiver, appointment of—Remuneration.*

The rate of remuneration fixed for Receivers under the C. P. C., does not necessarily provide the limit of the rate of remuneration to be fixed for a Receiver appointed in a proceeding under S. 145. The total amount of the Receiver's remuneration, however, should not, in any case, exceed the amount of the net income realised by the Receiver. *Yamunabai v. Emperor.*

27 Cr. L. J. 22 :
91 I. C. 54 : 8 N. L. J. 167 :
A. I. R. 1925 Nag. 462.

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—S. 145—*Receiver, appointment of, validity of.*

Under S. 145 a Magistrate has in cases of emergency the power to attach the subject in dispute, but he has no power at that stage to appoint a Receiver. Where a Magistrate takes proceedings under S. 145, the object of the law is that he shall confirm the party in actual possession. He is not competent to dispossess such a party by appointing a Receiver and the order of attachment which the law empowers him to make has no greater force than any Civil Court attachment, the effect of which is generally to restrain alienation. A Receiver can be appointed only where the Magistrate is unable to decide which of the parties is in possession and has a right to remain in possession, and considers it necessary that the property should vest in some person appointed by the Court under S. 146, Cr. P. C. *Mcwa Lal v. Emperor.*

19 Cr. L. J. 249 :
44 I. C. 41 : 1917 Pat. 363 :
3 P. L. J. 147 : 4 P. L. W. 359 :
A. I. R. 1918 Pat. 197.

—S. 145—*Receiver—Attachment.*

Attachment need not be only by prohibitory order—Court can take possession or appoint Receiver. *Prem Kaur v. Benarsi Das.*

34 Cr. L. J. 342 :
142 I. C. 207 :
34 P. L. R. 368 : I. R. 1933 Lah. 177 :
A. I. R. 1933 Lah. 409.

—S. 145—*Receiver—Dispute as to possession—Possession of Receiver.*

When a Receiver has been appointed by Court for certain properties, his possession should, for the purposes of S. 145 be regarded as possession on behalf of the party who might ultimately be found by the Magistrate to be in possession immediately before the date of the Receiver's appointment. *Ismail Ghami Ammac v. Katima Rowther.*

13 Cr. L. J. 23 :
10 M. L. T. 573 : 24 M. L. J. 154 : 13 I. C. 215.

—S. 145—*Receiver—Possession proceedings—Receiver, not in actual possession, whether necessary party to.*

In an inquiry under S. 145 between old and new tenants of an estate, the Receiver who is not in actual possession and who only granted leases to some of the new tenants, is not a necessary party. *Maddipoti Chinna v. Narayanaswamy Naidu.*

12 Cr. L. J. 185 :
9 I. C. 1009 : 9 M. L. T. 502.

—S. 145—*Receiver's possession.*

Receiver's possession is on behalf of the successful party. *Rajabali Khan v. Fakri Bibi.*

134 I. C. 906 : 58 Cal. 1070 : 35 C. W. N. 483 :
I. R. 1931 Cal. 906 : A. I. R. 1932 Cal. 29.

—S. 145 (4)—*Receiver—Appointment of—Court can attach property—Whether can appoint Receiver—'Attach', meaning of—Possession of attached property—If he can be awarded costs incurred by him for managing it—Proceedings under S. 145 are for speedy remedy.*

Magistrate cannot appoint a Receiver under

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S. 145 (4). The Magistrate can only attach the property but it is not stated in the Code as to how the attachment is to be effected. If the land in dispute is land paying revenue to Government, and if analogy of S. 88 were to be followed, the Magistrate must attach it through the Collector. The word "attach" merely means to bring under the control of the Court, and Magistrate is entitled to effect that object in any way which is within his power. Certainly, the appointment of a Receiver with the power of a Receiver under the Code of Civil Procedure is not one of those ways, because unless that power is expressly given, a Magistrate cannot exercise it. It is not advisable to employ the term "Receiver" owing to the possibilities of misunderstanding that may arise, yet it is clear that if the Magistrate's attachment is to be effected, he must put some person into possession of the property, who will have authority to maintain his possession. The person put in possession of the property can be awarded the legitimate costs incurred by him for managing the property. *Maung San U v. Maung Lu Gale*.

39 Cr. L. J. 484 :
174 I. C. 958 : 10 Rang. 451 :
A. I. R. 1938 Rang. 88.

———S. 145—*Relevancy of title—Grave irregularity in the proceedings of the Magistrate—Formal order under Cl. (1) of the section passed two months after dispossession—Question of law involved in the case.*

The formal order under Cl. (1) of the section passed more than two months after dispossession, is against the provisions of its Cl. (4) and is, therefore, illegal and in itself sufficient to invalidate the whole proceedings. Where a complainant has not got a clear title to the property in dispute and difficult questions of law are involved to decide it, which cannot properly be decided by a Criminal Court, the best course for the Magistrate is to refuse to proceed under the said S. 145. *Lakhan v. Begam*.

4 Cr. L. J. 425 :
1 P. W. R. Cr. 20.

———S. 145—*Relevancy of title—No apprehension of breach of peace—Proceedings without jurisdiction—Title, relevancy of.*

Where a proceeding under S. 145 is founded upon a Police report, and in that report there is nothing to suggest that there is any apprehension of a breach of the peace, the proceeding is without jurisdiction and liable to be set aside. In proceedings under S. 145, a Magistrate is entitled to look into the question of title only to arrive at a satisfactory conclusion on the question of possession. *Ram Saroop v. Darsano Koer*.

21 Cr. L. J. 748 :
58 I. C. 252 : 1 P. L. T. 387 :
A. I. R. 1920 Pat. 499.

———S. 145—*Relevancy of title—Proceedings under—Title, relevancy of.*

In proceedings under S. 145, a Magistrate is entitled to rely on the documentary evidence as to title to corroborate the oral evidence as to possession. *Adaikhan v. Mallakaruppan*.

23 Cr. L. J. 197 :
65 I. C. 853 : 15 L. W. 62 :
1923 M. W. N. 12 : A. I. R. 1922 Mad. 188.

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———S. 145—*Relevancy of title—Title, question of.*

Questions of title are of little importance under S. 145, except in so far as they may be available to show who was in actual physical possession of the land at the time when proceedings were taken. *Devendra Nath Khan v. Dhanmoni Dassi*.

35 Cr. L. J. 489 :
147 I. C. 817 : 37 C. W. N. 849 :
6 R. C. 371 : A. I. R. 1934 Cal. 95.

———S. 145—*Relevancy of title—Title, question of.*

In a proceeding under S. 145 the Court is in no way concerned with the question of title, it has merely to consider and investigate the question of possession. *Ram Prasad Sahu v. Emperor*.

21 Cr. L. J. 136 :
54 I. C. 616 : A. I. R. 1920 Pat. 520.

———S. 145—*Relevancy of title—Title, question of, not to be determined—Possession, mere fact of, to be determined.*

The question of title does not arise in proceedings taken under S. 145. There the Magistrate has simply to determine with which of the parties possession lies at the time. *Inayat Ullah v. Amanat Husain*.

15 Cr. L. J. 470 :
24 I. C. 350 : 10 L. J. 242 :
A. I. R. 1914 Oudh 31.

———S. 145—*Revision.*

Although the High Court has no revisional jurisdiction with respect to proceedings under S. 145, it will nevertheless interfere with an order which is without jurisdiction. *Nga Po Tin v. Nga Po Saung*.

24 Cr. L. J. 740 :
74 I. C. 68 : 1 Rang. 53 : 2 Bur. L. J. 32 :
A. I. R. 1923 Rang. 211.

———S. 145—*Revision.*

Case under S. 145—Magistrate arriving at conclusion after due inquiry—Finding of fact, cannot be impugned in revision.

35 Cr. L. J. 1056 (1) :
150 I. C. 143 : 11 O. W. N. 375 :
6 R. D. 613 : A. I. R. 1934 Oudh 158 (1).

———S. 145—*Revision—Crops on disputed land deposited with third party—Possession—Joint Magistrate ordering division of crops—High Court, interference by.*

Where previous to the drawing up of proceedings under S. 145, a Magistrate had caused the paddy crops on the disputed land to be cut and deposited with a third party, and after the proceedings had been drawn up between the contending parties, one of whom claimed to be in sole possession of the land and the other to be in joint possession of the same, the Magistrate finding that the parties were in joint possession of the land, and there was no likelihood of a breach of the peace, ordered the paddy to be equally divided between the two parties: *Held*, that the Magistrate had discretion to pass some order regarding the property which he found himself in custody of, and that the High Court was not bound to interfere with the order. *Ishan Chandra v. Srinath*.

18 Cr. L. J. 616 (b) :
39 I. C. 984 : 1 P. L. W. 543 :
A. I. R. 1917 Pat. 660.

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—S. 145—*Revision—High Court, interference by—Exclusion of some of the properties in dispute from enquiry—Final order by another Magistrate as to possession of excluded lands, legality of.*

A High Court will interfere in only very exceptional cases with orders made under S. 145. Where a Magistrate, after a protracted enquiry into a dispute relating to certain lands, excludes some specified plots from the scope of the enquiry, another Magistrate who succeeds him in office, cannot pass orders declaring one of the parties in the possession of such excluded plots. *Hardeo Singh v. Ram Chariter Singh.*

17 Cr. L. J. 286 :

34 I. C. 1006 : A. I. R. 1916 Pat. 418.

—S. 145—*Revision—Instituting fresh proceedings in spite of and during pendency of the Rule issued by the High Court to set aside order passed in previous proceedings, highly improper.*

When a Rule is issued by the High Court on the District Magistrate staying further proceedings, all subordinate Magistrates are bound to obey the orders of the High Court, and no subordinate Magistrate would be justified in carrying on proceedings with reference to the property in dispute which is the subject-matter of the Rule or institute fresh proceedings. *Pran Ballav v. Rash Behari.*

4 Cr. L. J. 397 :

4 C. L. J. 418.

—S. 145—*Revision—Interference—Ejection of tenant by Revenue Authority—Tenant's unlawful obstruction.*

The High Court should, except for very special reasons, not interfere on the revision side in cases under S. 145. But where the order of the Court below is wide and so much opposed to law and justice alike and the respondents' conduct has been so lawless and high-handed that to leave matters as they are, would be an unsound exercise of discretion, revisional power should be put in motion. Where a competent Revenue Officer rightly or wrongly decides that notice of ejection has been properly served upon a tenant and actually gives possession of the land to the landlord, thereafter the tenant's only lawful course is by way of appeal or such other lawful way to seek the remedy. If the tenant obstructs the landlord in any unlawful manner, the tenant is guilty of a criminal offence and is liable to be dealt with under S. 145. *Sri Ram v. Faujdar Singh.*

13 Cr. L. J. 719 :

33 P. W. R. 1912 Cr. : 193 P. L. R. 1912 :

16 I. C. 527.

—S. 145—*Revision—Irregularity amounting to want of jurisdiction—Interference by the High Court.*

A Magistrate drew up a proceeding under S. 145 but he did not serve any notice upon the first party in accordance with Sub-s. (3) nor did he fix a notice on some conspicuous place at or near the subject of dispute, nor receive a written statement from either party before he passed his final order. There was no appearance on behalf of the first party and no opportunity was given to cite witnesses or to put in any documentary evidence. But on examining one witness on behalf of the second party, the Magistrate held that there was a

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likelihood of breach of the peace and declared the second party to be in possession : *Held*, that the proceedings of the Magistrate were so irregular as to amount to a want of jurisdiction and to justify the interference of the High Court. *Sajjad Ahmed Chaudhury v. Parbati-Charan Roy.*

8 Cr. L. J. 119 :

12 C. W. N. 848 : 8 C. L. J. 71 :

35 Cal. 774.

—S. 145—*Revision—Local enquiry by Magistrate—Final order based on local enquiry—Material error in exercise of jurisdiction.*

A decision under S. 145, Cr. P. C. based on the result of a local enquiry to the disregard of evidence on the file is illegal and liable to be set aside in revision. *Lal Behari Saha v. Bejoy Shankar Sikdar.*

3 Cr. L. J. 193 :

10 C. W. N. 181.

—S. 145—*Revision.*

Magistrate assuming function of Civil Court—Order amounting to one of ejection on grounds of title cannot be interfered with in revision when effect of order has expired. *Chhakan Rani v. Raghunath Ram.*

36 Cr. L. J. 474 :

154 I. C. 184 : 7 R. P. 440 :

A. I. R. 1935 Pat. 145.

—S. 145—*Revision—Magistrate deciding question not raised in notice—Revision—Interference.*

Where in proceedings under S. 145 the Magistrate decides questions not raised in the notice to the parties, the Magistrate exceeds his jurisdiction and his order must be set aside. *Tej Bhan Singh v. Jagdish Prasad Singh.*

37 Cr. L. J. 1058 :

164 I. C. 1120 : 1935 O. W. N. 373 :

9 R. O. 138 : A. I. R. 1936 Oudh 188.

—S. 145—*Revision—Magistrate's order without giving the parties opportunity to produce evidence—Illegality of the order—Revision.*

An application was made to a Magistrate to take action under S. 145. No preliminary order was recorded by the Magistrate. The Magistrate visited the place in dispute, called upon the parties to put in statements of their cases and, without allowing either side to produce evidence, passed orders. He did not at all decide, who was in possession when he started the proceedings : *Held*, that the procedure adopted by the Magistrate was prejudicial to the parties and his order was liable to be set aside. *Jhabha v. Dalchand.*

13 Cr. L. J. 296 : 14 I. C. 760.

—S. 145—*Revision—Magistrate's refusal to procure attendance of witnesses—Revision.*

In a proceeding under S. 145, it is not obligatory on the Magistrate to enforce the attendance of any witness at the instance of the parties. Where a party, in a proceeding under S. 145 states that four material witnesses did not appear and complains that the Magistrate did not enforce their attendance, but it does not appear what evidence these witnesses were going to give and there is nothing to show what efforts the party has made to procure their attendance : *Held*, that nothing like a case of denial of justice has been made out and

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that the High Court could not interfere. *Harendra Kumar v. Gerish Chandra*.

11 Cr. L. J. 530 :
7 I. C. 798.

———S. 145—Revision—Magistrate's refusal to take action—Revision.

If in a proceeding under S. 145 the Magistrate after issuing a preliminary order and holding an inquiry, comes to the conclusion that a declaratory order is necessary and passes such an order under Cl. (6) of the section, such order is capable of revision under S. 435. Where, however, he comes to the conclusion that there is no possibility of a breach of the peace and declines to proceed under S. 145, his order is not an order under Cl. (6) of the section and is not liable to revision. *Moolyamal Topandas v. Ali Mohammad Jadore*. 26 Cr. L. J. 1333 : 89 I. C. 309 : 18 S. L. R. 278.

A. I. R. 1926 Sind 85.

———S. 145—Revision—Magistrate refusing to examine witnesses—Jurisdiction of High Court to interfere.

Where in a proceeding under S. 145 the trying Magistrate refused to examine the witnesses of a party who were present in Court: *Held*, that the refusal is in direct contravention of Cl. (4), S. 145, and the High Court has jurisdiction to interfere. *Manmatha Nath Mitter v. Baroda Prosad Roy Chowdhuri*.

1 Cr. L. J. 774 :
1 L. R. 31 Cal. 684.

———S. 145—Revision—No order in writing—Ultra vires—Revision.

Where a Magistrate has recorded no order in writing under S. 145, stating the grounds of his being satisfied that a dispute likely to cause a breach of the peace exists concerning immovable property, his proceedings are not such as are justified by Chapter XII of the Code, and may be set aside in revision as entirely without jurisdiction. *Bihari Lal v. Chajju*.

2 Cr. L. J. 222 :
2 A. L. J. 272.

———S. 145—Revision.

No question of law involved in case—Reasons of Magistrate on facts not unsound or untenable—Interference by High Court is not proper.

35 Cr. L. J. 611 :
148 I. C. 198 : 6 R. P. 426 :
A. I. R. 1934 Pat. 33.

———S. 145—Revision—Non-compliance with procedure—Its effect.

When the copy of the preliminary order is not served upon any one or affixed to some conspicuous place at or near the subject of dispute and none of the parties interested except one is heard or evidence taken: *Held*, that the proceedings to the District Magistrate is without jurisdiction and must be set aside. *Abdulla Khan v. Gunda*.

6 Cr. L. J. 113 :
7 P. R. 1907 Cr. : 2 P. W. R. 79 Cr. :
9 P. L. R. 189.

———S. 145—Revision—Omission of the Magistrate to set out in his order the matter in

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dispute—Effect of—Revision—Powers of the High Court.

Where a Magistrate acts with jurisdiction in deciding an application under S. 145, the High Court has no power to interfere in Revision. Where a Magistrate issued an order stating that he was satisfied from the information given to him that a dispute likely to result in a breach of the peace existed and he required the parties to attend his Court on a day fixed: *Held*, that his order was an order which he had jurisdiction to pass. It would have been well if he had set out in greater detail: (1) the ground of his being so satisfied, and (2) the subject-matter of dispute; but his omission to do so did not vitiate the proceedings. *Babban Singh v. Baldeo Singh*.

5 Cr. L. J. 117 :
4 A. L. J. 91 : 27 A. W. N. 50.

———S. 145—Revision—Order of Magistrate without compliance with law—Revision.

Where a Magistrate closes a proceeding under S. 145 without complying with all the provisions of the section and to the prejudice of one of the parties, a revision lies to the High Court. *Jhengar v. Bajj Nath*.

14 Cr. L. 277 :
19 I. C. 709 : 11 A. L. J. 586.

———S. 145—Revision—Order on merits—Revision.

In a case under S. 145 when the Magistrate has, on perusal of the written statements of the parties, decided that the possession of the first party is that of an agent and that the 2nd party, the principal, is entitled to possession, the decision being on the merits, the High Court will not interfere in revision. *Vaidyanath Iyer v. Suppalu Ammal*.

15 Cr. L. J. 669 :
25 I. C. 997 : 1914 M. W. N. 795 :
A. I. R. 1915 Mad. 27.

———S. 145—Revision—Order under—Revision—High Court, interference by.

No order under S. 145 can be set aside by the High Court in its revisional jurisdiction, except on the ground of want of jurisdiction or prejudice to the accused. Departure from procedure sufficiently grave might justify the High Court in holding that an order was without jurisdiction. *Bakwant v. Balkrishna*.

20 Cr. L. J. 176 :
49 I. C. 496 : A. I. R. 1919 Nag. 115.

———S. 145—Revision—Order under revision—Judicial Commissioner's Court, powers of.

The Judicial Commissioner's Court, having no authority to revise proceedings except that given to it by the Cr. P. C. has no authority to set aside an order passed by a Magistrate under S. 145. *Ibad-ullah Khan v. Rahat-ullah Khan*.

16 Cr. L. J. 541 :
29 I. C. 669 : 18 O. C. 69 :
A. I. R. 1915 Oudh 208.

———S. 145—Revision—Order under, not accurate—Omission to publish locally—Land situate in different districts—Decision as to possession—Title.

An order under S. 145 (3) is not defective merely on the ground that the property in dispute was not set forth with sufficient

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accuracy when the parties appeared to know the land perfectly well. An omission to have a copy of such order locally published does not deprive the Court of its jurisdiction when the provisions of S. 145 (1) are complied with. An order passed under S. 145 by a Magistrate under circumstances in which the passing of such order was proper, cannot be set aside in revision upon the ground that the initiatory order did not set forth, as explicitly as it might have set forth, the reasons which satisfied the Magistrate that there was a likelihood of a breach of the peace. In proceedings under Chap. XII of the Cr. P. C. where there is any doubt as to the exact local area within which the land in dispute is situate, inquiry can be made by Magistrate having jurisdiction in either of the areas in which the land may be situate. When a Magistrate, having jurisdiction under S. 145, comes to a decision as to possession within the meaning of S. 145 (4), that decision as to possession, whether right or wrong, is one which cannot be questioned in revision. *Iklas Kunwar v. Raghuraj*.

11 Cr. L. J. 69 :
4 I. C. 876 : 12 O. C. 400.

—S. 145—Revision.

Previous decision in land registration case—Weight to be attached is in discretion of Magistrate which cannot be interfered with. Keeping case pending till decision of revision against previous order is not proper. Magistrate should receive evidence produced. *Gaya Prasad Singh v. Ram Sarober Saran Singh*.

36 Cr. L. J. 624 (2) :
155 I. C. 36 : 15 P. L. T. 453 :
7 R. P. 520 : A. I. R. 1934 Pat. 471.

—S. 145—Revision—Proceedings—Magistrate awarding possession without deciding possession on date of preliminary order—Revision.

Where in a proceeding under S. 145 the Magistrate fails to decide which party was in possession on the date of the preliminary order and makes an order declaring that one of the counter-petitioners be placed in possession, he acts without jurisdiction and the High Court has power to interfere. *Peria Subba Goundan v. Sinna Zubbayya Goundan*.

23 Cr. L. J. 670 :
69 I. C. 158 : 16 L. W. 701 : 31 M. L. T. 382 :
45 M. L. J. 56 : A. I. R. 1923 Mad. 142

—S. 145—Revision—Proceedings under—Finding as to likelihood of breach of peace—Insufficient evidence—Revision.

A purchaser of agricultural land at an execution sale applied for the mutation of names in his favour. While mutation proceedings were pending, he filed an application under S. 145 alleging that a breach of the peace was apprehended because of interference in the collection of rents of the property. The Magistrate passed an interim order of attachment of the property and fixed a date for hearing the application; on the date of hearing, the Magistrate without recording any evidence but relying on the evidence recorded in the mutation proceeding came to the conclusion that the applicant was in possession and that existence of conflicting claims rendered a breach

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of the peace probable: *Held*, that the finding was virtually a finding based on no legal evidence, because the Magistrate was not justified in importing his knowledge of the evidence in the mutation proceeding, while that proceeding was yet undecided, into the case, and that the finding was open to revision. *Raza Husain v. Medhi Hasan*.

23 Cr. L. J. 684 :
69 I. C. 268 : 250 Cal. 148 :
A. I. R. 1922 (J. C.) 256.

—S. 145—Revision—Proceedings under—Interference by High Court—Practice of Sind Judicial Commissioner's Court.

It is the practice of the Sind Judicial Commissioner's Court that it will not interfere with proceedings of Magistrates under Chap. XII, Cr. P. C., in which S. 145 comes, merely because the Judges would have exercised their discretion differently upon the facts. But where it is shown that there is not upon the record material on which the Magistrate could properly have exercised jurisdiction, then the Judicial Commissioner's Court will interfere. *Muhammad Araf v. Satramdas Sakhimai*.

37 Cr. L. J. 1030 :
164 I. C. 969 : 9 R. S. 60 (2) :
A. I. R. 1936 Sind 143.

—S. 145—Revision.

Refusal to grant adjournment: *Held*, did not amount to irregularity as to render order liable to be set aside.

34 Cr. L. J. 216 :
141 I. C. 628 : 26 S. L. R. 353 :
I. R. 1933 Sind 67 :
A. I. R. 1932 Sind 145.

—S. 145—Revision.

State of emergency is for Magistrate to decide—His action should not be lightly interfered with in revision. *Prem Kaur v. Benarsi Das*.

34 Cr. L. J. 342 :
142 I. C. 207 : 34 P. L. R. 368 :
I. R. 1933 Lah. 177 :
A. I. R. 1933 Lah. 409.

—S. 145—Revision.

The question before the Court of Revision is whether any serious and substantial injustice has been done to the applicants. If none has happened, the Court will not interfere. *Kunj Behari Das v. Emperor*.

37 Cr. L. J. 694 :
162 I. C. 736 : 1936 A. L. J. 370 :
8 R. A. 892 : A. I. R. 1936 All. 322.

—S. 145—Revision.

Where the Magistrate has satisfied himself as to whether there was a likelihood of breach of peace after due inquiry, it is not necessary for the High Court to go into that question of fact. *Emperor v. Narsingdas Gangadhar*.

35 Cr. L. J. 1381 :
151 I. C. 348 : 30 N. L. R. 311 :
7 R. N. 60 : A. I. R. 1934 Nag. 112.

—Ss. 145, 146—Revision—Order under S. 146 made without reference to important documentary evidence of possession, legality of—Revision.

When S. 145 speaks of the Magistrate being

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unable to satisfy himself as to which of the parties was in actual possession of the property in dispute, it contemplates that the Magistrate has considered the evidence fairly and judicially for the purpose of arriving at a decision. Where a Magistrate in a proceeding under S. 145 writes a very short judgment without specifically referring to the important documentary evidence of possession placed before him and makes an order under S. 146 on the ground that it was doubtful which of the parties was in actual possession, the order is illegal and liable to be set aside. *Ambica Nath Roy v. Wajadali Khan Pani*.

20 Cr. L. J. 342 :
50 I. C. 822 : A. I. R. 1919 Cal. 99.
23 C. W. N. 910 :

———Ss. 145, 146—*Revision proceedings under, basis of Jurisdiction—High Court, power of interference of.*

The High Court has power of interference with orders under Chap. XII, Cr. P. C. provided they are without jurisdiction. In order to give jurisdiction for an order under S. 146, it is necessary that there should be jurisdiction over the proceedings under S. 145 and for jurisdiction under S. 145, it is essential that there should be a dispute likely to cause a breach of the peace concerning any land, etc. *Balam Singh v. Lal Babu*. 19 Cr. L. J. 105 :
43 I. C. 329 : 3 P. L. W. 386 :
A. I. R. 1918 Pat. 28.

———Ss. 145, 147, 435—*Revision—Revisional power of High Court over proceedings under Ss. 145, 147.*

With the deletion in 1923 of Sub-s. (3) of S. 435, Cr. P. C., the High Court has full revisional power over proceedings under Ss. 145 and 147 and though even now the High Court will be slow to interfere with a real exercise of discretion by the lower Courts, there can be no hesitation in interfering in revision when no discretion has been exercised at all, or when, what discretion has been exercised, has been exercised on wrong principles altogether. *Kunjo Mandal v. Sarju Ram Marwari*.

40 Cr. L. J. 538 :
181 I. C. 126 : 20 P. L. T. 164 :
5 B. R. 539 : 11 R. P. 573 :
A. I. R. 1929 Pat. 206.

———Ss. 145, 148—*Revision—Proceedings under S. 145—Local inspection, unrecorded—Order illegal.*

Where in proceedings under S. 145, the Magistrate makes a local inspection, but without making a record of the result of his observations he uses them in substitution of, and in order to supplement the evidence recorded by him, the proceedings are vitiated. *Ramsundar v. Kesho Prasad Singh*.

25 Cr. L. J. 545 :
81 I. C. 33 : 1922 A. I. R. Pat. 294.

———Ss. 145, 244, 439—*Revision—Proceedings under S. 145—Parties, right of, to produce witnesses—Court, whether can limit number of witnesses—Revision.*

Ordinarily, in a proceeding under S. 145 the Court has jurisdiction to curtail the number of unnecessary witnesses upon the ground

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that the examination of those witnesses will delay or defeat the ends of justice. Subject to this, however, the parties have the undoubted right to examine their witnesses and this right cannot be arbitrarily curtailed by the Magistrate. The refusal of a Magistrate to examine more than a certain number of witnesses in a proceeding under S. 145 amounts to a failure to exercise jurisdiction and entitles the High Court to interfere in revision. *Biswanath Mahapatra v. Shivanand Saraswati*.

22 Cr. L. J. 430 :
61 I. C. 718 : 2 P. L. T. 330 :
A. I. R. 1921 Pat. 308.

———Ss. 145, 423 (1) (d), 439—*Receiver—Dispute with regard to immovable property—Order under S. 145—Revision—Receiver, whether can be appointed pending disposal of revision-petition.*

The High Court has no jurisdiction to appoint a Receiver pending the disposal of a criminal revision-petition filed against the order of a Magistrate passed under S. 145. *Marudayya Thevar v. Shanmugasundra Thevar*.

27 Cr. L. J. 126 :
91 I. C. 702 : 49 M. L. J. 593 :
1925 M. W. N. 772 : 22 L. W. 723 :
A. I. R. 1926 Mad. 139.

———Ss. 145, 435—*Revision—High Courts Act of 1861 (21-5 Vic. c. 101), S. 15—Magistrate's order under S. 145, Cr. P. C.—High Court's power to interfere—Revision.*

Where the proceedings are in intention, in form, and in fact, proceedings under Chap. XII, Cr. P. C. by a Magistrate duly empowered to act under that Chapter, the High Court has no power of revision either under the Code or under S. 15 of the High Courts Act, 1861. *Jhingai Singh v. Ram Partab*.

9 Cr. L. J. 382 :
1 I. C. 762 : 6 A. L. J. 113 : 31 All. 150.

———Ss. 145, 435—*Revision—Magistrate—Order—Jurisdiction—Revision.*

Where the proceedings before a Magistrate are really within the purview of S. 145, the High Court cannot under S. 435 interfere in revision. But it can interfere where the proceedings merely purport to be under that section and disclose an exercise of powers not conferred by it. *In re : Rasul Jamal*.

2 Cr. L. J. 451 :
7 Bom. L. R. 475.

———Ss. 145, 435—*Revision—Magistrate's order—Revision.*

A Magistrate's order under S. 145 cannot be interfered with by the High Court in revision. *Syeda Khatun v. Lal Singh*. 15 Cr. L. J. 572 :

25 I. C. 324 : 12 A. L. J. 344 : 36 All. 233 :
A. I. R. 1914 All. 71.

———Ss. 145 and 435—*Revision—Order ultra vires—Revision—Joint trial, illegality of—Possession, actual or constructive.*

S. 435 of the Cr. P. C. does not exclude the jurisdiction of the High Court to revise an order of the Magistrate which is illegal and irregular, though it purports to have been made under S. 145 (2). Where several accused persons are found to be in possession of

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different and separate pieces of land alleged to be the property of the complainant, the accused cannot be tried jointly under S. 145; (3) Where the Magistrate finds that the dispute is between the owner and the occupant of the land, or in other words, between the persons in actual and in constructive possession, the Magistrate should maintain the persons in actual possession. *Crown v. Jamal*.

9 Cr. L. J. 265 :
1 S. L. R. 25.

—Ss. 145, 435—Revision—Power of High Court to interfere with order passed under S. 145, Government of India Act, 1915 (5 & 6 Geo. V. c. 61), S. 107—Superintendence, meaning of—Jurisdiction—Irregularity—Prejudice, meaning of—Decree of Civil Court, effect of, in proceedings under S. 145.

High Courts in India which have no statutory power of superintendence cannot, under S. 435, Cr. P. C., send for the record of proceedings which are in substance and in fact proceedings under Chapter XII of the Code and were conducted by a Magistrate who had jurisdiction. A Chartered High Court has power under S. 107 of the Government of India Act to interfere with an order passed by a Magistrate under S. 145 where the Magistrate has acted without jurisdiction or has exceeded his jurisdiction. It will not interfere merely because there has been an irregularity in the proceedings or an erroneous decision on a question of fact or law, but it can and will interfere where there has been a material irregularity, which amounts to a refusal to exercise or an usurpation of jurisdiction or which has prejudiced a party to the proceedings. In order to establish prejudice it is not sufficient to show that there has been an erroneous decision on a question of law or fact, but it must be shown that the irregularity has prevented a party from having a fair trial. No hard and fast rule can be laid down that a Magistrate in proceedings under S. 145 must give effect to a recent decision or proceeding of a Civil or Criminal Court. *Parmessar Singh v. Kailaspati*.

17 Cr. L. J. 369 :
35 I. C. 801 : 1 P. L. J. 336 :
A. I. R. 1916 Pat. 292.

—Ss. 145, 435—Revision—Proceedings under S. 145—Revision—High Court, interference by.

Where a Magistrate duly empowered to act under Chapter XII, Cr. P. C., takes proceedings which are in intention, in form and in fact proceedings under that Chapter, the High Court has no power to send for those proceedings either under the Code, or under S. 15 of the High Courts Act or under S. 107 of the Government of India Act. *Matukdhari Singh v. Jaisari*.

18 Cr. L. J. 828 :
41 I. C. 652 : 15 A. L. J. 576 : 39 All. 612 :
A. I. R. 1917 All. 220.

—Ss. 145, 435, 439—Revision—Opinion of Magistrate, expression of—Final orders, absence of—Revision.

Where, in proceedings under S. 145 a Magistrate merely expresses his opinion on the documents produced and their legal effect

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without passing final orders and there is no award of possession to either party, the High Court cannot interfere in revision. *In re : Ravri Manikyam*.

19 Cr. L. J. 63-A :
43 I. C. 95 : 1918 M. W. N. 37 :
A. I. R. 1918 Mad. 164.

—Ss. 145, 435, 439—Revision—Proceedings under Chapter XII—Order passed without taking evidence—Revision.

A High Court cannot ordinarily interfere in revision under Ss. 435 and 439, Cr. P. C. with proceedings under Chap. XII, but it has power to interfere where the subordinate Court has passed an order without giving the parties an opportunity of calling evidence. Where in a proceeding under S. 145 a local inquiry is directed to be made, the result of the local enquiry becomes a part of the proceeding and the party affected by it is entitled to be made acquainted with the result thereof and should be given an opportunity of rebutting the report. *Jaiwanti v. Ram Rao*.

20 Cr. L. J. 107 :
48 I. C. 987 : A. I. R. 1918 Nag. 136.

—Ss. 145, 435 (3)—Revision—High Court's power of revision.

Where proceedings taken by a Magistrate under Chapter XII of the Cr. P. C. are proceedings under that chapter in intention, in name and in fact, the High Court's interference with them in revision is excluded by S. 435 (3) of the Code. S. 15 of the High Courts Act of 1861 does not override the provisions of S. 435 (3). *Maharaj Tewari v. Har Charan Rai*.

1 Cr. L. J. 339 :
I. L. R. 26 All. 144 : 1903 A. W. N. 212.

—Ss. 145, 435 (3)—Revision—Initial order, failure to make—Revision.

Where in a proceeding under S. 145 the Magistrate fails to make the initial order and has also not made at any subsequent stage of the proceedings an order which essentially complies with the requirements of Sub-s. (1) the proceedings are with jurisdiction. In circumstances such as the foregoing, the High Court is not precluded by S. 435 (3) of the Cr. P. C. from interfering in revision. *In re : P. N. Palia Ram*.

24 I. C. 751 :
C. 1001 : 20 Cr. W. R. Lah. 66 :
A. I. R. 1917 Lah. 91.

(3)—Revision—Proceedings under S. 145—Dispute, finding as to whether necessary—High Court, power of interference of.

S. 145 does not require a Magistrate to give in his final order a finding that there is a likelihood of a breach of the peace. After he has made an order in writing under Sub-s. (1) of S. 145, the only matter which he has to determine is the question of the possession of the disputed property. Having regard to the provisions of S. 435 (3) of the Cr. P. C., the High Court has no power to interfere in revision with an order under S. 145 even though such order was made without affording the aggrieved party an opportunity of producing evi-

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dence, *Jhanda Ram v. Topan Ram*.

23 Cr. L. J. 424 :
67 I. C. 584 : 4 U. P. L. R. Lah. 82 :
A. I. R. 1922 Lah. 454.

———Ss. 145, 435 (3)—*Revision—Proceedings under S. 145—High Court, power of interference of.*

Orders passed under Chapter XII, Cr.P.C. are not subject to revision, being expressly excluded from the operation of S. 435 (3). But in order to make the provisions of S. 435 (3), applicable, the proceedings must be proceedings under Chapter XII of that Code in fact, and not only in name. *Nga Hapay v. Nga Aung Baw*.

19 Cr. L. J. 381 :
44 I. C. 685 : 3 U. B. R. 1917 35 :
A. I. R. 1918 U. Bur. 4.

———Ss. 145, 435 (3), 503—*Revision—proceedings under S. 145—High Court, power of interference of—Previous trial, whether bar to proceedings.*

An order passed under the provisions of S. 145 and proceedings under Chapter XII, Cr. P. C. are not subject to revision in view of the terms of S. 435 (3). But that section does not deprive the High Court of jurisdiction unless the proceedings are in fact, and not merely in name, proceedings under Chapter XII of the Code. Proceedings under S. 145 do not constitute a trial and are not in the nature of a trial. They are in the nature of Police proceedings in order to prevent the commission of offences, and the fact that there have been criminal charges brought by one or other of the parties against each other so far from being a bar to action under Chapter XII, constitutes evidence which may possibly prove the danger of disputes which it is desired to prevent. *U. B. Nga Chit v. Nga Ya*.

19 Cr. L. J. 389 :
44 I. C. 741 : 3 U. B. R. 1917 33 :
A. I. R. 1918 U. Bur. 8.

———Ss. 145, 439—*Revision—Criminal cases—Failure to observe prescribed procedure, effect of.*

Where before passing an order under S. 145, the Magistrate failed to observe the procedure prescribed by law, viz., no preliminary order in writing was made by the Magistrate, nor was a copy of the order laid upon the parties, or published in the local inspection was ultra vires. *Budhan v. ...*

16 Cr. L. J. 628 :
22 I. C. 12 : 169 P. L. R. 1915 :
32 P. W. R. 1915 Cr. :
A. I. R. 1915 Lah. 232.

———Ss. 145, 439—*Revision—Dispute concerning immovable property—Order confirming possession—Interference by High Court.*

In a proceeding under S. 145 it is for the Magistrate to decide which party was in possession at the date of the initial order. If the finding of the Magistrate as to possession is based on no material at all, the High Court will interfere with his order in revision, but if there is material before the Magistrate, he is the only Judge as to whether the material is sufficient, or not, and if upon the material placed before him he is satisfied that one of

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the parties is in possession, his order cannot be deemed to be without jurisdiction. *Abdul Satar v. Udha Lal*.

27 Cr. L. J. 471 :
93 I. C. 695 : 8 L. L. J. 47 :
27 P. L. R. 102.

———Ss. 145, 439—*Revision—Failure to consider evidence—Effect.*

A general remark in an order under S. 145 that the documentary evidence is not relevant and that the oral evidence is not satisfactory, without referring to the evidence and without giving reasons, is not a disposal of the evidence upon the record. It amounts to a refusal to exercise the jurisdiction vested in a Magistrate by law and is open to revision. *Lakhpur Gope v. Emperor*.

24 Cr. L. J. 432.
72 I. C. 544 : 1 P. L. R. 152 Cr. :
4 P. T. 579 : A. I. R. 1923 Pat. 588.

———S. 145, 439—*Revision—Finding on point of possession—Interference by High Court in revision—Propriety of.*

Finding of a Magistrate on the point of possession is a finding of fact with which the High Court ordinarily refuses to interfere; but where there are certain circumstances which completely vitiate the findings of the Magistrate in that he does not keep in view that it is the bounden duty of a Criminal Court to obey the orders of the Civil Court and to respect the *dakhaldehane* given by the Civil Courts, the High Court will interfere even though the Magistrate does not commit any error of jurisdiction. *Bahali Singh v. Safayat Gop.*

39 Cr. L. J. 379 :
173 I. C. 756 : 10 R. P. 449 : 4 B. R. 335 :
A. I. R. 1938 Pat. 105.

———Ss. 145, 439—*Revision—Magistrate, power of, to decide whether he has jurisdiction—Revision.*

A Magistrate has jurisdiction to decide whether the land, the subject-matter of a proceeding under S. 145, is within the local limits of his jurisdiction, and where rightly or wrongly, he comes to the conclusion that the land is not within his jurisdiction and passes an order dropping the proceedings, his act does not amount to a failure to exercise jurisdiction, to enable the High Court to interfere in revision. *Rajani Kanta De v. Debendra Nath Singh Roy*.

22 Cr. L. J. 392 :
61 I. C. 520.

———Ss. 145, 439—*Revision—Magistrate refusing to make enquiry—Revision.*

Where a Magistrate refuses to make an inquiry under S. 145 (4), his proceeding cannot be held to be one under that section so as to bar the jurisdiction of the High Court to revise his order. *Nilkanth v. Suryabhan*.

24 Cr. L. J. 880 :
75 I. C. 80 : A. I. R. 1923 Nag. 297.

———Ss. 145, 439—*Revision—Non-compliance with provisions of S. 145, Fatal defect—Revision.*

Where a Magistrate proceeding under S. 145 does not strictly comply with its provisions and fails to find that the dispute between the parties concerning the property in question is

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likely to occasion a breach of the peace, his order is without jurisdiction and bad in law and is consequently, liable to be set aside on revision. *Teku v. Buta Singh*.

16 Cr. L. J. 206 :

27 I. C. 766 : 9 P. W. R. 1915 Cr. :

92 P. L. R. 1915 : A. I. R. 1915 Lah. 404.

—Ss. 145, 439—Revision—Omission to follow procedure laid down therein—Revision.

An order purporting to be one under S. 145 passed without following the procedure laid down therein and tacked on to an order dismissing a complaint under S. 297, Penal Code, is illegal and without jurisdiction and liable to be set aside on revision. *Ali Shah v. Emperor*.

11 Cr. L. J. 422 :

6 I. C. 955 : 24 P. W. R. 1910 Cr.

—Ss. 145, 439—Revision—Order under S. 145—Interference—Procedure in disputes relating to immovable property—Parties in joint possession—Partition chitthi, effect of.

A High Court will interfere with an order under S. 145 putting one party in possession of the disputed property only if the Magistrate has acted illegally or in an irregular manner. Where the parties were in joint possession and the Magistrate placed the property under attachment until the allotment of property in partition, and one of the parties was subsequently put in possession on the basis of the registered *chitthi*: *Held*, that the order was not illegal or irregular and should not be set aside. In proceedings under S. 145 the first thing to be decided is whether there is a dispute likely to lead to a breach of the peace, and secondly, which of the parties was in actual possession. *Balbhaddar Singh v. Aditya Prasad*.

30 Cr. L. J. 381 :

114 I. C. 810 : 6 O. W. N. 17 :

I. R. 1929 Oudh 202 :

A. I. R. 1929 Oudh 826.

—Ss. 145, 439—Revision—Restitution of disputed immovable property to the person dispossessed—Interference.

Where a Magistrate passed an order under S. 145, but finding it unnecessary to take further proceedings, ordered the restitution of the land to the person dispossessed, such order being passed without a judicial investigation: *Held*, that the order restoring possession having been carried out, no interference with the order was necessary. *Puttamadiah v. Subbama*.

9 Cr. L. J. 336 :

12 M. C. C. R. 99.

—Ss. 145, 439—Revision—Service of process, method of—One party not served with notice—Proceedings, legality of—Revision.

The law of service of a summons in criminal cases is on the same lines as the rules for the service of summons in a civil case. In an inquiry under S. 145, both sides must be heard: consequently if one of the parties to the enquiry is not served and the Magistrate proceeds with the case, there is a defect of jurisdiction, and his order is liable to be set aside in revision by the High Court. *Tukaram Kunbi v. Panjabrao*.

20 Cr. L. J. 816 :

53 I. C. 720 : A. I. R. 1918 Nag. 46.

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—Ss. 145, 439, 537—Revision—Charter Act, S. 15—Jurisdiction—Interference by High Court.

A petition does not lie under S. 439 Cr. P. C. to revise proceedings under S. 145, Under S. 15 of the Charter Act, it has never been customary to interfere except when it can be said that the Magistrate's order was passed without jurisdiction. The failure by a Magistrate to comply with any provision of the Code as to his preliminary procedure does not destroy his jurisdiction to take action under the Court. *Semle*:—Such irregularity would be covered by S. 537, Cr. P. C. The essential requisite to give a Magistrate jurisdiction under S. 145, is that he must be satisfied from information of some sort that a dispute exists likely to cause a breach of the peace concerning land or water or the boundaries thereof in his jurisdiction. Once he is so satisfied, his jurisdiction is complete and his subsequent action must be considered in relation to procedure, not jurisdiction. *Kamal Kutty v. Udayavarma Raja*.

13 Cr. L. J. 753 :

17 I. C. 65 : 12 M. L. T. 439 : 24 M. L. J. 499 : 1912 M. W. N. 1154.

—Ss. 145 (1) and 439 (3)—Revision—Jurisdiction to interfere with an order purporting to be passed under S. 145.

Where an order under S. 145 (1) was found to be insufficient or defective in the sense that it gave no information as to the subject of the dispute and left the persons to whom it was issued quite in the dark as to the property in regard to which they had to set forth their respective claims: *Held*, that the inadequacy of such order gave the High Court jurisdiction to interfere *non obstante* Cl. (3) of S. 439 of the Code. *In the matter of the Petition of T. A. Martin*.

1 Cr. L. J. 917 :

24 A. W. N. 234 : I. L. R. 27 All. 296.

—S. 145 (1), (3)—Revision—Omission to record preliminary order—Magistrate explaining matters to parties.

The omission to frame an order under S. 145 (1) or to serve a copy of the order on the parties as required by S. 145 (3) does not necessarily invalidate proceedings under S. 145. Where, therefore, the parties appeared before a Magistrate who explained matters to them fully and they evidently understood everything that was requisite: *Held*, that there was no sufficient cause for interference. *Nur Bakhsh v. Emperor*.

18 Cr. L. J. 633 :

39 I. C. 1001 : 26 P. W. R. 1917 Cr. :

A. I. R. 1917 Lah. 35.

—S. 145 (3)—Revision—Omission to serve notice—Grave irregularity—Prejudice to parties—Procedure.

When a proceeding is drawn up under S. 145, the omission to serve it upon the parties or affix it on some place in the locality, amounts to grave irregularity, and in case of prejudice to any party, vitiates the order under S. 145. A High Court has jurisdiction to set aside the order of a Magistrate when the provisions of S. 145 (3) have not been complied with and the parties are prejudiced thereby. The procedure laid down in S. 145 is indeed summary, but should not be cut too short. *Basawan Pandey v. Tilok Gope*.

24 Cr. L. J. 345 :

72 I. C. 345 : 1 Pat. L. R. 130 Cr. :

4 P. L. T. 723 : 1922 A. I. R. Pat. 77.

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———**S. 145 (4)—Revision—Magistrate's refusal to examine witnesses—Failure to record finding as to possession at date of preliminary order—Declining jurisdiction—Irregularity.**

If a Magistrate refuses to examine, except on the ground of vexation or delay, the witnesses tendered by parties to proceedings under S. 145 or fails to record a finding as to which party was in possession at the date of his preliminary order, he fails to exercise a jurisdiction vested in him by law, and the High Court would be justified to interfere in revision. *Obiter.*—The High Court has jurisdiction to interfere in cases of illegalities or manifest irregularities in procedure committed by the subordinate Courts in proceedings under S. 145. *Marudanayakam Pillai v. Mohammad Rowthen*.

17 Cr. L. J. 217 :

34 I. C. 329 : A. I. R. 1917 Mad. 594.

———**S. 145—Scope—Dispute as to possession of minerals—Proceedings.**

Proceedings under S. 145 can be appropriately instituted in cases of disputes as to the possession of minerals. *Ranchi Zamindari Co., Ltd. v. Pratap Udainath Sahi Deo*.

40 Cr. L. J. 631 :

182 I. C. 89 : 20 P. L. T. 105 :

18 Pat. 215 : 5 B. R. 711 : 11 R. P. 657 :

A. I. R. 1939 Pat. 209.

———**S. 145—Scope—Immovable property.**

Dispute as to lease of *lac* produce is dispute with regard to land. *Emperor v. Narsingdas Gangadhar*.

35 Cr. L. J. 1381 :

151 I. C. 348 : 30 N. L. R. 311 :

7 R. N. 60 : A. I. R. 1934 Nag. 112.

———**S. 145—Scope.**

Per *Rankin, C. J.*—S. 145 is not the only weapon with which a Magistrate is entrusted for the maintenance of the peace in connection with dispute over land. He has a power specially adapted to cases of urgency under S. 144 and he has a power under S. 107 which, in some cases, will suffice. It is clear enough that whatever force be given to the word "shall" in the first Sub-sec. of S. 145, it need in no way embarrass any Magistrate in exercising his discretion. If he is of opinion that an order under S. 107 will meet the case and proposes to make one, he has only to make it to justify himself in holding that the dispute no longer is likely to cause a breach of the peace; he can do this either without taking action under S. 145 or at any stage of proceedings under that section. If he thinks that the case calls for action under S. 144, he can take such action and if he thinks this sufficient to prevent the likelihood of a breach of the peace, he can postpone all action under S. 145. *Agni Kumar Das v. Mantazaddin*.

30 Cr. L. J. 69 :

113 I. C. 181 : 48 C. L. J. 193 :

32 C. W. N. 1173 : I. R. 1929 Cal. 82 :

56 Cal. 290 : A. I. R. 1928 Cal. 610.

———**S. 145—Scope—Proceedings under S. 145, termination of.**

When there is a clear dispute regarding the possession of land, the proper section to proceed under is S. 145, which not only is more

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effective in order to prevent a breach of the peace but also is one that causes the least prejudice to the contending parties. *Himmat Mian v. Emperor*.

19 Cr. L. J. 712 :

46 I. C. 296 : A. I. R. 1918 Pat. 500.

———**S. 145—Scope of—Absolute continuous possession dealt with—Party claiming right of easement not to be made party—Public if may be declared to be in possession.**

S. 145 only deals with rights of absolute continuous possession of immovable property, and proceedings under that section are entirely without jurisdiction unless they are directed to the decision of absolute continuing possession of either party. The right of a party, who does not claim anything beyond the right to worship on one day in the year and the right to make due and proper preparations for the holding of that worship by erecting huts for the purpose of holding the *pūja*, is in the nature of an easement and not in the nature of possession, and, therefore, such a party cannot be made a party to a proceeding under S. 145. The public cannot be declared to be in possession of any piece of land, for if that be done, then both parties to the dispute are included in that term and the possession, therefore, is joint possession and the jurisdiction of the Court under S. 145 is ousted. *Manik Chandra Charkravarti v. Preo Nath Kuar*.

13 Cr. L. J. 789 :

17 I. C. 533 : 17 C. W. N. 205 :

17 C. L. J. 397.

———**S. 145—Scope of—Actual physical possession, consideration of—Possession, nature of, irrelevant—Written statement—Jurisdiction.**

S. 145 is concerned solely with the fact of actual physical possession whether lawful or unlawful, whether in contemplation of law enjoyed by the possessor in his own right or on behalf of others. Therefore, in proceedings under that section any question as to whether possession is on behalf of others or in one's own right is quite irrelevant. Questions as to the rights of parties raised by their written statements under S. 145, are quite irrelevant; as such proceedings are initiated by the Magistrate in the interests of public order and tranquillity and it is his preliminary order that settles the actual issue between the parties and founds his jurisdiction. *Narayana Asari v. Kandasami Asari*.

16 Cr. L. J. 525 :

29 I. C. 541 : 3 L. W. 154 :

A. I. R. 1916 Mad. 967.

———**S. 145—Scope of.**

An inquiry under S. 145 should, as far as possible, be confined to the question of possession only. *Gursahi Singh v. Meghu Mahaton*.

36 Cr. L. J. 513 :

154 I. C. 426 (b) : 16 P. L. T. 19 :

7 R. P. 471 : A. I. R. 1935 Pat. 83.

———**S. 145—Scope of—Dispute embracing several items of property—Lumping items together, legality of—Possession, decision as to, in absence of parties, legality of.**

Where a dispute embraces several items of property, they may be lumped together in a single inquiry provided the disputants are the

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same for each item. Where, however, the disputants on one or both sides are different for different items of property, the disputants concerned in each item should be given an opportunity of being heard before a decision is arrived at on the question of actual possession, because in such a case, the Magistrate would have no jurisdiction to decide the question of actual possession of a number of items after only hearing the parties who claimed possession of one or two of them. *Velu Malunarayan v. Kuppuswamy Pillai*. 22 Cr. L. J. 90 :

59 I. C. 378 : 12 L. W. 315.

—S. 145—Scope of—Dispute regarding offerings of idol, nature of.

The right to perform the *pūja* of an idol or to have a share of the offerings made to the idol cannot be said to be a right of user of land, as provided in S. 145. Therefore a dispute relating to such a right does not come within that section. *Surendra Nath Banerjee v. Shashi Bhushan Sarkar*. 27 Cr. L. J. 239 :

92 I. C. 223 : 52 Cal. 959 :

42 C. L. J. 127 : A. I. R. 1926 Cal. 437.

—S. 145—Scope of—Movable property, attachment of.

A Magistrate has no jurisdiction to attach movable property under the provisions of S. 145. *Arjun Singh v. Chandani Kuar*.

22 Cr. L. J. 625 :

63 I. C. 321 : 24 O. C. 167 :

A. I. R. 1921 Oudh 6.

—S. 145—Scope of—Order of ejectment, whether competent—Magistrate, whether can decide claims to hold possession and reap crops—Irregularity—Jurisdiction—Revision—High Court, power of interference of.

The scope of S. 145 is merely a determination of actual possession for the purpose of preventing a breach of the peace pending a decision on the merits in a civil dispute. The section does not provide for eviction by the Magistrate or for a decision by him of any claims to a right to hold possession or to reap crops. Cl. (1) of S. 145 is imperative with regard to the necessity of serving an order in writing on the parties. The mere omission to regard such an order gives the Chief Court power to interfere in revision. Where the proceedings under S. 145 are irregular and the Magistrate has acted without jurisdiction, the Chief Court can interfere in revision. It is not sufficient for a Magistrate to come to a general finding that certain fields are in the possession of one party and certain others in the possession of the other and that the latter has taken wrongful and forcible possession. The date of such forcible possession must be determined and unless there is a finding that the forcible possession occurred in the case of all fields at the same time, there must be a finding as to the date of possession with regard to each field separately. *Kaku v. Harnaman*.

18 Cr. L. J. 660 :

40 I. C. 208 : 28 P. W. R. 1917 Cr :

40 P. R. 1917 Cr. : A. I. R. 1917 Lah. 171.

—S. 145—Scope of—Possession.

In proceedings under S. 145, Courts have no

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concern with title. Possession is the only matter which the Magistrate should concern himself with. Where there has been no dispossession, the case is not covered by S. 145 (4) and the question of dispossession does not arise. *Natho Khan v. Emperor*. 34 Cr. L. J. 216 :

141 I. C. 628 : 26 S. L. R. 353 :

I. R. 1933 Sind 67 : A. I. R. 1932 Sind 145.

—S. 145, scope of—Revision—Jurisdiction—Magistrate acting under S. 145—Preliminary order—Grounds not recorded, effect of.

The essential requisite to give a Magistrate jurisdiction under S. 145 is that he must be satisfied from information of some sort that a dispute exists likely to cause a breach of the peace concerning land or water, or the boundaries thereof, within his jurisdiction. There is nothing in S. 435 (3) to prevent a non-chartered High Court interfering in proceedings which purport to be proceedings under Chap. XII, in a case where the Magistrate has initiated those proceedings without jurisdiction to do so. The mere mention of an order as being made under S. 145 will not of itself make that order an order under Chap. XII, Cr. P. C. But it is to be presumed that the work of a Court is done decently and in order, and if a Magistrate has jurisdiction, he can enter the ring-fence of Chap. XII, Cr. P. C., and he cannot be followed nor his procedure examined. An omission to record grounds in the preliminary order made by a Magistrate under S. 145 does not affect his jurisdiction. *Udai Bhan Pratab Singh v. Ram Samajh*. 18 Cr. L. J. 100 :

37 I. C. 308 : 30 O. L. J. 546 : 19 O. C. 136 :

A. I. R. 1917 Oudh 400.

—S. 145—Scope of.

S. 145 contemplates the existence of a dispute regarding property likely to lead to a breach of the peace and proceedings thereunder are only initiated for this purpose. When all likelihood of a breach of the peace has disappeared, all necessity ceases for maintaining any orders passed on account of the dispute. *Khushi Ram v. Emperor*.

22 Cr. L. J. 4 :

59 I. C. 36 : 1 Lah. 451.

—S. 145—Scope of enquiry—Decree of Civil Court involving adjudication of title, how far binding on Criminal Court.

What a Magistrate has to determine in proceedings under S. 145 is which of the two contending parties was in peaceable possession of the property in dispute at the date of the preliminary order. It is quite immaterial, whether such possession is lawful or unlawful. In order that a decree of a Civil Court may be binding on a Magistrate as conclusive evidence of possession, it has to be established that the decree is one for possession of the property in suit, and that the decree-holder obtained possession through Court in execution of such a decree, the Magistrate being bound to maintain the order for delivery of possession contained in such a decree. But an incidental adjudication on the question of ownership in a suit for damages will not bar a Magistrate from deciding a question of possession under S. 145. It is, no doubt, open

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to a Magistrate to take and consider the evidence of title to enable him to adjudicate upon the question of actual possession, but neither proof of title nor an adjudication on the question of title in favour of a party constitutes proof of actual possession. *Shriram v. Emperor*.

29 Cr. L. J. 902 :
111 I. C. 662 : 24 N. L. R. 148 :
A. I. R. 1928 Nag. 284.

———S. 145—Scope of inquiry—Question of possession—Breach of peace—Final order, contents of.

In proceedings under S. 145, a Magistrate should not go into the question of title; his function is merely to go into the question of possession. A final order should explain how a breach of peace is to be apprehended between the parties and contain a decision as to who was in possession of property on the date of the first order. *Amir Hassan v. Qadir Baksh*.

28 Cr. L. J. 328 :
100 I. C. 712 : 28 P. L. R. 107 :
7 A. I. Cr. R. 269.

———Ss. 145, 146—Scope, standard of proof, in proceedings under S. 145—Decision on balance of evidence—Attachment when should be passed—Evidence of first party although weak, yet preferable to evidence of second party—Order.

In a proceeding under S. 145, it would not be proper to set up any absolute standard of proof and to say that evidence not up to this standard will not be acted on by the Court for the purpose of an order under that section. The proceeding under S. 145 can be decided on the balance of evidence and if the Magistrate can see his way to express an opinion that the evidence of one side is superior to the evidence on the other side, then he is entitled to and should, if possible, form a definite opinion on the question of fact who is in possession. An order under S. 146, attaching the property, is a desperate remedy for cases in which the Magistrate finds it quite impossible to choose between the conflicting evidence adduced by the two sides. It would be regrettable if it were necessary to pass such an order when the first Court has been able to make up its mind in favour of one party. If the Magistrate thinks that the evidence for the first party, weak, though it might be, is preferable to the evidence for the second party, it is the Magistrate's duty to give a decision in favour of the first party. *Nandkishore Singh v. Bigan Lohar*.

41 Cr. L. J. 101 :
184 I. C. 817 : 6 B. R. 81 : 21 P. L. T. 306 :
12 R. P. 281 : A. I. R. 1940 Pat. 113.

———Ss. 145, 253, 494 (a)—Scope—Warrant-case—Discharge—Fresh complaint—Succession (Property Protection) Act (XIX of 1841)—Dispute as to succession of large estate—Remedy.

An accused person cannot be tried in several Courts on the same facts, although the complainants in the several cases may be different. An order of discharge under S. 494 (a) or under S. 253, Cr. P. C. in a warrant-case does not prevent the Magistrate from taking cognisance of a complaint on the same fact

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if there are new materials before the Magistrate which were not before him formerly. The Succession (Property Protection) Act, XIX of 1841, has a larger scope than S. 145, Cr. P. C. and is a more appropriate remedy in cases involving dispute as to succession in large estates involving breaches of the peace. *Biso Ram v. Emperor*.

23 Cr. L. J. 236 :
66 I. C. 76 : A. I. R. 1922 Pat. 372.

———Ss. 145, 435, 439—Scope—Title and possession, question of, decided by Civil Court—Proceedings under S. 145, whether competent—Jurisdiction of Criminal Courts—Revision.

Where a Civil Court has decided the question of title to property which forms the subject of proceedings under Chap. XII, Cr. P. C. and has directed that possession thereof be given to a particular person, the Criminal Court has no jurisdiction to initiate fresh proceedings under S. 145 in respect of the same property. Such a proceeding is without jurisdiction and is liable to be quashed in revision by the High Court. Proceedings under S. 145 must be in intention, in form and in fact proceedings under Chap. XII by a Magistrate duly empowered to act under that Chapter. *Brahma Nath v. Sundar Nath*.

20 Cr. L. J. 410 :
51 I. C. 170 : 17 A. L. J. 434 :
A. I. R. 1919 All. 311.

———Ss. 145, 526 (8)—Scope—S. 526 (8), whether applies to proceedings under S. 145—Application for transfer—Magistrate, whether bound to grant adjournment.

Cl. 8 of S. 526 is not applicable to proceedings under S. 145 and it is not, therefore, obligatory on a Magistrate in a proceeding under S. 145 to grant an adjournment on receipt of an application intimating to him that an application would be made for transfer under S. 526. *Jamir Sheikh v. Murari Mohan Choudhury*.

31 Cr. L. J. 698 :
124 I. C. 522 : 50 C. L. J. 331 :
34 C. W. N. 59 : 57 Cal. 869 :
A. I. R. 1929 Cal. 778.

———S. 145—Scope.

Where the petition under S. 145 (1), contains no information that a dispute likely to cause a breach of the peace existed, the Magistrate is not justified in taking action under S. 145. *Dr. A. Meah v. Steel Brothers & Co., Ltd.*

39 Cr. L. J. 708 :
176 I. C. 266 : 11 R. Rang. 40 :
A. I. R. 1938 Rang. 299.

———S. 145 (4)—Scope of inquiry—Magistrate's duty.

Under Sub-s. 4 of S. 145, a Magistrate has to decide the question of possession without reference to the merits of the claim of any party. *Haziri Gope v. Bibi Amna*.

29 Cr. L. J. 724 :
110 I. C. 50 : 10 P. L. T. 47.

———S. 145, Sub-s. (4)—Scope—Witnesses present to be examined on date originally fixed—Necessity for further evidence—Adjournment—Issue of process for attendance of witnesses.

S. 145 (4) contemplates that on the date

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originally fixed, the Magistrate should take all the evidence that is produced before him, and unless he considers it necessary for good reasons to require further evidence, he should decide then and there, if he can, which of the parties is in actual possession. Even if the Magistrate goes out of his way to issue process for the attendance of witnesses after the date on which the case should have been disposed of, he is not bound to exhaust the process of the Court in order to enforce the attendance of such of those witnesses as did not appear. *Haripada Mandal v. Sanyasi Charan Biswas*.

14 Cr. L. J. 40 :
18 I. C. 214 : 17 C. W. N. 144 :
17 C. L. J. 610.

—S. 145 (4), Proviso—Scope and applicability—Magistrate deciding complainant to be in possession at date of order under Sub-s. (1)—Whether should see if any of the parties have been dispossessed within two months next before the order.

The procedure prescribed in the Proviso to S. 145 (4) is not mandatory and if a Magistrate chooses to act under Sub-s. (4), i. e., decides the question which of the parties was in possession at the date of the order made under Sub-s. (1), it is not necessary to see whether or not any of the parties has been dispossessed within two months next before the date of the order. Where the Magistrate had decided on the evidence before him that the complainants are in possession, no question arises as to who was in possession two months before the passing of the preliminary order. *Mohammad Nasir v. Dwarika Singh*.

39 Cr. L. J. 963 :
177 I. C. 974 : 1938 O. W. N. 1018 (2) :
11 R. O. 81 : 1938 O. L. R. 459 :
A. I. R. 1939 Oudh 31.

—Ss. 145, 107—Simultaneous proceedings—Simultaneous proceedings under two sections.

There cannot be two simultaneous proceedings on the same materials, one under S. 145 and the other under S. 107. *In re : Udit Narain*.

18 Cr. L. J. 628 :
39 I. C. 996 : I. P. L. W. 546 :
1917 Pat. 216 : A. I. R. 1917 Pat. 632.

—S. 145—Small area—Dispute of civil nature—Proceedings.

In an enquiry under S. 145 the fact that the land is small in area is a neutral consideration and does not help either party and to say that the dispute is one of a civil nature begs the whole question. If either party has a good case, that party will obtain a proper decision from a Civil Court ; but till such a decision can be obtained, proceedings under the Criminal Law are taken, to avoid a breach of the peace. *Gurditta v. Taja*.

40 Cr. L. J. 519 :
181 I. C. 59 : I. L. R. 1938 Lah. 611 :
41 P. L. R. 217 : 11 R. L. 741 :
A. I. R. 1939 Lah. 108.

—S. 145—Symbolical possession—Decree-holder getting symbolic possession of judgment-debtor's zemindari property—Interference with possession by judgment-debtor—Proceedings by decree-holder under S. 145, if can be entertained.

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Where a decree-holder is given symbolical possession of the judgment-debtor's zemindari property and he finds afterwards that his possession is being interfered with by the judgment-debtor and initiates proceedings under S. 145 for retaining possession, the Magistrate cannot refuse to entertain proceedings on the ground that the Civil Court had not given actual possession to the decree-holder. If, however, circumstances show that the decree-holder or auction-purchaser has slept over his right and has allowed the judgment-debtor to regain possession of the property and he is at the time of the proceeding in peaceful possession of it, the matter stands on a quite different footing. *Narayan Bhanja Deo v. Chintamani Mahapatra*.

40 Cr. L. J. 339 :
180 I. C. 322 : 19 P. L. T. 632 :
20 P. L. T. 1333 : 5 B. Rang. 385 :
11 R. Pat. 493 : A. I. R. 1939 Pat. 151.

—S. 145—Symbolical possession in execution of a foreclosure decree, not effective against a lessee who was not a party to the mortgage suit—Actual possession to be considered, nature of.

It is settled rule of law that no decree for foreclosure could be effective against a person interested in the property, if he was not made a party to the suit.

Where, therefore, S had executed in 1890 a mortgage by conditional sale in favour of G, and had in 1893 leased the properties covered by it to B for 25 years, and G in 1902, instituted a suit against S upon the mortgage without making B a party and obtained symbolical possession in execution of the decree for foreclosure passed therein : *Held*, that such delivery of possession could not affect the possession of B. *Bloomfield v. Gangadhar Kundu*.

4 Cr. L. J. 503 :
4 C. L. J. 562.

—S. 145—Symbolical possession of subject-matter delivered to party some time before proceedings—Evidence of actual possession on date of proceeding, whether can be discarded.

Where symbolical possession of a holding was delivered to a party on the 2nd June, 1915, and proceedings under S. 145 in respect of the same holding were instituted in November, 1916 : *Held*, that it was incumbent on the Magistrate to go into the question of actual possession between those two dates and consider the evidence tendered by the parties on that question before he could properly pass a final order under S. 145, Cr. P. C., and that it was not competent to him to wholly discard and leave out of consideration the evidence of actual possession on the date on which the proceedings were instituted. *Hazani Khan v. Nafer Chandra Pal*.

18 Cr. L. J. 718 :
40 I. C. 718 : A. I. R. 1918 Cal. 662.

—Ss. 145, 146—Symbolical possession—Decree-holder obtaining symbolical possession in execution of decree upon delivery warrant—Judgment-debtor attempting forcible entry within two months—Application under S. 145 by decree-holder—Magistrate by order under S. 146 (1) referring back parties to Civil Court, propriety of.

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Where in execution of a decree the Court orders delivery of possession of judgment-debtor's property to the decree-holder and the Officer of Court executing the delivery warrant gives effect to the order and since then the decree-holder is in possession both in fact and in law of the property in question but the judgment-debtor within two months of the execution of such warrant attempts forcible entry upon the land whereupon the decree-holder files a petition under S. 145, the Magistrate cannot go behind the decision of the Civil Court in the matter and cannot ignore the decree even though the Court passing the decree had no jurisdiction over the land. It is immaterial that the delivery of possession is symbolical only. In the enquiry under S. 145, there is only one conclusion possible for the Magistrate to arrive at with reference to the land, that is, that it was in the possession of the applicant on the date of the order passed under Sub-s. (1) of S. 145. Even assuming that the applicant (decree-holder) had been forcibly dispossessed at any time after the execution of the delivery order, the first Proviso to Sub-s. (4) will operate in favour of the applicant. Consequently, when in such circumstances the Magistrate passes an order under S. 146 (1) referring the parties back to Civil Court for the determination of their rights, the order is highly improper and opposed to all principles of justice. *Maung Kan v. Maung Po Tok*.

41 Cr. L. J. 123 :

185 I. C. 119 : 1940 Rang. 157 :

12 R. Rang. 183 : A. I. R. 1939 Oudh 388.

———Ss. 145, 526 — Transfer — “Criminal case”, what is,

A proceeding under S. 145 cannot properly be called a “criminal case” within the meaning of S. 526. *Farid v. Piru*.

16 Cr. L. J. 249 :

28 I. C. 105 : 8 S. L. R. 215 :

A. I. R. 1914 Sind 11.

———S. 145—Transfer of case.

City Magistrate examining petitioner on oath and ordering Police enquiry—On receipt of report transferring case under S. 192 to another Magistrate—Transfer held valid. *Kapoor Chand v. Suraj Prasad*. (F. B.)

34 Cr. L. J. 414 :

142 I. C. 537 : 1933 A. L. J. 188 :

L. R. 14 All. 48 Cr. :

I. R. 1933 All. 125 :

A. I. R. 1933 All. 264.

———S. 145—Transfer of case from one Magistrate to another, mode of.

S. 145 requires the Magistrate who draws up a proceeding under the section to call upon the parties concerned to attend his Court and to file written statements of their respective claims. He cannot direct them to appear before another Magistrate. But after the parties have attended and are ready to proceed with the case, it may be validly transferred to another Magistrate competent to try it. *Ramjharla v. Piur Koeri*.

24 Cr. L. J. 557 :

73 I. C. 173 : 4 P. L. T. 308 :

2 P. L. R. 6 Cr. : A. I. R. 1923 Pat. 369.

———S. 145—Transfer of case—Transfer by a District Magistrate—Amended proceedings.

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The jurisdiction to make a final order under S. 145 is not personal to the Magistrate who initiates the proceedings, and a District Magistrate may, of his own motion, transfer a case under Ch. XII of the Code to a Magistrate of the First Class subordinate to him. *Ram Kissore Roy v. Dwarka Nath Sen*.

4 Cr. L. J. 223 :

10 C. W. N. 1095.

———Ss. 145, 146—Transfer of case—Magistrate examining certain witnesses on each side but ignoring evidence and attaching land—High Court remanding for consideration of evidence—Magistrate being transferred, case transferred to another Magistrate—One party producing before such Magistrate long list of witnesses—Magistrate, whether bound to summon all.

Where in proceedings under S. 145, a Magistrate examines a certain number of witnesses on both sides but ignoring the evidence, attaches the land in dispute under S. 146, relying exclusively upon the evidence of the Superintendent of Police and the High Court sets aside that order and directs the Magistrate to pronounce judgment after considering the evidence as a whole but the Magistrate being transferred, the case is transferred to another Magistrate and a party comes forward before such Magistrate with a long list of witnesses, the Magistrate has power to issue process on these witnesses under Sub-s. (9) of S. 145 ; but it cannot be said that any obligation lies upon him to summon any witnesses other than those originally produced by the parties in the proceeding, and if he summons only those witnesses who were examined previously, there is no irregularity or illegality. *Bhupal v. Abdul Hakim*.

40 Cr. L. J. 276 :

179 I. C. 896 : 5 B. R. 319 :

11 R. P. 423 : A. I. R. 1939 Pat. 281.

———Ss. 145, 146, 192, 528—Transfer of case—Proceeding under S. 145—Magistrate, power of, to transfer.

A proceeding under S. 145 is a criminal case and a Magistrate has power to transfer it under Ss. 192 and 528, Cr. P. C. *Gurudas Nag v. Gaganendra Nath Tagore*.

3 Cr. L. J. 83 :

2 C. L. J. 614.

———Ss. 145, 147, 192, 528—Transfer of case—Transfer of proceedings under Ss. 145, 147.

Proceedings under Ss. 145 and 147 are criminal cases and a Magistrate has power to transfer such cases under Ss. 192 and 528 of the Code. Consequently, where a District Magistrate, on receipt of a Police report to the effect that there is likelihood of a breach of the peace in certain locality, makes an order to draw up proceedings under S. 147 and serves notices on the parties, ordering them to appear before another Magistrate, the order is not without jurisdiction. *Abdul Hamid v. Hasan Raza*.

24 Cr. L. J. 487 :

72 I. C. 951 : 4 P. L. T. 297 :

1 P. L. R. 195 Cr. :

1923 A. I. R. Pat. 366.

———Ss. 145, 192—Transfer of case—Proceedings, transfer of—“Any case” in S. 192, interpretation of.

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The words "any case" in S. 192 are wide enough to cover an enquiry under S. 145. Therefore, a Sub-Divisional Magistrate who institutes proceedings under S. 145 has power to transfer the same to any Magistrate subordinate to him for enquiry or trial. *Mahendra Singh v. Rajpatti*.

23 Cr. L. J. 205 :
65 I. C. 861 : 20 A. L. J. 215 :
A. I. R. 1922 All. 99.

—Ss. 145, 526—*Transfer of case—Proceeding under S. 145—Transfer, powers of—Breach of peace—Magistrate, opinion of, whether ground for transfer.*

S. 526 is applicable to proceedings under S. 145 and the High Court has, therefore, power to direct a transfer of such proceedings. In a proceeding under S. 145 the question whether there is likely to be a breach of the peace is an executive question, on which the Magistrate may form his opinion on any information, not necessarily on evidence at all; and the mere fact that the Magistrate has made up his mind that there is no likelihood of a breach of the peace, is not a ground for directing a transfer of the proceeding to another Magistrate. *Mohammad Naji Khan v. Rahamat Unnisa*.

25 Cr. L. J. 194 :
76 I. C. 562 : A. I. R. 1923 Oudh 161.

—S. 145, 526—*Transfer of case—Proceedings under S. 145, whether can be transferred.*

S. 526 does not empower a High Court to pass an order for the transfer of proceedings under S. 145 as such proceedings cannot be described as a criminal case, which means a case in which a person is accused of an offence. *Narain Singh v. Gandharv Raj*.

25 Cr. L. J. 276 :
76 I. C. 868 : A. I. R. 1925 Lah. 48.

—Ss. 145, 526—*Transfer of case—Transfer of proceedings under S. 145.*

The expression "Criminal case" in S. 526, Cr. P. C., includes a proceeding initiated under S. 145 and the High Court has power to transfer such proceeding from one Court to another. *Jaggu Ahir v. Murli Shukul*.

13 Cr. L. J. 452 :
15 I. C. 84 : 10 A. L. J. 27 : 34 All. 533.

—Ss. 145, 526 (8)—*Transfer of case—Proceedings under S. 145—Application for stay for moving for transfer, maintainability of.*

A party to a proceeding under S. 145 is not entitled to make an application under S. 526, Cl. (8) of the Code for stay of proceedings with a view to enable the applicant to move the High Court for transfer of the case. *Loka Mahton v. Kali Singh*.

28 Cr. L. J. 1035 :
106 I. C. 219 : 6 Pat. 553 : 8 P. L. T. 716 :
A. I. R. 1927 Pat. 351.

—S. 145 (5)—*Transfer of case—Proceedings transferred by Magistrate from file of Deputy Magistrate—Power of Magistrate to quash proceedings summarily.*

Where a Magistrate took a case under S. 145 on his own file from that of a Deputy Magistrate, and forthwith quashed the proceedings on the ground that in view of admissions made in a certain letter from the first party

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to the Magistrate, no proceedings under the section should have been taken: *Held*, that the order was without jurisdiction. If the Magistrate were satisfied that there was no dispute likely to cause a breach of the peace, then he could have quashed the proceedings under Cl. (5) of S. 145. *Tara Charan v. Bengal Coal Co.*

10 Cr. L. J. 560 :
4 I. C. 354 : 13 C. W. N. 125.

—Ss. 145, 350—*Transfer of Magistrate—Proceeding—Change of Magistrate—De novo trial.*

In a proceeding under S. 145 where the Magistrate is succeeded by another, the succeeding Magistrate is not compelled under the proviso to S. 350 of the Code to start the enquiry *de novo*, if an application to that effect is made on behalf of the accused. *Sadek Raza v. Sachindra Nath Roy*.

24 Cr. L. J. 569 :
73 I. C. 265 : 37 C. L. J. 128 :
A. I. R. 1923 Cal. 483.

—Ss. 145 and 350—*Transfer of Magistrate—Proceedings under S. 145—"Enquiry"—Transfer of Magistrate—Successor taking up case.*

An enquiry under the Code does not merely mean an enquiry into an offence: its meaning is considerably wider and extends to enquiries into matters which are not offences. Proceedings under S. 145 are enquiries. Therefore, when a Magistrate, who was enquiring into a case under S. 145 is transferred and another comes in his place, the new Magistrate is to be regarded as the successor of the other, and can deal with the proceedings under S. 350. *Ali Mahomed Khan v. Tarak Chandra Banerji*.

9 Cr. L. J. 278 :
1 I. C. 336 : 13 C. W. N. 420.

S. 146.

—Applicability.
—Attachment.
—Competent Court.
—Costs.
—Duty of Magistrate.
—Evidence.
—Jurisdiction.
—Receiver.
—Review.
—Revision.
—Scope.

—S. 146—*Applicability—Movable property, attachment of.*

The jewellery and other movable property of a *math* must be treated as appurtenant to the *math*, and can properly be the subject of proceedings under S. 146. *Gokil Nath v. Baram Nath*.

27 Cr. L. J. 429 :
93 I. C. 157 : 24 A. L. J. 383 :
L. R. 7 All. 129 Cr. : A. I. R. 1927 All. 125.

—S. 146—*Applicability.*

S. 146 comes into operation only if the Magistrate is unable to satisfy himself as to which of the parties is in possession. *Brij Pal Singh v. Ram Nares Singh*.

33 Cr. L. J. 157 :
135 I. C. 246 : 2 R. B. All. 98 Cr. :
I. R. 1932 All. 70 : A. I. R. 1932 All. 335.

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—S. 146—*Applicability of —Rights of parties already determined by Civil Court.*

Where one of the two parties to a proceeding under Ch. XII, Cr. P. C., has already obtained a decree for joint possession, with the other party, of the property concerning which the dispute exists and that decree has been executed in accordance with O. XXI, r. 35, C. P. C., S. 146 is inapplicable and the order of attachment of the property is unjustifiable. *Parabhans Pande v. Sheodarsan Singh.*

27 Cr. L. J. 559 :
93 I. C. 1055 : 24 A. L. J. 399 :
L. R. 7 All. 102 Cr. : 48 All. 397 :
A. I. R. 1926 All. 685.

—S. 146—*Attachment—First party's mortgagee in possession but not 2nd party—Attachment.*

Where the first party, a widow and her mortgagee are found to be in possession of the disputed garden and the second party is not found to be in possession, a Magistrate is not entitled to attach the subject of dispute merely on the ground that the widow had, in her written statement, stated that she was not in possession but the mortgagee was, because the possession which she had may be exercised through her mortgagee. *Mst. Mohoodra Koer v. Khuban Panday.* A. I. R. 1923 Pat. 363.

—S. 146—*Attachment.*

Joint owners in joint possession—Likelihood of breach of peace—Magistrate can direct land to be kept in attachment until decision in civil suit for partition to be filed. *Chirangi Lal v. Modadeo Prosad.*

34 Cr. L. J. 480 :
143 I. C. 54 : 1932 A. L. J. 819 :
L. R. 13 All. 151 Cr. :
I. R. 1933 All. 168 : A. I. R. 1932 All. 683.

—Ss. 146, 147—*Attachment—Joint possession of parties—Attachment.*

A Magistrate after finding that both parties are in joint possession of properties in dispute, has no jurisdiction to pass an order of attachment under S. 146. *Muhammad Koolayappa v. Abdul Khadhir.*

15 Cr. L. J. 572 :
25 I. C. 324 : 27 M. L. J. 169 :
A. I. R. 1915 Mad. 396.

—S. 146—*Attachment—Magistrate holding no inquiry—Interference in revision.*

An order passed by Magistrate, without making any inquiry as to the rights of the parties, attaching the property in dispute, pending the decision of a competent Court of Civil Jurisdiction, is erroneous and must be set aside. *The Crown v. Isakhan.*

9 Cr. L. J. 272 :
1 S. L. R. 33.

—S. 146—*Attachment—Receiver, appointment of.*

The attachment referred to in S. 146 can only be made where the Magistrate is unable to decide which party is in possession, or decides that none of them is in possession. The mere passing of an *interim* order of attachment does not by itself justify the appointment of a Receiver. *Raza Husain v. Medhi Hasan.*

23 Cr. L. J. 684 :
69 I. C. 268 : 25 O. C. 148 :
A. I. R. 1922 Oudh 256.

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—S. 146—*Attachment.*

Under S. 146 attachment can only be effected on the Magistrate's inability to satisfy himself as to which of the parties is in possession of the subject of dispute, and not because the Magistrate cannot decide upon the rights of the parties. In proceedings under S. 145 and 146, a Magistrate should determine actual possession, not rightful possession. *In re : Sanganbasawa kom Basappa.*

2 Cr. L. J. 28 :
7 Bom. L. R. 18.

—S. 146—*Attachment of disputed property—Order without taking evidence.*

Where a Magistrate makes an order under S. 146 attaching the disputed property without taking any evidence, the order is wholly without jurisdiction and should be set aside. *Sheobalak Ravi v. Bhagwat Panday.*

13 Cr. L. J. 486 :
15 I. C. 486 : 16 C. W. N. 1052 :
40 Cal. 105.

—S. 146—*Attachment of disputed property without evidence—Adjournment to enable parties to present their case before Magistrate, whether can be allowed—Magistrate, duty of.*

Where proceedings under S. 146 were drawn up against two parties, who were required to produce evidence in support of their respective cases on a certain date, on which date both parties applied for time, and one of them, on account of the notice being served upon him only two days before the date fixed for hearing, could not even file his written statement, and the Magistrate proceeded to deal with the case, and for want of evidence, being unable to satisfy himself as to who was entitled to possession, attached the property under S. 146 : *Held*, that the Magistrate, in the exercise of his discretion, ought to have allowed further time, and acceded to the application of the parties to grant them a reasonable adjournment in order to enable them to present their case before him. *In re : Manrakhan Singh.*

18 Cr. L. J. 413 :
38 I. C. 973 : 1 P. L. W. 55 :
A. I. R. 1917 Pat. 507.

—S. 146—*Attachment of land by Magistrate—Liability of defendant for damages in suit.*

No action will lie against any person for procuring an erroneous decision of a Court of Justice. Therefore no action for damages lies against a party for having obtained an order for attachment under S. 146, Cr. P. C. *Mackay v. Cave.*

12 Cr. L. J. 14 :
9 I. C. 137.

—S. 146—*Attachment of property—Delivery of possession—Discretion of Court.*

Where property attached under S. 146 is released by the Magistrate on being satisfied that there is no longer any likelihood of a breach of the peace, it is open to the Magistrate to make over possession of the property to any party he thinks fit. He is not bound simply to direct the Receiver to abandon the property, leaving the parties to scramble for the estate. There may, however, be cases in which it might be sufficient for him to make

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an order withdrawing the attachment, and leave some party to take possession. *Ali Bahadur v. Emperor*. 26 Cr. L. J. 1629 :

90 I. C. 925 : 2 O. W. N. 868 :
A. I. R. 1926 Oudh 146.

—S. 145—Attachment of property—Duration of attachment—Adjudication of rights of parties by competent Court—Magistrate, duty of, to withdraw attachment.

An order of attachment of property under S. 146 remains in force until withdrawn, but it is the duty of the Magistrate to withdraw it and release the attachment as soon as it is brought to his notice that a competent Court has determined the rights of the parties thereto or of the person entitled to possession. *Maharaja of Venkatagiri v. Ambarkana Srinivas Row*. 16 Cr. L. J. 481 :

29 I. C. 321 : 17 M. L. T. 392 :
A. I. R. 1916 Mad. 507.

—S. 146—Attachment of property—Release from attachment.

Where property is attached under S. 146, the Magistrate has inherent power to release the property from attachment as soon as he is satisfied that all likelihood of a breach of the peace has disappeared ; for instance, where one of the parties to the dispute dies leaving the other party as his heir. In such a case, the judgment of a competent Court is not *sine qua non* before the property can be released. *Khushi Ram v. Emperor*. 22 Cr. L. J. 4 :

59 I. C. 36 : 1 Lah. 451 :
A. I. R. 1920 Lah. 286.

—S. 146—Attachment of property—Withdrawal of attachment—Decision by Civil Court—Jurisdiction of Magistrate.

S. 146 (1) contemplates that an attachment made under the provisions of that section may be determined after a competent Court has determined the rights of the parties to the property in dispute. A Magistrate who has effected an attachment under that section has, therefore, jurisdiction to withdraw the attachment and make over possession of the property to a party in whose favour a decision has been pronounced by the Civil Court. *Ases Kumar v. Kishori Mohan Sarkar*. 25 Cr. L. J. 937 :

81 I. C. 553 : 39 C. L. J. 353 :
A. I. R. 1924 Cal. 812.

—S. 146—Attachment of property, when legal.

S. 146 presupposes an enquiry by the Magistrate on the evidence recorded and its object is to give the Magistrate jurisdiction to attach property if upon the evidence so recorded, he is unable to come to a finding as to who was in possession on the date on which the order under S. 145 was drawn up, and where there is no evidence of any kind, an order effecting attachment of property under S. 146 is without jurisdiction. *Daulat Ali Moila v. Hedail Moila*. 30 Cr. L. J. 802 :

117 I. C. 600 : 32 C. W. N. 843 :
I. R. 1929 Cal. 552 : A. I. R. 1928 Cal. 703.

—S. 641—Attachment, when effective.

An order under S. 146 would be *ultra vires*, un-

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less the Magistrate records a finding that he is unable to find which party is in actual possession under S. 145. *Thumbalabed Hampanna v. Parisi Gangama*. 16 Cr. L. J. 239 :

27 I. C. 911 : A. I. R. 1915 Mad. 1176.

—S. 146—Attachment, when effective.

The procedure prescribed in S. 145 must precede an order made under S. 146 of the Code. *Subbarama Aiyar v. Mariya Pillai*. 15 Cr. L. J. 559 :

24 I. C. 967 : 16 M. L. T. 52 : 1 L. W. 493 :
1914 M. W. N. 798 : A. I. R. 1914 Mad. 78.

—S. 146—Attachment when to be effected.

Under S. 146, a Magistrate has got no jurisdiction to issue any order for attachment of property unless and until he has made the inquiry contemplated by S. 145, that is to say, unless he has received and considered the evidence produced before him by the parties. *Inayat Ullah v. Amanat Husain*. 15 Cr. L. J. 470 :

24 I. C. 350 : 1 O. L. J. 242 :
A. I. R. 1914 Oudh 31.

—Ss. 146, 435 (3)—Attachment of property—Release—Revision.

Where a Magistrate releases property attached under S. 146 consequent upon possession being awarded to a party under S. 40 of the U. P. Land Revenue Act, the order of release cannot be questioned in revision by virtue of S. 435 (3) of the Code. *Surendra Bikram Singh v. Emperor*. 24 Cr. L. J. 537 :

73 I. C. 153 : 25 O. C. 242 :
A. I. R. 1922 Oudh 300.

—S. 146—Competent Court—Bengal Survey Act (V, B. C. of 1875), S. 41—Competent Court—Order of survey authorities tantamount to decree of Civil Court.

An order of survey authorities under the Survey Act, is a determination by a competent Court of the rights of the person entitled to the land for purposes of release of attached property under S. 146. *Ambler v. Shah Somi Ahmed*. 11 Cr. L. J. 372 :

6 I. C. 545 : 11 C. L. J. 417 : 37 Cal. 331.

—S. 146—"Competent Court", meaning of—Mutation order—Person entitled to possession, whether determined.

The words "competent Court" in S. 146 are not confined to mean only a "competent Civil Court." An order of a Revenue Court directing mutation to be made in favour of a certain person is an order of a competent Court determining the person entitled to possession within the meaning of S. 146 (1). *Ram Sri v. Sri Kishun*. 25 Cr. L. J. 1242 :

82 I. C. 170 : 22 A. L. J. 803 :
46 All. 879 : L. R. 5 All. 129 Cr. :
A. I. R. 1924 All. 777.

—Ss. 146 and 147—Costs—Costs of proceedings under Ss. 145, 146 or 147—Amount of costs, assessment of—Time for making order for costs.

Only the Magistrate who passes an order under Ss. 145, 146 or 147 can decide by whom the costs of the proceedings are to be paid but the

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amount of the costs may be assessed by his successor. An order for costs should, as a rule, be made at the time of passing the order under Ss. 145, 146 or 147 when the facts are fresh in the mind of the Magistrate. *Iklas Kaur Thakurain v. Raghuraj Bahadur Singh*.

11 Cr. L. J. 335 :
5 I. C. 943 : 13 O. C. 66.

———S. 146—Duty of Magistrate—Failure of parties to adduce evidence—Duty of Magistrate.

There is no obligation imposed by S. 146 on a Magistrate who initiates proceedings under S. 145 on the basis of a Police report to make independent enquiry if the parties having been given adequate opportunity decline to adduce evidence as to possession. The Magistrate is then entitled to fall back on such information as he may have before him which would make him apprehensive of a breach of the peace and he must attach the property. *Bengali Parida v. Banchnidhi Panigrahi*.

30 Cr. L. J. 894 :
118 I. C. 326 : I. R. 1929 Pat. 518 :
10 P. L. T. 867 : A. I. R. 1930 Pat. 29.

———S. 146—Duty of Magistrate.

S. 146 presupposes an enquiry by the Magistrate on the evidence recorded. A Magistrate cannot say that he is unable to satisfy himself if he has never made the slightest efforts to do so. When the Magistrate has not made any effort to satisfy himself, the order cannot be supported under S. 146. *Emperor v. Radha Raman*.

37 Cr. L. J. 215 :
160 I. C. 20 : 1936 A. L. J. 197 :
8 R. A. 558 : A. I. R. 1936 All. 177.

———S. 146—Evidence.

Omission to adduce evidence after sufficient time. *Bejoy Madhub Chowdhury v. Chandra Nath Chuckerburthy*.

11 Cr. L. J. 27 :
5 I. C. 40 : 14 C. W. N. 80.

———S. 146—Evidence.

Order without written statement and evidence. *Asfaudyar Khan v. Irshad Khan*.

11 Cr. L. J. 90 :
5 I. C. 249.

———S. 146—Jurisdiction—Enquiry as to possession—Conflicting claims based on different titles—Refusal of Magistrate to decide as to possession—Jurisdiction.

Where in an enquiry as to possession, the parties put in claims based on different titles, one claiming under a Will, another under a Partition Settlement and Will and the Magistrate, holding that he was unable to decide as to the question of possession, ordered that the property do remain under Court attachment till the parties had settled their differences in a Civil Court: *Held*, that the Magistrate acted without jurisdiction and should have decided on the question of possession. *Veyya Manikiam v. Venkaiya*.

11 Cr. L. J. 560 :
8 I. C. 63.

———S. 146—Jurisdiction—Neither party in possession of land in dispute—Public pathway—Attachment.

Where in a proceeding under S. 145 the land in dispute is a public path, and the Magistrate finds that neither party is in possession, he has no jurisdiction to attach the land under S. 146

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of the Code. *Sasi Mohun Kundu v. Kailash Chandra De*. 22 Cr. L. J. 464 :
61 I. C. 848 : A. I. R. 1920 Cal. 898.

———S. 146—Jurisdiction of Magistrate to pass order—Order passed without trying to ascertain possession, legality of—Gross and material irregularity.

An order under S. 146 can be made only where the Magistrate is unable to satisfy himself as to which of the contending parties is in possession. Where a Magistrate after having legally instituted proceedings under S. 145 made no effort whatsoever to ascertain the fact of possession, but after discarding and rejecting on erroneous grounds practically every piece of evidence that might have led him to a correct conclusion as to possession, made his final order under S. 146: *Held*, (1) that the final order made by the Magistrate was either without jurisdiction or involved such gross and material irregularities as to seriously prejudice one of the parties to the proceeding; (2) that the final order must be set aside and the proceedings resumed from the point reached when the two parties closed their evidence as either of them may be advised. Where a previous dispute between the parties to a proceeding under S. 145 was terminated by an order under the provisions of Ss. 40 and 41 of the Bengal Survey Act V of 1875, and an entry in the Record of Rights was made in accordance with that order, the Magistrate in determining the question of possession should, in the first instance, presume that the possession of the land in dispute is with the party in whose favour the order under the Bengal Survey Act and the entry in the Record of Rights were made. *Prafulla Nath Tagore v. Hodding*.

18 Cr. L. J. 988 :
42 I. C. 604 : 26 C. L. J. 39 :
21 C. W. N. 1059 : A. I. R. 1918 Cal. 284.

———Ss. 146 (2), 435 (3)—Jurisdiction—Ultra vires order—Revision.

A Sub-Divisional Magistrate attached certain land and appointed a Receiver under S. 146 (2), till a competent Civil Court would determine the rights of the parties, but refused to make over the possession to the successful party when the District Court determined the rights of the contesting parties on the ground that the losing party was going to appeal to the Chief Court: *Held*, that the Sub-Divisional Magistrate's order was clearly without jurisdiction, as a Magistrate ceases to have authority to retain the property after a competent Civil Court determines the rights of the parties. The Chief Court has power to annul such orders in revision under S. 435 (3), Cr. P. C. *Mg. Tha Zan v. Mg. Ba Gale*.

15 Cr. L. J. 500 :
24 I. C. 588 : A. I. R. 1914 L. Bur. 218.

———S. 146—Receiver—Lease to one of parties—Court's power to cancel.

Receiver appointed under S. 145, fraudulently taking permission of Court to lease property, without disclosing the lessee—Property leased to one of the parties until decision of Civil Court—Magistrate could set aside

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lease summarily. *Mayyappa Cheltiar v. Nagamai Achi*. 33 Cr. L. J. 956 :

140 I. C. 281 : 36 L. W. 651 :
1932 M. W. N. 1154 : I. R. 1923 Mad. 834 :
A. I. R. 1933 Mad. 67 (2).

—S. 146—Receiver—Return of property.

The mere declaration of title in favour of the plaintiff is sufficient to entitle them to ask the Receiver appointed under S. 146, to make over the sum held in deposit by him to the plaintiffs. *Jurawan Singh v. Ram Sarekh Singh*. 149 I. C. 561 :

14 P. L. T. 113 : 12 Pat. 261 :
6 R. P. 620 (2) : A. I. R. 1933 Pat. 224.

—Ss. 146, 439—Receiver—Appointment of party when justified—Settlement with parties, desirability of—Order under S. 146—Revision—Interference.

As a matter of principle a person ought not to be appointed a Receiver who has shown a partiality for one of the parties, and a party to the action should not be appointed unless by consent or unless there are special circumstances justifying his appointment in preference to others. When the order of the District Magistrate offends against an elementary rule founded on the desire of the Courts to place the parties to a proceeding on a footing of absolute equality, the High Court can set aside that order in revision. *Lachmi Kuer v. Gajadhar Proshad*. 28 Cr. L. J. 776 :

104 I. C. 104 : 9 A. I. Cr. R. 8 :
9 P. L. T. 109 : 1 L. T. 49 Pat. 42 :
7 Pat. 1 : A. I. R. 1927 Pat. 393.

—S. 146—Review—Order releasing attachment—Review.

A Magistrate has no power to review his own order releasing a property from attachment. *Balam Singh v. Lal Babu*. 19 Cr. L. J. 105 :

43 I. C. 329 : 3 P. L. W. 386 :
A. I. R. 1918 Pat. 28.

—Ss. 146, 369—Review—Attachment, cancellation of—Review.

An order attaching land under S. 146 cannot be cancelled by the Magistrate as S. 369, Cr. P. C., does not permit a review. *Ram Dulare v. Ajudhia Singh*. 14 Cr. L. J. 605 :
21 I. C. 477 : 16 O. C. 192.

—S. 146—Revision—Order as to possession—Brevity—Revision.

Where a Magistrate passes an order under S. 146 but omits to write at length the reasons for such order, it may be good ground for remand. But a High Court will not interfere if the Magistrate passed the order after giving full consideration to the evidence in the case. *Kanai Lal v. Hyder Ali*. 24 Cr. L. J. 575 :

73 I. C. 271 : 37 C. L. J. 127 :
A. I. R. 1923 Cal. 483.

—S. 145—Scope—Collector's order under Bengal Survey Act—Decision of competent Court.

An order of the Collector as to the land under Bengal Survey Act, is a determination by a

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competent Court of rights of the person entitled to possession of the land, within the meaning of S. 146. *Ram Ranbijaya Prasad Singh v. Ram Prasad Gupta*. 40 Cr. L. J. 797 :
183 I. C. 388 : 20 P. L. T. 595 : 5 B. R. 906 :
12 R. P. 141 : A. I. R. 1939 Pat. 348.

—S. 146—Scope—Order directing possession to be given on happening of certain contingency—Legality.

An order declaring a certain person to be in possession of the property in dispute on the happening of a certain contingency, cannot be passed under S. 146 but can only be passed under S. 145. *Lachmi Ojha v. Birja Misser*. 22 Cr. L. J. 616 :

63 I. C. 152 : 2 P. L. T. 168 : 1921 Pat. 110 :
A. I. R. 1921 Pat. 173.

—S. 146—Scope—Order of attachment, when can be passed—Magistrate, duty of.

An order under S. 146 attaching the subject-matter in dispute can only be passed after the Magistrate has taken evidence under S. 145, and has satisfied himself that none of the parties was in possession, or that he is unable to satisfy himself as to which of them was in possession. *Nilkanth v. Suryabhan*. 24 Cr. L. J. 880 :

75 I. C. 80 : 1923 A. I. R. Nag. 297.

—S. 146—Scope—Order under S. 146, operation of, extent of—Order when comes to end—Record of Rights, entry in, whether final adjudication by competent Court.

Once an order under S. 146 has been passed by a Court, it can come to an end only under one of two circumstances: (1) that there is no longer any likelihood of a breach of the peace in regard to the subject-matter of the dispute; and (2) it is competent for a Magistrate to release the subject-matter of the dispute from attachment if a competent Court has determined the rights of the parties to the proceedings or the person entitled to possession of the subject-matter of the dispute. An entry in the Record of the Rights cannot be regarded as constituting a final adjudication by a competent Court within the meaning of S. 146 (1). *Kutiswar Mondal v. Jitendra Nath Sen*. 26 Cr. L. J. 1055 :

87 I. C. 975 : 30 C. W. N. 646 :
A. I. R. 1926 Cal. 316.

—S. 146—Scope—Punjab Land Revenue Act, S. 36, application of, to cases under S. 146, Cr. P. C.—Revision—High Court, powers of.

Obiter dictum.—S. 36 of the Punjab Land Revenue Act is not properly applicable to cases in which property has been attached by a Magistrate under S. 146 of the Cr. P. C. Where after the attachment of certain property by a Magistrate under S. 146, one of the parties is put in possession of it by a Revenue Officer acting under S. 36 of the Punjab Land Revenue Act, the Chief Court, as a Criminal Court, cannot interfere with the Revenue Officer's order. *Emperor v. Abdul Aziz*. 19 Cr. L. J. 261 :

44 I. C. 117 : 45 P. W. R. 1917 Cr. :
A. I. R. 1918 Lah. 390.

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———S. 146—Scope—Right to possession—Magistrate.

The power conferred by S. 146 can be exercised when a Magistrate decides that none of the parties is in possession or is unable to satisfy himself as to which of them is in possession. But inability to decide on the right to property cannot justify an attachment order under the section. *In re : Sonmakh Madhavji.*

1 Cr. L. J. 832 :
6 Bom. L. R. 723.

———Ss. 146, 107—Scope—Lease of property attached—Lessee, right of—Lessee may be bound down to keep peace.

A lessee of a property attached under S. 146 is entitled to protection in his possession of the land let to him, but the fact of letting out is no bar to proceedings against the lessee under S. 107 if the Magistrate is satisfied that such action is necessary in the interests of the public peace. *Jai Rai v. Emperor.*

18 Cr. L. J. 1007 :
42 I. C. 735 : A. I. R. 1917 Pat. 223.

———Ss. 146, 439—Scope—Miscellaneous proceedings—Ordinary rules of procedure—Breach of the peace—Reference by the Sub-Divisional Magistrate to District Magistrate—Jurisdiction—Revision.

Miscellaneous proceedings under Cr. P. C. are governed, as far as may be, by the ordinary rules of procedure. Magistrates are solely and entirely responsible for a case so long as it remains upon their files and no references which are not allowed by the Code can be made or can be acted on in the case either of regular trials or of miscellaneous proceedings. The jurisdiction of the High Court to revise an order passed under Ch. XII, Cr. P. C. is barred. *Murat Singh v. Mst. Paika Bai.*

1 Cr. L. J. 877 :
17 C. P. L. R. 133.

———Ss. 146, 439—Scope—Order under S. 146, when to be passed—Contents of order—Magistrate, duty of—Revision.

An order under S. 146 can only be passed when the Magistrate, upon a consideration of the evidence, is unable to come to a definite finding as to the possession of either party. In order to show the Magistrate's inability to decide the question of possession, he ought to discuss the evidence and give reasons for his inability. *Khedan Mahto v. Hussaini Kalal.*

22 Cr. L. J. 323 :
61 I. C. 51 : 2 P. L. T. 16 :
1921 Pat. 112 : A. I. R. 1921 Pat. 166.

———S. 147.

———Applicability.

———Costs.

———Easement.

———Form of order.

———Inquiry.

———Interlocutory order.

———Jurisdiction.

———Legality of order.

———Mandatory Injunction.

———Meaning of words.

———Procedure.

———Revision.

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———S. 147.

See also (i) Cr. P. C., 1898, S. 107.

(ii) Cr. P. C., 1898, S. 145.

———S. 147—Applicability—Easement.

S. 147 is not confined to mere easements. The right which the first party claimed in this case was the natural right of every land-holder to the use and enjoyment of his own land, and among the necessary incidents to such an enjoyment, was the right to let off water by the natural course in which it had always flowed and would always flow so as to prevent inundation of his own land. The second party erected a *bund* on the boundary of the first party's village : *Held*, that the erection of the *bund* was an infringement of that natural right, and that the case was a fit one for the exercise of jurisdiction under S. 147. *Doulat Koer v. Siva Prasad.*

12 Cr. L. J. 319 :
10 I. C. 615 : 15 C. L. J. 267.

———S. 147—Applicability.

S. 147 is intended to apply only to cases where there might be disputes concerning the right of use of any land or water as distinct from disputes as to the title to or possession of the land itself, for which provision is made by Ss. 145 and 146 of the Code. *Ram Dulare v. Ajudhya Singh.*

14 Cr. L. J. 605 :
21 I. C. 477 : 16 O. C. 192.

———S. 147—Applicability—Dispute as to right of way—Order under S. 147 (2)—Institution of enquiry, date of—Order under S. 147 (3), when legal.

The inquiry contemplated by the Proviso to Sub-s. (2) of S. 147, is the enquiry referred to in Sub-s. (1) of the said section. An occurrence took place on the 15th November, 1928, relating to a dispute over an alleged right of way. The complaint lodged was sent for local inquiry and the Sub-Divisional Officer considered the report and heard the parties and their Pleaders on the 12th January, 1929, and asked for further report as to the likelihood of a breach of the peace. On the 16th February, the report of the Police was considered, the complaint was dismissed and proceedings under S. 147 were instituted. The Honorary Magistrate held that he had no jurisdiction to make an order under S. 147 (2) as the alleged obstruction was beyond three months of the date of the institution of the inquiry, but passed an order under S. 147 (3). The District Magistrate held that the inquiry was commenced on the 12th of January, within three months of the alleged obstruction and made a reference to the High Court : *Held*, (1) that the District Magistrate was wrong in coming to the conclusion that the 12th January was the date of the institution of the inquiry ; (2) that the order of the Honorary Magistrate under S. 147 (3) was, however, illegal as an order under the said clause could be made only if the right of way did not exist. *Sohan Lohar v. Jiut Upadhya.*

31 Cr. L. J. 361 :
122 I. C. 145 : A. I. R. 1930 Pat. 291.

———S. 147—Applicability—Dispute as to right to use land as burial ground—Matters

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for consideration—Raising crops on burial grounds, effect of.

Where a breach of the peace is threatened over a dispute in respect of the right of certain persons to use a land as a burial ground, the section applicable is S. 147, and not S. 145. The important point for consideration in such a case is not the question of possession of the land, but whether the persons claiming the right exercised that right when occasions arose. The circumstance that certain vacant portions of the land were improperly used for raising crops does not necessarily affect the right to use the land as burial ground. *Mahammad Abdul Khuddus Sahib v. Muhammad Ashroff Sahib.*

29 Cr. L. J. 644 :

110 I. C. 100 : 55 M. L. J. 40 :

51 Mad. 522 : 28 L. W. 75 :

10 A. I. Cr. R. 368 : A. I. R. 1928 Mad. 598.

———S. 147—*Applicability—Order, essentials for.*

In order that an order may be passed under S. 147 there must not only be a dispute regarding alleged right of user of any land or water but it must also appear to the Magistrate that a legal right exists. *Sethu Koruppan Ambalam v. Peer Mohammad Sammatti.*

37 Cr. L. J. 4 :

159 I. C. 49 : 1935 M. W. N. 181 :

68 M. L. J. 417 : 41 L. W. 436 :

58 Mad. 876 : 8 R. M. 440 :

A. I. R. 1935 Mad. 350.

———S. 147—*Applicability—Right to enter temple to perform kumbabhishekam ceremony—Danger of breach of peace, finding as to, whether necessary.*

A right to enter a temple and officiate at the kumbabhishekam ceremony; whenever it is necessary to perform it, is a right "to immovable property" within the meaning of S. 147. S. 147 does not require a Magistrate to formally record a proceeding that there is in his opinion danger of a breach of the peace. *Chidambara Gurukkal v. Sengoda Gounden.*

15 Cr. L. J. 671 :

25 I. C. 999 : 16 M. L. T. 427 :

27 M. L. J. 587 : A. I. R. 1915 Mad. 84.

———S. 147—*Applicability.*

Where S. 145 does not apply, S. 147 may, and proceedings under the latter section are carried on in the same manner as proceedings under the former. *Kunjo Mandal v. Sarju Ram Marwari.*

40 Cr. L. J. 538 :

181 I. C. 176 : 20 P. L. T. 164 :

5 B. R. 639 : 11 R. P. 573 :

A. I. R. 1939 Pat. 206.

———S. 147—*Applicability.*

Under S. 147 right to fishery is apart from right to land—When right to catch fish in water on land of another is claimed, S. 147 applies. *Ramsaroop Mahlon v. Mano Mian.*

35 Cr. L. J. 481 :

147 I. C. 774 : 15 P. L. T. 147 :

13 Pat. 153 : 6 R. P. 378 :

A. I. R. 1934 Pat. 86.

———Ss. 147, 148—*Costs—Costs in proceedings under S. 147.*

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An order for costs in a case under S. 147 need not be made at the time judgment is delivered. *Dowlat Koer v. Sina Pershad.*

12 Cr. L. J. 319 :

10 I. C. 615 : 15 C. L. J. 267.

———S. 147 and Sch. V, Form 24—*Easement—Right contemplated by S. 147.*

In passing an order under S. 147, the Court should adopt the Form No. 24 in Sch. V of the Code. S. 147 is not confined to cases of easement acquired by uninterrupted enjoyment for 20 years as provided by S. 26, Limitation Act. *Srimanta Bera v. Indra Narayan.*

10 Cr. L. J. 292 :

3 I. C. 463 : 13 C. W. N. 859.

———S. 147 (2)—*Form of order—Order, form of.*

It is impossible to lay down a hard and fast rule that in every case the final order of the Magistrate should be in exactly the same words as are used in the section. *Khajer Naskar v. Tabrej Ali Naskar.*

34 Cr. L. J. 1230 :

146 I. C. 223 : 6 R. C. 190 (1) :

A. I. R. 1933 Cal. 752 (1).

———S. 147, Proviso—*Inquiry—'Institution of inquiry', meaning of—Formal order, drawing up of, whether necessary.*

The 'institution of an inquiry' within the meaning of S. 147 does not refer to the date when the formal proceedings are drawn up under the section, but when the Magistrate hears the Pleaders of the parties and directs a local inquiry even though the formal order is drawn up after three months. *Rama Nath Basu v. Sarada Prosad Basu.*

28 Cr. L. J. 1 :

99 I. C. 33 : 44 C. L. J. 214.

———S. 147 (2), Proviso—"Inquiry," meaning of—*Police inquiry.*

The inquiry that is contemplated by the Proviso to S. 147 (2) is the inquiry by the Magistrate, and not the inquiry by the Police. Institution of the inquiry into the existence of the likelihood of breach of the peace must precede the inquiry into the respective rights of the parties and the magisterial inquiry is instituted when proceedings are drawn up by the Court under S. 147. Where in a case of an alleged obstruction of a pathway under S. 147, proceedings are drawn up more than three months after the date of the obstruction complained of, the Magistrate has no jurisdiction to proceed under the section. The fact that he ordered a Police inquiry within three months of the obstruction cannot give him such jurisdiction. *Ramchandra Acharjee v. Aditya Chandra Pal.*

27 Cr. L. J. 1089 :

97 I. C. 353 : 30 C. W. N. 863 :

53 Cal. 851 : 44 C. L. J. 307 :

A. I. R. 1926 Cal. 1051.

———S. 147—*Interlocutory order.*

Interlocutory order must not, in substance, amount to final order. *Ramchandra v. Dr. Shankar Rao.*

33 Cr. L. J. 556 :

138 I. C. 38 : 15 N. L. J. 28 :

I. R. 1932 Nag. 71 : A. I. R. 1932 Nag. 83.

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———**S. 147—Jurisdiction—Dispute as to right of fishery—Decree of Civil Court declaring right—Magistrate's jurisdiction to enquire into claim.**

If a matter which is in dispute under S. 147 has actually been adjudicated upon by a Civil Court, a Magistrate has no jurisdiction to enquire into a claim which is contrary to that Court's decree. *In re : Anya Shidya Patil*.

28 Cr. L. J. 578 :
102 I. C. 546 : 29 Bom. L. R. 715 :
8 A. I. Cr. R. 223.

———**S. 147—Jurisdiction.**

Failure of arbitration proceedings. *Kalanand Singh v. Rameshwar Singh*. 11 Cr. L. J. 729.

———**S. 147—Jurisdiction—Force—Obstruction to private pathway—Jurisdiction.**

A Magistrate has jurisdiction to pass an order under S. 147 if he considers that on the date of the order there is a likelihood of the breach of the peace. Where what is constructed is a mere flimsy fence and not a strong one, a Magistrate has jurisdiction to deal with it under S. 147 and not to treat it as a public nuisance under S. 133, Cr. P. C. An order under S. 147 can be made even when the right claimed is a right to a private path. *Kareppana Kownden v. Kandaswami Kownden*.

15 Cr. L. J. 362 :
22 I. C. 780 : 15 M. L. T. 230 :
26 M. L. J. 223 : 1914 M. W. N. 394 :
A. I. R. 1914 Mad. 712.

———**S. 147—Jurisdiction—Interference with exercise of right by particular class—Interference with the use of well—Order of Magistrate forbidding interference—Jurisdiction.**

Where the Hindus prevented the Christians from exercising their right to take water from well : *Held*, that there was nothing in S. 147 to prevent the Magistrate from passing an order forbidding the Hindus from interfering with the exercise of that right. *Hindus of Kannampalaiyam Village v. Kali Kola*.

11 Cr. L. J. 721 (b) :
8 I. C. 848.

———**S. 147—Jurisdiction—Order under S. 147 on proceeding under S. 133, without jurisdiction.**

An order under S. 147 is made without jurisdiction if it is passed on a proceeding under S. 133, without any action in accordance with S. 145. *Abdul Ruckman Mia v. Zafar Ali*.

12 Cr. L. J. 43 (b) :
9 I. C. 262 : 15 C. W. N. 667.

———**S. 147—Jurisdiction—Preliminary order—Addition of applicants—Revision.**

Unless there are special circumstances giving rise to an apprehension of the breach of the peace, there is no jurisdiction to make an order under S. 147. The bringing of new applicants on record after the preliminary order in proceedings under S. 147 is passed, is undesirable but it is a mere irregularity which does not vitiate the proceedings. It is not usual for a High Court to interfere in revision with the discretion of the Magistrate who has passed an order under S. 147, unless it is made

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without jurisdiction or if the Magistrate has not followed the procedure which has been laid down. *Parashran v. Gopal Ramchandra*.

25 Cr. L. J. 353 :
77 I. C. 289 : A. I. R. 1924 Nag. 294.

———**S. 147, Proviso—Jurisdiction, basis of—Exercise of right within three months.**

An order under S. 147 is without jurisdiction if it is made in the absence of any finding that the right in dispute was exercised within 3 months anterior to the enquiry. In order to vest a Court with jurisdiction to deal with a matter under S. 147, it must appear that where the right to do such thing is exercisable at all times of the year, the right has been exercised within three months next before the institution of the enquiry, or where the right is exercisable only in particular seasons or on particular occasions, the right has been exercised during the last of such seasons. *Babu Khan v. Raj Kishore Pershad*.

20 Cr. L. J. 558 :
51 I. C. 846 : A. I. R. 1919 Pat. 477.

———**S. 147—Jurisdiction and Proviso ; Sch. V, Form XXIV—Dispute concerning easement—Order without finding that right was exercised within three months.**

An order under S. 147 is without jurisdiction if it is made in the absence of any finding that the right was exercised within three months anterior to the inquiry. *Guru Prosad Dhar v. Lachman Ram Ghose*.

14 Cr. L. J. 303 :
19 I. C. 957.

———**Ss. 147, 148—Jurisdiction—Right of way, dispute as to—Local enquiry, report on—Statements of parties, order on—Jurisdiction.**

Where in proceedings under S. 147, a First Class Magistrate directed a local enquiry to be made by a Subordinate Magistrate, on whose report and on the written statements filed by the parties, who tendered no evidence, he passed an order : *Held*, that the order was not passed without jurisdiction as the Court acted on the materials before it. *Muthuswami Nadan v. Kalinga Muppan*.

17 Cr. L. J. 478 :
36 I. C. 158 : A. I. R. 1917 Mad. 854.

———**Ss. 147, 439—Jurisdiction—User of immovable property, dispute as to—Manager made party on behalf of employer—Irrregularity—Order against manager, legality of.**

The fact that the manager of an estate and not his employer, the owner of the estate, has been made a party to a proceeding under S. 147 is a mere irregularity, or at most, an error of law which does not affect the Magistrate's jurisdiction. In such a proceeding, it is open to the Magistrate to make an order against the Magistrate who puts forward a written statement on behalf of his employer and sets up a claim of the latter to the user of the immovable property in dispute. *Chhakauri Lal v. Isher Singh*.

27 Cr. L. J. 142 :
91 I. C. 814 : 6 P. L. T. 799 :
A. I. R. 1926 Pat. 196.

———**S. 147—Legality of order—Order to Police to assist in removal, obstruction.**

An order to the Police to assist a party in removing the obstruction is legal and is made

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within jurisdiction. *Dowlat Koor v. Siva Per-shad*.

12 Cr. L. J. 319 :
10 I. C. 615 : 15 C. L. J. 267.

—S. 147 (2)—Mandatory Injunction—Dispute concerning immovable property—Mandatory order, whether can be issued—Jurisdiction of Magistrate.

Under Sub-s. (2) of S. 147, a Magistrate has power only to issue a prohibitory order restraining any person from doing any act interfering with the right of another person when the Magistrate finds that such right exists. The power given to a Magistrate under this sub-section is analogous to the power of a Civil Court to grant a temporary injunction restraining a person from doing a certain act, but the sub-section does not authorize a Magistrate to make an order in the nature of a mandatory injunction directing a party to perform a certain act; for instance, an act directing a party to demolish a wall that has been built by him. *Hari Mali Dasi v. Hari Dasi Dasi*.

26 Cr. L. J. 1265 :
88 I. C. 1041 : 41 C. L. J. 568 :
30 C. W. N. 238 : A. I. R. 1925 Cal. 991.

—S. 147 (2)—Mandatory injunction—Magistrate directing person not to obstruct drain—Mandatory injunction to remove wall—Imaginary right, as basis of order.

Magistrate acting under S. 147 and directing a person not to obstruct a certain drain cannot add to the order a mandatory injunction directing him to remove the wall which he had already constructed. Similarly, the Magistrate instead of basing his order under S. 147 upon the alleged right, cannot base it upon some imaginary right. *Haradhone Mukerjee v. Brojendra Nath Rai Choudhury*.

38 Cr. L. J. 1071 :
171 I. C. 268 : 41 C. W. N. 900 :
10 R. C. 261 : A. I. R. 1937 Cal. 513.

—S. 147 (2)—Mandatory injunction—Order in nature of.

The Magistrate has no power under S. 147 to make an order in the nature of a mandatory injunction. *Usman Ali v. Emperor*.

39 Cr. L. J. 584 :
175 I. C. 234 : 1938 N. L. J. 139 :
I. L. R. 1938 Nag. 580 : 10 R. N. 440 :
A. I. R. 1938 Nag. 297.

—S. 147—Meaning of words.

The words "last of such occasions before such inquiry," in S. 147, mean last of such occasions on which the right would have been exercisable. *Jadubans Deo v. Pandey Bansidhar*.

36 Cr. L. J. 106 :
152 I. C. 295 : 15 P. L. T. 740 :
7 R. P. 188 : A. I. R. 1934 Pat. 557.

—S. 147—Procedure.

Admission of documents after close of case without notice to opposite party or opportunity to adduce rebutting evidence is illegal. *Ram-roop Mahlon v. Manoo Mian*. 35 Cr. L. J. 481 :

147 I. C. 774 : 15 P. L. T. 147 : 13 Pat. 153 :
6 R. P. 378 : A. I. R. 1934 Pat. 86.

—S. 147—Procedure—Final order, when can be made.

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No order can be passed under S. 147 unless the Magistrate comes to a finding that the right has been exercised within the period specified in the section. *Sirkawal Singh v. Bujha Singh*.

28 Cr. L. J. 996 :
81 I. C. 708 : 5 P. L. T. 457 :
A. I. R. 1924 Pat. 784.

—S. 147—Procedure—Order about rights of parties in certain property, to be binding, must be under S. 147—Order without notice is not binding.

Though a Magistrate is entitled to express an opinion on the rights of the parties in the disputed property, yet he is not authorised by any rule of law to pass an order which could be binding upon anybody unless he passed such an order under the provisions of S. 147. Such an order passed without notice to one of the parties is not binding on such a party. *Gurmanj Saran v. Radha Swami Sat Sang Sabha, Agra*. 38 Cr. L. J. 46 :
165 I. C. 721 : 1936 A. L. J. 1047 : 9 R. A. 303 :
1936 A. W. R. 881 : A. I. R. 1936 All. 759.

—S. 147—Procedure—Order directing parties to appear before another Magistrate, legality of.

S. 147 requires that a Magistrate drawing up a proceeding under the section shall direct the parties to appear before himself. An order directing the parties to appear before another Magistrate is illegal and vitiates the proceedings. *Misri Choudhury v. Narsingh Prasad*.

22 Cr. L. J. 483 (b) :
62 I. C. 179 : 2 P. L. T. 186 :
A. I. R. 1921 Pat. 333.

—S. 147—Procedure—Order to be directed to party, not through the agency of police.

S. 147 contemplates orders to be directed to the persons who are parties to the dispute, and the Magistrate is not empowered to carry out an order under that section through the agency of the police. *Dalmir Puri v. Khodadad Khan*.

10 Cr. L. J. 579 :
4 I. C. 415 : 36 Cal. 923 : 14 C. W. N. 178.

—S. 147—Procedure—Order under, when to be made—Right, exercise of—Proof.

A Magistrate is not competent to pass an order under S. 147 without coming to a clear finding under the proviso to that section that the party in whose favour the order is made exercised the right in dispute either within three months next before the institution of the enquiry or during the last season or occasion before its institution, if the right is exercisable at particular seasons or occasions. *Grant v. Padarath Jha*.

22 Cr. L. J. 463 :
61 I. C. 847 : 2 P. L. T. 364 :
A. I. R. 1921 Pat. 486.

—S. 147—Procedure—Preliminary investigation—Apprehension of breach of peace—Order.

Where the Magistrate to whom an application under S. 147 is made, holds after some preliminary investigation that there is an apprehension of breach of peace, he can

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direct proceedings to be drawn up under S. 147. *Khoda Bux v. Mozaharul Haq.*

41 Cr. L. J. 728 :
189 I. C. 354 : 44 C. W. N. 623 :
13 R. C. 80 : A. I. R. 1940 Cal. 330.

S. 147—Procedure.

Procedure under this section includes the filing of a written statement, taking of evidence, and if necessary, local inspection. *Abdul Rackman Mia v. Safar Ali.*

12 Cr. P. C. 43 (b) :
9 I. C. 262 : 15 C. W. N. 667.

S. 147 (1), (2) Proviso—Procedure under—Period of three months, calculation of.

After the order in writing has been drawn up as required by the earlier part of S. 147 (1), the procedure in the inquiry should follow the course laid down in S. 145 and it is immaterial whether the inquiry itself was instituted before or after the drawing up by the Magistrate of the order requiring the parties to attend the Court. The period of three months to be calculated from the date on which the complainant first approaches the Magistrate and not from the date of institution of formal proceedings. *Bhagwan Swain v. Mathuri Swain.*

31 Cr. L. J. 791 :
125 I. C. 143 : A. I. R. 1930 Pat. 349.

S. 147—Revision—Finding of fact—Remedy.

Finding of fact under S. 147 cannot be traversed by revisional proceedings, and as indicated by Sub-s. (4), the aggrieved party should seek his remedy in the Civil Court. *In re : Khazi Mohd. Khan.*

22 L. W. 831 : A. I. R. 1926 Mad. 154 (1).

S. 147—Revision—Magistrate refusing to take action—High Court, if can order him to initiate proceedings.

The High Court cannot order a Magistrate to initiate proceedings under S. 147 or under any of the preventive sections of that Code when he has refused to take action thereunder. The Magistrate is responsible for the peace of the district and when he says that it is not a proper case under S. 147, it is not competent for the High Court to interfere with such an order. *Biswas v. Muchiram Mahata.*

40 Cr. L. J. 345 :
180 I. C. 332 : 20 P. L. T. 194 :
5 B. R. 389 : 11 R. P. 497 :
A. I. R. 1939 Pat. 111.

Ss. 147, 148, 537—Revision—'Local enquiry,' meaning of—Evidence, recording of, by Magistrate deputed to make enquiry, legality of—High Court—Revision, grounds for.

Per *Curiam*.—The High Court does not interfere, under S. 15 of the Charter Act, with orders passed by a Magistrate under S. 147 unless such orders were passed without jurisdiction. The words 'local enquiry,' in S. 148 are not synonymous with mere local inspection, and a person deputed to make an enquiry under the section is competent to examine witnesses. *Muthuswami Nadan v. Kalianga Moopan.*

18 Cr. L. J. 715 :
40 I. C. 715 : 33 M. L. J. 78 :
A. I. R. 1918 Mad. 791.

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S. 147—Scope—Fishery, right to.

As there can be no restrictions on right to fish in sea, one set of people cannot be restrained from fishing in a lawful manner and order by Magistrate restraining them is illegal. *Sethu Karuppan Ambalam v. Peer Mahammad Sammalli.*

37 Cr. L. J. 4 :
159 I. C. 49 : 1935 M. W. N. 181 :
68 M. L. J. 417 : 41 L. W. 436 :
58 Mad. 876 : 8 R. M. 440 :
A. I. R. 1935 Mad. 350.

S. 147—Scope—Puja, right of.

Dispute as to possession of temple and right to perform puja—Magistrate can deal with right of puja as a part of major relief. It is doubtful whether question of right to puja alone can be dealt with under S. 147. *Perumal Konan v. Tirumalai.*

34 Cr. L. J. 88 :
140 I. C. 900 : 1932 M. W. N. 1079 :
37 L. W. 143 : I. R. 1933 Mad. 63 :
A. I. R. 1933 Mad. 245.

S. 147—Scope—Dispute as to right to use a mosque.

An order under S. 147 declaring possession to be with a certain person is illegal when there has been no enquiry as to the party in possession. A dispute as to the right to use a mosque between persons claiming to be entitled to officiate as Kazi therein is a dispute coming within S. 147. *Kader Batcha v. Kader Batcha Rowthan.*

4 Cr. L. J. 58 :
I. L. R. 29 Mad. 237.

S. 147—Scope—Dispute concerning right of use—Right of use by a person other than one in possession.

Obiter :—A dispute "concerning the right of use of any land" exists within the meaning of S. 147 although the use may be by a person in possession of land. S. 147 is not to be confined to the case where a dispute likely to cause breach of the peace exists concerning the right of use of any land by a person other than the one in possession of the same. *Arunachallam Chettiar v. Chidambaram Chettiar.*

3 Cr. L. J. 31 :
15 M. L. J. 394 : I. L. R. 29 Mad. 97.

S. 147—Scope—Dispute concerning right to collect tolas from hat, whether within the section.

The words "concerning the right of use of any land or water" in S. 147 are wide enough to include the right to go upon a hat for the purpose of collecting gratuities; therefore, a dispute concerning the right to collect tolas (gratuities) from a hat falls within the purview of the section. *Sarat Chandra Mudak v. Mobarak Mallik.*

18 Cr. L. J. 113 :
37 I. C. 465 : 24 C. L. J. 437 :
21 C. W. N. 439 : A. I. R. 1917 Cal. 256.

S. 147—Scope—Finding—Evidence—Local inspection—Right of way.

A finding arrived at by a Magistrate in a proceeding under S. 147 on a consideration of the evidence in the case, is not vitiated merely because the Magistrate states, that the view which he took of the evidence was

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confirmed by his local inspection. It is open to a Magistrate to pass an order under S. 147 giving to a party to the proceedings a right of way which is limited by the exclusion of vehicular traffic. It may be that it is unnecessary definitely to find under S. 147 which party is in possession, but such a finding, that a particular party is in possession, does not affect materially proceedings which are ostensibly taken under S. 147. *Muhammad Musa v. Shyam Sundar Koeri*.

22 Cr. L. J. 739 :
64 I. C. 131 : 2 P. L. T. 681 : 1921 Pat. 174 :
A. I. R. 1921 Pat. 227.

———S. 147—Scope—Local inspection, scope and use of—Note of inspection.

The rule that in criminal cases a Court is only justified in holding a local inspection in order to explain the facts appearing in the evidence does not apply to S. 147. Special provision is made in the Code for local inspection in these cases. In cases where rights of irrigation and rights of taking water through particular channels from particular reservoirs are concerned, a local inspection is eminently necessary. Although, as a rule, it is better to have such an inspection made by some other person, there is nothing in law to prevent the presiding Magistrate from making it himself provided he records what he sees and does not act upon hearsay evidence. A Court's finding must be based upon evidence duly recorded by it and not upon the impression formed by the Judge on a local inspection of the locality. He can, in order to elucidate the evidence, make a local inspection and the object of a local enquiry would be only with a view to understand the evidence actually adduced in the case. But it is absolutely necessary that if a Magistrate makes a local enquiry he must make a note of what he sees and must place it on the record, so that the parties may be in a position to know his impression and correct it if it is wrong. *Abdul Hamid v. Hasan Raza*.

24 Cr. L. J. 487 :
72 I. C. 951 : 4 P. L. T. 297 :
1 P. L. R. 195 Cr. : A. I. R. 1923 Pat. 366.

———S. 147—Scope—Local investigation, how to be made.

The rule that in criminal cases, Courts are only justified in holding a local inspection in order to explain the facts appearing in evidence, does not apply to cases under S. 147 nor is there anything in the law to prevent the presiding Magistrate from making a local investigation himself provided he records what he saw and does not act upon hearsay evidence. *Dowlat Koor v. Sina Pershad*.

12 Cr. L. J. 319 :
10 I. C. 615 : 15 C. L. J. 267.

———S. 147—Scope—Muhammadan Law—Prayers whether can be said on land belonging to another—Right of way over land belonging to another in order to worship at grave.

Under the Muhammadan Law, a Muhammadan cannot say his prayers on property belonging to another without an express or implied permission of the owner of the property. Therefore, a Muhammadan has no right to say

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prayers at a grave situated in, and belonging to another, and consequently cannot claim a right of way to go over land belonging to another in order to worship at a grave situated in that land. *Rampratab Marwari v. Satif*.

27 Cr. L. J. 44 :
91 I. C. 76 : 1925 Pat. 64 : 6 P. L. T. 857 :
A. I. R. 1925 Pat. 435.

———S. 147—Scope.

One party's right to drain off surplus water enclosed by *alang* of other party—Other party having right of irrigation—Dispute—Magistrate issuing notice under S. 141—Held, case fell within S. 147 and not S. 144. *Inderdey Narayan v. Durga Prasad Singh*.

37 Cr. L. J. 378 :
160 I. C. 945 : 17 P. L. T. 22 :
2 B. R. 263 (2) : 8 R. P. 397 :
A. I. R. 1936 Pat. 59.

———S. 147—Scope—Police assistance to enforce orders.

A Magistrate has power to invoke the assistance of the Police in carrying out an injunction made by him under S. 147, that is, the Police may be ordered to see that an obstruction is removed. *Amika Prasad Singh v. Gur Sahai Singh*.

13 Cr. L. J. 184 :
13 I. C. 1000 : 39 Cal. 560.

———S. 147—Scope—'Privy,' whether 'land' or 'water' or use of it, an easement.

Where to deprive the complainant of the use of a 'privy,' which he had been using jointly with the accused, the latter locked up the 'privy' and a Magistrate taking action under S. 147 directed the removal of the lock : *Held*, that the Magistrate was in error, inasmuch as, under S. 147, a Magistrate is restricted to inquiring into disputed right of 'land and water' including easements over the same, but a 'privy' is neither 'land' nor 'water' nor is the use of it an easement over the same. *In re : Shankar Sadashiv Katre*.

14 Cr. L. J. 400 :
20 I. C. 224 : 15 Bom. L. R. 329.

———S. 147—Scope, proceeding under—Dispute as right to take religious procession through public street—Non-exercise of right on previous occasion owing to interference of opposite party, effect of—Right, nature of.

The proviso to Sub-s. (2) of S. 147 contemplates a non-exercise of the alleged right upon the last occasion for reasons within the control of the persons claiming the right. Where the non-exercise of the right within the proper period on the last occasion was due to the obstruction offered by the opposite party, the case does not fall within the purview of the proviso to Sub-s. (2). Where in a proceeding under S. 147 the Magistrate finds that the right claimed was not exercised on the last occasion on which it could have been exercised, this finding is not sufficient to show that the right claimed does not exist at all. It merely prevents the Magistrate from issuing an order under Sub-s. (2) of the section. *Samble*.—The right to take a religious procession through certain streets is a

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right of user of land which falls within S. 147
(1). *In re : Basappa Rachappa Belkeri.*

26 Cr. L. J. 1422 :
89 I. C. 846 : 27 Bom. L. R. 1058 :
A. I. R. 1925 Bom. 536.

—S. 147—Scope.

Proceedings under, in respect of pathway, by defendants—Plaintiff's putting up fence pending proceedings—Order in favour of defendants—Removal of fence—Suit under S. 9, Specific Relief Act, is not maintainable. *Jogindra Chandra Das v. Birendra Lal.*

61 Cr. L. J. 307 :
156 I. C. 924 : 39 C. W. N. 394 : 8 R. C. 43 :
A. I. R. 1935 Cal. 454.

—S. 147—Scope—Right of way, dispute as to—Easement, alternative claim of, whether maintainable—Inquiry, nature of—Magistrate; duty of—"Such right exists", meaning of.

There is nothing to prevent a claim being made under S. 147 that the way in dispute is a public road and that, failing that, the applicant has acquired a right of way as an easement over the property of the opposite party. The provisions of S. 147 are of an emergency nature and an inquiry under the section is conducted more or less summarily. If the Magistrate, as the result of hearing the evidence, thinks that reasonable grounds have been shown to him that a *bona fide* claim of right exists, he is justified in passing such order under the section as he may think fit. It is not expected that he should usurp the functions of the Civil Court or that the inquiry under S. 147 should be a formal trial of the matter in issue. The words 'such right exists' in S. 147 must be understood to mean "such right as is claimed." *Hamir & Co. v. Suresh Chandra Sarkar.*

27 Cr. L. J. 841 :
95 I. C. 761 : 1926 Pat. 187 :
A. I. R. 1926 Pat. 348.

—S. 147—Scope.

There should be a present dispute, and a present fear of disturbance and the section will not apply to a state of things indicating that there may be a breach of the peace in future. *Jagabandhu Misra v. Manager, India.*

37 Cr. L. J. 512 :
161 I. C. 338 : 40 C. W. N. 351 :
8 R. C. 507.

—S. 147—Scope—Mandatory injunction.

Under S. 147, Cr. P. C., a Magistrate has power to pass an order in the nature of a mandatory injunction directing a party to remove any obstruction which he has put up. *Kanta Venkanna v. Inuganti Venkata Surya Neeladri Rao.*

32 Cr. L. J. 215 :
129 I. C. 68 : 1 R. 1931 Mad. 212 :
32 L. W. 175 : 59 M. L. J. 430 :
1930 M. W. N. 987 :
A. I. R. 1930 Mad. 865.

—S. 147—Scope.

Where the initial notice, the written statements and subsequent proceedings, including the operative order under S. 145 are all substantially covered by S. 147, the fact that

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a wrong section, viz., S. 145, has been quoted, will not alter the real character of the proceedings. *Gajraj Singh v. Emperor.*

37 Cr. L. J. 705 :
162 I. C. 760 : 1936 A. L. J. 746 :
8 R. A. 900 : 1936 A. W. N. 529 :
A. I. R. 1936 All. 320.

—S. 147 (2)—Scope—Power of Magistrate to issue injunction to prohibit interference with existing rights.

Under S. 147 (2), where a right exists, the Magistrate may make an order prohibiting any interference with its exercise. *Ram Dhan v. Barhamdeo Lal.*

31 Cr. L. J. 247 :
121 I. C. 401 : 10 P. L. T. 376 :
A. I. R. 1929 Pat. 351.

—S. 147 (2) proviso—Scope.

There is nothing in the wording of the proviso to S. 147 (2), to extend the scope of the proviso to cases where the exercise of the right on the last occasion was prevented by circumstances beyond the control of the parties seeking to exercise the right. *Vellayan Chetty v. A. P. Balakrishna Nadar.*

32 Cr. L. J. 972 :
133 I. C. 5 : 1931 M. W. N. 554 :
I. R. 1931 Mad. 693 :
A. I. R. 1931 Mad. 495.

—S. 147—Scope of—Dispute as to right of entry into religious places,—Inquiry—Power of Magistrate to refer to judgments of Civil Courts—"Three months", calculation of.

S. 147 is not confined to disputes about rights to easements and similar rights but applies also to disputes relating to right of entry into religious places, such as temples, mosques or *samadhs*. In adjudicating upon the existence or non-existence of a right in an enquiry under S. 147, the Magistrate is entitled to refer to judgments of Civil Courts relating to the right in dispute. The three months mentioned in S. 147, do not mean three months prior to the order but three months next before the institution of the enquiry. *Daya Ram v. Emperor.*

31 Cr. L. J. 1217 :
127 I. C. 422 : A. I. R. 1930 All. 452.

—S. 147—Scope of—Dispute regarding right to worship as *pujari* or offerings.

Where the dispute is regarding a right which is inseparably connected with the use of any land or building, it must be regarded as being within the purview of S. 147. A dispute regarding the right to worship as *pujari* in a temple in actual fact may have more to do with what a man does in the temple after entering into it and not so much with his actual entry into the temple, nevertheless where the right regarding which a dispute exists is one which is inseparably connected with the right to enter a building and cannot be dissociated from its dispute cannot be said to be not one regarding an alleged right of user of the building. Such a dispute is a dispute regarding any alleged right of user of any land as explained in S. 145, Sub-s. 2 and comes within S. 147. *Obiter.*—There can be no doubt that a dispute which relates to offerings cannot be regarded as a

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dispute about the user of any land or building.
Velapa Goundan v. Ramaswami Goundan.

39 Cr. L. J. 705 :
176 I. C. 127 : 47 L. W. 305 :
1938 M. W. N. 349 : 1938 1 M. L. J. 817 :
11 R. M. 32 : A. I. R. 1938 Mad. 537.

—S. 147—Scope of—Jurisdiction of Magistrate to pass prohibitive order against party claiming easement.

Under S. 147, a Magistrate has jurisdiction to make a prohibitive order against the party who is found not to have the right which it claims. Where in a proceeding under S. 147, the first party claimed a right of passage over certain land which the other party denied and the Magistrate found that the right of easement claimed by the first party did not exist : *Held*, that the Magistrate had jurisdiction to pass an order directing that the first party shall not use the passage unless it obtained the decision of a competent Court adjudging it to use. *Pyari Mohan Shaha v. Harish Chandra Shaha.*

20 Cr. L. J. 251 :
49 I. C. 923 : 23 C. W. N. 956 :
A. I. R. 1919 Cal. 207.

—S. 147—Scope of object.

No mandatory order for the removal of a fence can be passed under S. 147. *Jogindra Chandra Das v. Birendra Lal.*

61 Cr. L. J. 307 :
156 I. C. 924 : 39 C. W. N. 394 : 8 R. C. 43 :
A. I. R. 1935 Cal. 454.

—S. 147—Scope of—Order prohibiting use of public street.

A Magistrate has jurisdiction under S. 147, to pass orders even in respect of the right of passage in a public street. The expression "land or water" in S. 147 does not necessarily refer only to private property. *Muhammad Amir Khan v. Mahalingam Pillai.*

28 Cr. L. J. 948 :
105 I. C. 669 : 53 M. L. T. 523 : 26 L. W. 535 :
1927 M. W. N. 789 :
9 A. I. Cr. R. 144 : 51 Mad. 174 :
A. I. R. 1927 Mad. 985.

—S. 147—Scope of—Right to use water from artificial channel for irrigation.

Where a Magistrate finds that a right of use of water in favour of any party exists, he can, under S. 147, either direct an obstruction to be removed or direct that an obstruction or dam be constructed, as the case may be, for the purpose of enabling the party to enjoy the use of water declared in his favour. A dispute concerning the right to the use of water from an artificial water channel for the purpose of irrigation comes within the scope of S. 147. *Manzur Hussain v. Gauri Lal Das.*

20 Cr. L. J. 209 :
49 I. C. 769 : A. I. R. 1919 Pat. 174.

—S. 147 (2),—Scope of—Proper order.

S. 147 (2) contemplates a final order made after due inquiry in the manner provided for by that section and does not justify an interlocutory order prohibiting interference with existing rights pending decision in the matter. *Khoda Bux v. Mozabarul Haqu.*

41 Cr. L. J. 728 :
189 I. C. 354 : 44 C. W. N. 623 : 13 R. C. 80 :
A. I. R. 1940 Cal. 330.

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—S. 148.

—Costs.

—*Ex parte* order.

—Interpose.

—Local Enquiry.

—Local Inspection.

—Scope.

—S. 148—Costs awardable.

Under S. 148 a Magistrate has jurisdiction to award only the actual costs incurred, and his order awarding costs must be based upon proper materials. An order based upon no materials is bad and liable to be set aside. *Jhama Mahton v. Thakuri Mahton.*

21 Cr. L. J. 625 :

57 I. C. 449 : 1 P. L. T. 369 :

2 U. P. L. R. Pat. 192 : A. I. R. 1920 Pat. 219.

—S. 148—Costs—Awardable—Revision—Interference.

A wide discretion as to costs is given to a Magistrate by S. 148 (3) and the High Court has no power in revision to interfere with his exercise of that discretion. The practice of awarding in proceedings under S. 145, additional costs for extra fees and travelling and other expenses of a like nature, incurred by reason of bringing pleaders or counsel from a distance condemned. *Rajendra Narain Roy v. Mohammad Arzumand Khan Chowdhury.*

2 Cr. L. J. 408 :
1 C. L. J. 331 : 9 C. W. N. 887.

—S. 148—Costs—Delay.

An order for costs passed a few days after the decision of the case is not an illegal order. *Kapoor Chand v. Suraj Prasad.* (F. B.)

34 Cr. L. J. 414 :
142 I. C. 537 : 1933 A. L. J. 188 :
L. R. 14 All. 48 Cr. : I. R. 1933 All. 125 :
A. I. R. 1933 All. 264.

—S. 148—Costs, order as to—Delay, effect of.

An order for costs under S. 148 (3), made ten days after an order under S. 145 (6), is not illegal by reason of the delay in passing it. *Chadhari Ahir v. Raja Ram Singh.*

19 Cr. L. J. 396 :
44 I. C. 748 : 4 P. L. W. 234 :
A. I. R. 1918 Pat. 481.

—S. 148—Costs, order regarding—Procedure.

No order as to costs can be passed under S. 148 without notice being given to the opposite party against whom the order is proposed to be made. *Dwarka Rai v. Nathuni Koeri.*

19 Cr. L. J. 764.
46 I. C. 604 : A. I. R. 1918 Pat. 658.

—S. 148—Costs—Person liable.

Under S. 148, Cr. P. C., a Magistrate has no power to saddle a person with costs who is not party to the proceedings. *Emperor v. Chet Khan.*

27 Cr. L. J. 21 :
91 I. C. 53 : A. I. R. 1926 Oudh 269.

—S. 148—Costs.

Order for costs when to be made. *Dowlat Koer v. Sesia Pershad Paudil.*

12 Cr. L. J. 319 :
10 I. C. 615 : 15 C. L. J. 267.

Cr. P. CODE (1898), S. 148**—S. 148—Costs—Procedure.**

Where an order as to costs under S. 148, is passed simultaneously with the final order in the presence of the aggrieved party, it is not necessary that fresh notice should be given. *Nezamul Ashan v. Golam Mohammad.*

35 Cr. L. J. 478 :
147 I. C. 800 (2) : 37 C. W. N. 852 : 6 R. C. 362 :
A. I. R. 1934 Cal. 80 (1).

—S. 148—Costs—Proceeding under S. 145—Order as to costs to be made within reasonable time.

An order as to costs under S. 148 should be made within a reasonable time for the judgment in the case. As long as the order is passed within a reasonable time, the inquiry into the amount of costs due may be protracted as long as it is necessary. *Bansi Singh v. Mohammad Akbar Ali.*

12 Cr. L. J. 376 :
11 I. C. 144 : 15 C. W. N. 811.

—S. 148—Costs.

Question of costs need not be treated as separate issue on which separate judgment should be given. The question must, however, be determined judicially and on proper materials. *Devendra Nath Khan v. Dhanmoni Dassi.*

35 Cr. L. J. 489 :
147 I. C. 817 : 37 C. W. N. 849 :
6 R. C. 371 : A. I. R. 1934 Cal. 95.

—S. 148 (3)—Costs awardable.

The jurisdiction of a Magistrate to award costs under S. 148 (3) is limited to the costs mentioned therein. *Popuri Peddanna v. Tummala Ganta Kotiah.*

13 Cr. L. J. 297 :
14 I. C. 761 : 13 M. L. T. 224.

—S. 148 (3)—Costs—Magistrate competent to award—Delay, effect of—Notice.

A Magistrate who has not actually passed the order under S. 155, has jurisdiction to assess the costs. It is in the discretion of a Magistrate to refuse to assess the costs if there has been unreasonable delay in applying for them. An order as to costs should not be passed without notice to the opposite party. But if it is passed, it cannot be set aside again by the same Magistrate. *Dilbasi Koer v. Deorati Koer.*

4 Cr. L. J. 171 :
10 C. W. N. 1030.

—S. 148 (3)—Costs, Magistrate's power to award—Calculation.

S. 148 (3) authorises a Magistrate, while passing an order under S. 145 to direct the payment of costs by the party against whom the order is made. Such costs may include any expenses incurred in respect of witnesses and of Pleader's fees which the Magistrate may consider reasonable. *Abdul Satar v. Udah Lal.*

27 Cr. L. J. 471 :
93 I. C. 65 : 8 L. L. J. 47 :
27 P. L. R. 102.

—S. 148 (3)—Costs—Penalty on document not properly stamped.

A Magistrate has no jurisdiction under S. 148 (3) to include in costs the penalty paid on a

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document not properly stamped. *Tummalagunta Kotiah v. Popuri Peddanna.*

14 Cr. L. J. 210 :
19 I. C. 306 : 13 M. L. T. 224.

—S. 148 (3)—Costs—Procedure.

An award of costs under S. 148 (3), should, in the usual course, be contemporaneous with the decision of the main question. Where, however, circumstances require the postponement of the award of costs, it should be made within a reasonable time after the disposal of the principal subject of the proceeding, in the presence of both parties. *Vythianada Tambiran v. Mayandi Chetty.*

4 Cr. L. J. 232 :
I. L. R. 29 Mad. 373.

—S. 148—Ex parte order.

A Magistrate cannot be held guilty of an "irregularity," where he passes an *ex parte* order. *Kapoor Chand v. Suraj Prasad.* (F. B.)

34 Cr. L. J. 414 :
142 I. C. 537 : 1933 A. L. J. 188 :
L. R. 14 All. 48 Cr. : I. R. 1933 All. 125 :
A. I. R. 1933 All. 264.

—S. 148—Local Enquiry—Procedure.

A Magistrate deputed to hold a local enquiry under S. 148 (1) should hold the enquiry himself and should not delegate it to some body else. *Jaiwanti v. Ram Rao.*

20 Cr. L. J. 107 :
48 I. C. 987 : A. I. R. 1918 Nag. 136.

—S. 148—Local inspection, object of.

The object of local inspection is to understand and appreciate the topography of the land in dispute in order to aid the Magistrate in appreciating the evidence offered in Court ; but the local inspection cannot take the place of legal evidence much less the result thereof can be used as a basis for the decision. *Ram Ratan Kuar v. Tarak Nath Bhattacharji.*

25 Cr. L. J. 412 :
77 I. C. 492 : A. I. R. 1922 Pat. 249.

—S. 148—Scope—Inquiry by Kanungo—Legality—Kanungo's report and evidence—Report corroborative of sworn testimony—Evidence Act (I of 1872), s. 157.

S. 148 is an enabling section, and the deputation of a *Kanungo* to make an inquiry under that section is not bad. Under the general provisions of law, anybody who has seen a place may be examined as to what he saw. The *Kanungo* making the enquiry may give his deposition, and his report is admissible under S. 157 of the Evidence Act in order to corroborate his sworn testimony. *Achambbit Das v. Sarada Prasad Haldar.*

12 Cr. L. J. 480 :
12 I. C. 88.

—Ss. 148 (3), 386, scope of—Costs awarded in proceedings under S. 145—Delay in applying to realize costs—Magistrate, power of, to refuse to realize costs—Limitation.

S. 148 (3) merely points out the way in which costs awarded in a proceeding under S. 145 are to be recovered, and does not give a Magistrate a discretion to refuse to recover such costs. Inasmuch as a person to whom costs have been awarded has a period of

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six years within which to apply for the recovery thereof, the mere fact that there is delay, not exceeding such period, in applying to recover the costs, would not justify a Magistrate in refusing the application. The use of the word "may in his discretion" in S. 386, Cr. P. C. cannot be used for the purpose of interpreting the words "may be recovered" in S. 148. The discretion in S. 386 of the Code only refers to cases where there has been a conviction and sentence. *Harendra Krishna Bagchi v. Bal Kumar*.

24 Cr. L. J. 126 :
71 I. C. 254 : 3 P. L. T. 762 :
A. I. R. 1923 Pat. 57.

S. 149—"Interpose," meaning of.

The word "interpose" in S. 149 conveys the idea of actively intervening and not merely a prohibition by word of mouth. *Emperor v. Raghunath*.

26 Cr. L. J. 599 :
85 I. C. 823 : 22 A. L. J. 1049 :
L. R. 6 All. 1 Cr. :
47 All. 205 : A. I. R. 1925 All. 165.

S. 154.

- Admissibility in evidence.
- Applicability.
- Essentials.
- European British subject.
- First Information.
- Information.
- Miscellaneous.
- Other Statement.
- Procedure.
- Value.

S. 154.

See also (i) Cr. P. C., 1898, S. 4.

(ii) Criminal Trial—First Information Report.

(iii) Penal Code, 1860, S. 182.

(iv) Penal Code, 1860, S. 217.

S. 154—Admissibility—Conditions as to writing, not observed.

The conditions as to writing are merely procedural and if there is an "information relating to the commission of a cognizable offence" it falls under S. 154 and becomes admissible in evidence as such, even though the Police Officer may have neglected to record it in accordance with law. *Mani Mohan Ghose v. Emperor*.

33 Cr. L. J. 138 :
135 I. C. 289 : 58 Cal. 1312 :
35 C. W. N. 623 : I. R. 1932 Cal. 97 :
A. I. R. 1931 Cal. 745.

S. 154—Admissibility—Failure to observe procedure—Effect.

Failure by the Police to observe the procedure laid down in S. 154 does not make the former statement inadmissible; it merely renders it more difficult to prove that it was actually made by the person said to have made it, and thereby renders it a less certain means of corroborating or contradicting his evidence in Court. *Mir Rahman v. Emperor*.

37 Cr. L. J. 225 :
159 I. C. 890 : 8 R. Pesh. 92 :
A. I. R. 1935 Pesh. 165.

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S. 154—Admissibility—F. I. R. amounting to confession.

A First Information Report is not admissible in evidence if it is a confession by the accused to the Police of his guilt. *Manjoo v. Emperor*.

24 Cr. L. J. 570 :
73 I. C. 266 : A. I. R. 1923 Nag. 251.

Ss. 154, 162—Admissibility—Statement to Police Officer wrongly signed.

Statements to a Police Officer in the case of an investigation are not rendered admissible in evidence under S. 154 by the mere fact that they were signed by the person in contravention of the provisions of S. 162. *In re : Narayana Menon*.

25 Cr. L. J. 401 :
77 I. C. 481 : A. I. R. 1925 Mad. 106.

S. 154—Applicability.

S. 154 has no application in Calcutta, and therefore, it is not relevant at all in a case arising in Calcutta. *Cyril Bertram Plucknett v. Emperor*.

41 Cr. L. J. 72 :
184 I. C. 757 : 43 C. W. N. 120 :
I. L. R. 1939 1 Cal. 162 : 12 R. C. 295 :
A. I. R. 1939 Cal. 545.

S. 154—Essentials—F. I. R., Essentials of.

The conditions as to the record of an information under S. 154, are first that it must be an information; secondly, it must relate to a cognizable offence on the face of it and not merely in the light of subsequent events. The mere fact that an information is first in point of time is not sufficient. *Mani Mohan Ghose v. Emperor*.

33 Cr. L. J. 138 :
135 I. C. 289 : 58 Cal. 1312 :
35 C. W. N. 623 : I. R. 1932 Cal. 97 :
A. I. R. 1931 Cal. 745.

S. 154—Essentials—F. I. R., what is.

A, finding his brother M. to be missing, gave information to the Sub-Inspector of Police, but the latter did not record it under S. 154. Nevertheless he commenced investigation and after four days when the matter had so developed that there was some reason to believe that M. had been murdered, he for the first time recorded a statement by A, as the first information : *Held*, that such a practice is altogether contrary to the provisions of S. 154, and a statement recorded under such circumstances cannot be regarded as a first information. *Emperor v. Kampu Kuki*.

6 Cr. L. J. 86 :
11 C. W. N. 554.

S. 154—European British subject—waiver of right.

It is possible for a European British subject to waive his right to be dealt with as such. *Cyril Bertram Plucknett v. Emperor*.

41 Cr. L. J. 72 :
184 I. C. 757 : I. L. R. 1939 1 Cal. 162 :
43 C. W. N. 120 : 12 R. C. 295 :
A. I. R. 1939 Cal. 545.

S. 154—First Information—Criterion.

The fact of the officer starting an investigation

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is not the sole criterion of a First Information Report. *Mani Mohan Ghose v. Emperor*.

33 Cr. L. J. 138 :
135 I. C. 289 : 58 Cal. 1312 :
35 C. W. N. 623 : I. R. 1932 Cal. 97 :
A. I. R. 1931 Cal. 745.

—S. 154—First Information—Essentials.

What is of importance is whether statements were made prior to the commencement of investigation. If so, they can be proved for purposes of contradiction or corroboration but not for any other purpose. *Mir Rahman v. Emperor*.

37 Cr. L. J. 225 :
159 I. C. 890 : 8 R. Pesh. 92 :
A. I. R. 1935 Pesh. 165.

—S. 154—First Information—Evidentiary value.

A F. I. R. taken by a Police Officer amounts to an entry in an official record stating a fact in issue and made by a public servant in discharge of his official duty and in the performance of the duty especially enjoined upon him under which such record is kept and, therefore, falls within the scope of S. 35 of the Evidence Act and is a relevant fact. But it is not a substantive piece of evidence and can be used merely by way of corroboration or contradiction. *Chittar Singh v. Emperor*.

26 Cr. L. J. 554 :
85 I. C. 650 : 23 A. L. J. 14 : 47 All. 280 :
A. I. R. 1925 All. 303.

—S. 154—First Information—Information by several persons—Subsequent informations, admissibility of—Informations before and after commencement of Police investigation—Effect of, wrongful admission of statement.

A *chaukidar* made a report to the effect that four labourers who had left their master were wrongfully taken back by the master through his men and that a certain person was wounded on the occasion. The Writer Head Constable recorded this statement in the Police diary and sent a constable to bring the wounded man. He was incapable of making a statement. Next day, the wife of one of the labourers came of her own free will and informed that her husband and sons had been carried off. Thereafter the investigation began. A few days later, one of the labourers who had escaped, informed that he and the three others were confined by the accused. All the three statements were recorded as First Information and admitted in evidence but it was found that the accused was prejudiced thereby as the decision was not based upon these statements but on the other evidence in the case: *Held*, that the information laid by the wife was a First Information: but the information laid by the labourer was not and the conviction of the accused was not illegal as they were not in any way prejudiced by the erroneous admission of the statement made by the labourer as First Information. *Habib Khan v. Emperor*. 29 Cr. L. J. 728 : 110 I. C. 584 : A. I. R. 1928 Pat. 634.

—S. 154—First Information—Information given to Police before commission of offence.

A statement made by a person to the Police that he has seen a mob of men armed with

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weapons going towards a certain place, cannot be treated as the F. I. R. with regard to any offence that any members of the mob may subsequently commit. *Arjun Kurmi v. Emperor*.

28 Cr. L. J. 77 :
99 I. C. 109 : 8 P. L. T. 166 :
A. I. R. 1927 Pat. 100.

—S. 154—First Information—Prosecution, whether bound.

The prosecution is bound by practice to produce in Court the F. I. R. made to the Police but it is not bound to refrain from leading evidence that the report is not accurate. *Raja v. Emperor*. 25 Cr. L. J. 465 : 77 I. C. 817 : A. I. R. 1924 Lah. 591.

—S. 154—First Information—Report made to investigating officer.

A report of an occurrence made to an Assistant Sub-Inspector of Police when he is investigating a case in the *mofussil* and is not in charge of the Police Station cannot be treated as First Information Report. *Momin Talukdar v. Emperor*.

116 I. C. 601 : I. R. 1929 Cal. 553 :
A. I. R. 1928 Cal. 771.

—S. 154—First information—Value.

A statement made in the ordinary course to a Police Officer is not evidence at all and cannot be considered or proved as first information. *Dasrath Singh v. Emperor*.

23 Cr. L. J. 406 :
67 I. C. 502.

—S. 154—First information.

The First Information Report is not substantive evidence in the case, though it can be referred to show how the proceedings were initiated against the accused. *Nawab Khan v. Emperor*.

35 Cr. L. J. 476 :
147 I. C. 572 : 35 P. L. R. 132 : 6 R. Pesh. 34 :
A. I. R. 1933 Pesh. 94.

—S. 154—First information, what is—First information drawn up by Police officer after commencement of investigation and settled by attorney, if F. I. R.

A first information shows the manner in which the occurrence was related when the case was first started, it should be carefully and accurately recorded. The law requires that the first information should be the statement of the person himself giving the information, and it becomes valueless if drawn up by some person other than the proper informant. A statement recorded several days after the commencement of the investigation and after there had been some development, is not only no first information, but has very little or no value at all. A first information drawn up by a Police officer and finally settled by an attorney, is not a first information within S. 154. *Pearry Mohan Das v. Weston*.

13 Cr. L. J. 65 :
13 I. C. 721 : 16 C. W. N. 145.

—S. 154—First information, what is.

The F. I. R. is the technical description of a report under S. 154 giving first information of a cognizable offence. It is usually made by the complainant or by somebody on his behalf,

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The description is inapplicable to a statement made by the accused. *Subedar v. Emperor*.

25 Cr. L. J. 190 :
77 I. C. 880 : A. I. R. 1924 All. 207.

—S. 154—*First Information—Wrong treatment—Effect.*

Treating as F. I. R. a document which in fact is not and not treating as such a document which is really so, is a serious error vitiating trial. *Momin Talukdar v. Emperor*.

30 Cr. L. J. 803 :
116 I. C. 601 : I. R. 1929 Cal. 553 :
A. I. R. 1928 Cal. 771.

—S. 154—*First Information Report by victim—Admissibility, value.*

A F. I. R. is not substantive evidence and can only be used to corroborate or contradict the deposition of the maker at the trial. Consequently, the F. I. R. made by a victim who dies before the matter comes before the Court, cannot be admitted into evidence as such though it would be admissible as dying declaration under S. 32 (1), Evidence Act. *Kapur Singh v. Emperor*.

31 Cr. L. J. 475 :
123 I. C. 120 : 31 P. L. R. 83 :
A. I. R. 1930 Lah. 450.

—S. 154—*First Information Report, definition of—Statement by deceased.*

A statement by a deceased person to the Police cannot be admitted in evidence as a F. I. R. where the Police has already received information regarding the commission of the offence from some other source. *Banta Singh v. Emperor*.

31 Cr. L. J. 444 :
122 I. C. 491 : A. I. R. 1930 Lah. 457.

—S. 154—*F. I. R.—Delay in making—Delay, how far material.*

The fact that there was delay in reporting a case to the Police is not of much importance where the delay is satisfactorily explained. *Emperor v. Ibrahim*.

28 Cr. L. J. 983 :
105 I. C. 807 : 8 Lah. 605 :
28 P. L. R. 649 : 9 A. I. Cr. R. 132 :
A. I. R. 1928 Lah. 17.

—S. 154—*First Information Report, recording of, during investigation.*

In a suitable case, information under S. 154, may be recorded even in the course of an investigation by a Police Officer, but in such cases, it is from that information that investigation begins into the cognizable offence which was divulged by the information. If prior to that a statement was made to the Police and recorded in the station diary, it is not affected by S. 162 and can be admitted in evidence. *Mani Mohan Ghose v. Emperor*.

33 Cr. L. J. 138 :
135 I. C. 289 : 58 Cal. 1312 :
35 C. W. N. 623 : I. R. 1932 Cal. 97 :
A. I. R. 1931 Cal. 745.

—S. 154—*First Information Report—Ruqa by Police Officer during investigation.*

A ruqa by a Police Officer sent from the spot during the course of investigation, embodying the substance of the complainant's report made previously and some result of the investigation neither signed nor thumb-marked

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by the complainant is not a F. I. R. *Choghatta v. Emperor*.

27 Cr. L. J. 121 :
91 I. C. 697 : 1 Lah. Cas. 416 :
A. I. R. 1926 Lah. 179.

—S. 154—*First Information Report, scope and object of value.*

It is not necessary that every detail should be given in the F. I. R. The F. I. R. is merely a statement made to the Police which is not substantive evidence but can be used to corroborate or contradict the maker of it at the trial. *Gaman v. Emperor*.

30 Cr. L. J. 571 :
116 I. C. 187 : 11 L. L. J. 1 :
I. R. 1929 Lah. 459 : A. I. R. 1928 Lah. 913.

—S. 154—*First Information Report—Several informations.*

S. 154 does not necessarily contemplate that only one information of a crime should be recorded as a F. I. R. and information given to the police before investigation is started may amount to F. I. R. *Mir Rahman v. Emperor*.

37 Cr. L. J. 225 :
159 I. C. 890 : 8 R. Pesh. 92 :
A. I. R. 1935 Pesh. 165.

—S. 154—*First Information Report—Several statements.*

When more than one person goes to the Police Officer at the same time and makes statements relating to the same offence and the Police Officer records one statement as an information under S. 154 and then records other statements, they will be in the nature of statements in the course of the investigation. *Mani Mohan Ghose v. Emperor*.

33 Cr. L. J. 138 :
135 I. C. 289 : 58 Cal. 1312 :
35 C. W. N. 623 : I. R. 1932 Cal. 97 :
A. I. R. 1931 Cal. 745.

—S. 154—*F. I. R.—Telegram.*

So far as authenticity goes, a telegram stands in no better position than village gossip. *Public Prosecutor v. Chidambaram*.

29 Cr. L. J. 717 :
110 I. C. 461 : 28 L. W. 187 :
55 M. L. J. 23 : 10 A. I. Cr. R. 388 :
A. I. R. 1928 Mad. 791.

—S. 154—*F. I. R.—Telegram.*

A telegram to a Police Inspector stating that certain persons committed an offence does not comply with S. 154 as it is not signed by the informant. *Kachi Hazam v. Seraj Khan*.

36 Cr. L. J. 919 :
156 I. C. 400 : 39 C. W. N. 403 :
7 R. C. 699 : A. I. R. 1935 Cal. 403.

—S. 154—*F. I. R.—Telegram.*

Where an original telegram addressed to the Police regarding the commission of an offence is thumb-marked by the complainant and its authenticity is confirmed, it becomes a written statement complying with all the requirements of S. 154. *Chanan Singh v. Emperor*.

36 Cr. L. J. 97 :
152 I. C. 229 : 35 P. L. R. 363 :
15 Lah. 814 : 7 R. L. 269 :
A. I. R. 1934 Lah. 413.

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———S. 154—*F. I. R.—Telephone message.*

S. 154 is not intended to apply to a telephone message because that section says that every information whether given in writing or reduced to writing shall be signed by the person giving it and shall be read over to the informant. Further, the section requires that the information shall be relating to an offence not merely to an accident or injury. *Meherali Lalji v. Emperor*. 32 Cr. L. J. 543 : 130 I. C. 378 : A. I. R. 1931 Sind 13.

———S. 154—*First Information Report, use of, as evidence.*

A F. I. R. is not a substantive piece of evidence and can be used to corroborate or contradict the maker thereof. It cannot be used to contradict other witnesses. *Dharam Singh v. Emperor*. 29 Cr. L. J. 343 : 108 I. C. 162 : 9 A. I. Cr. R. 567 : A. I. R. 1928 Lah. 507.

———S. 154—*First information to Police—Reproduction by informant of the statements made by another, admissibility—Evidence Act (I of 1872), S. 155 (3)—Contradiction by proof of former statement.*

Where the first information to the Police is a mere reproduction by the informant of what is said to him by another, it cannot be used in evidence as a first information under S. 154, Cr. P. C. nor can it be used to contradict under S. 155 (3), Evidence Act, the evidence of the latter who, of course, may be contradicted by the evidence of the former. *Emperor v. Dina Bandhu Moitra*. 1 Cr. L. J. 62 : 8 C. W. N. 218.

———S. 154—*First Information Report, value of.*

The First Information Report is not substantive evidence and can only be used to corroborate or contradict a witness. A prosecution case cannot be held to be false merely because every detail of the offence is not given in the F. I. R. *Emperor v. Ibrahim*. 28 Cr. L. J. 983 : 105 I. C. 807 : 8 Lah. 605 : 28 P. L. R. 649 : 9 A. I. Cr. R. 132 : I. L. T. 40 Lah. 32 : A. I. R. 1928 Lah. 17.

———S. 154—*First Information Report, what amounts to—Statement recorded during investigation.*

S. 154 contemplates that the First Information of the commission of an offence actually received by the Police be recorded as such and not a statement made by a witness during investigation. *Chittar Singh v. Emperor*. 26 Cr. L. J. 554 : 85 I. C. 650 : 23 A. L. J. 14 : 47 All. 280 : A. I. R. 1925 All. 303.

———S. 154—*First Information—When to be recorded—Object of recording—Investigation by Police commenced without a first information—Irregularity.*

The first information, if recorded as directed by S. 154 at the time it is made, is of considerable value at the trial because it shows on what materials the investigation commenced

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and what was the story then told. Any statement recorded several days after the commencement of the investigation and after there had been some development, is not only no first information but has very little or no value. *Emperor v. Kampu Kuki*. 6 Cr. L. J. 86 : 11 C. W. N. 554.

———Ss. 154, 157, 162—*Telegram—Telegram to Police Officer—Subsequent statement by complainant to Police Officer.*

A person assaulted sent a telegram to the Inspector of Police complaining of the offence and the Police Inspector turned upon the spot and recorded statement from the complainant : *Held*, that it was not the telegram but the statement that was F. I. R. *Public Prosecutor v. Chidambaram*. 29 Cr. L. J. 717 : 110 I. C. 461 : 28 L. W. 187 : 55 M. L. J. 231 : 10 A. I. Cr. R. 388 : A. I. R. 1928 Mad. 791.

———Ss. 154, 161, 162—*First Information Report, evidentiary value of.*

A F. I. R. is information received under S. 154 and not information received after the commencement of investigation which comes under Ss. 161, 162. Though not substantive evidence, it shows materials on which the investigation commenced and the manner in which the occurrence was related when the case was first started and may, therefore, be used to corroborate or contradict the author of it. *Muhammad Ibrahim v. Emperor*. 30 Cr. L. J. 38 : 112 I. C. 902 : I. R. 1929 Nag. 10 : A. I. R. 1929 Nag. 43.

———Ss. 154, 162—*First Information Report and statement made to police, distinction between—Tests—Question of fact.*

It cannot be laid down that, because a person of the party of the accused goes first to the Police Station and says that some of the complainant's party has committed an offence, the real complaint against the accused must be kept off the record save on terms under S. 162. It is a question of fact whether a statement made to a Police Officer in the course of an investigation in such cases comes under S. 162 or is made by way of complaint to commence an investigation under S. 154. *Osman Gani Mistry v. Emperor*. 31 Cr. L. J. 771 : 125 I. C. 111 : A. I. R. 1920 Cal. 130.

———Ss. 154, 157—*"Information received"*.

The words "from information received" in S. 157 refer to the information given in S. 154. *Jagdami Pershad Singh v. Mahadeo Kandoo*. 11 Cr. L. J. 201 : 5 I. C. 693 : 14 C. W. N. 326.

———Ss. 154, 162—*Information—Information orally given not reduced to writing—Investigation—S. 162, application of.*

When an information is given orally under S. 154 and a Police Officer does not reduce it into writing, he is doing what he ought not to do. But it is going too far to say that while investigating the truth or otherwise of the information, he is not carrying on an investigation. He obviously is, and S. 162 applies

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to the statements made by persons examined by him. *Sahed Ali Mirdha v. Emperor*—

38 Cr. L. J. 1067 :
171 I. C. 269 : I. L. R. 1937 2 Cal. 308 :
10 R. C. 258 : A. I. R. 1937 Cal. 309.

———Ss. 154, 162—*Information, what is.*

Per *Mullick, J.*—Information, is an allegation in the nature of a complaint, made to a Police Officer with a view to his taking action, and when an allegation is made, the Police Officer must record it as an information under S. 151, and the writing will attract the provisions of S. 35 of the Evidence Act; and if the Police Officer should record more than one information relating to a cognizable offence, they will all share the privilege of being exempt from the disability imposed by S. 162. In every case it is for the Court to decide whether the communication is an information in this technical sense and whether and when the Police investigation had in fact begun. *Gansa Oraon v. Emperor*.

24 Cr. L. J. 641 :
73 I. C. 561 : 4 P. L. T. 462 :
1 P. L. R. 178 Cr. : 2 Pat. 517 :
A. I. R. 1923 Pat. 550.

———Ss. 154, 162—*Information, what is—Written statement obtained from witness during investigation, admissibility of.*

The information referred to in S. 151 is something in the nature of a complaint or accusation, or at least information of a crime, given with the object of putting the Police in motion in order to investigate, as distinguished from information obtained by the Police when actively investigating a crime. Circumstances may arise where information given to the Police is vague and indefinite, that it cannot be treated as coming under S. 154 so as to make the officer in charge of the Police Station to start an investigation and he may reasonably require more direct information and such further information given to him in such circumstances might not come under S. 162. Or the information referred to in S. 154 may come from more sources than one, and be recorded at or about the same time. But once definite information has reached of a cognizable offence under S. 154 and the Police have taken active steps to investigate, whether the information has been taken down in the book kept for that purpose as provided in S. 154 or not, all further statements taken from the witnesses are taken in the course of a Police investigation and are inadmissible in evidence under S. 162. *Gansa Oraon v. Emperor*.

24 Cr. L. J. 641 :
73 I. C. 561 : 4 P. L. T. 462 :
1 P. L. R. 178 Cr. : 2 Pat. 517 :
A. I. R. 1933 Pat. 550.

———S. 154—*Miscellaneous—P. I. R. omission to enter in Station Diary—Effect.*

Omission to enter the First Information in the Station Diary as required by S. 154 would have an important bearing if the date of the report was in question, but is not an illegality which vitiates the trial. *Hafiz Muhammad Sani v. Emperor*.

32 Cr. L. J. 638 :
131 I. C. 17 : 12 P. L. T. 393 :
A. I. R. 1931 Pat. 150.

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———Ss. 151, 155—*Miscellaneous—Defamation.*

Statements made to Police Officer when giving information of offence, whether privileged. See Penal Code, S. 499.

———S. 154—*Statements in course of investigation, whether "charge".*

Statements made in the course of an investigation under Chap. XIV are not 'charges' as contemplated by S. 211, Penal Code. *In re : Kodangi*.

135 I. C. 590 (a) : 34 L. W. 859 :
1931 M. W. N. 1231 : I. R. 1932 Mad. 174 (2) :
A. I. R. 1932 Mad. 151.

———S. 154—*Procedure—Duty of Police Officer recording P. I. R.*

It is a very serious thing for a Police Officer to record in the first report false facts, and it is still more serious for him to attempt to support it by false evidence. *Emperor v. Mahmood Khabar*.

35 Cr. L. J. 736 :
148 I. C. 672 : 6 R. S. 196 :
A. I. R. 1934 Sind 6.

———S. 154—*Value—P. I. R., value of, as evidence.*

Statements made by a complainant in the First Information Report and to the headman are not substantive evidence at all. *Nga Tun Hlaing v. Emperor*.

35 Cr. L. J. 808 :
148 I. C. 876 : 6 R. Rang. 258 :
A. I. R. 1934 Rang. 60.

———S. 155.

———Applicability.

———Irregularities.

———Jurisdiction.

———Procedure.

———Scope.

———S. 155 (3).

See Cr. P. C., 1898, S. 170.

———Ss. 155, 156, 164—*Applicability—Magistrate referring matter to Police for investigation—Report by Police—Examination on oath of suspected person—Perjury—Sanction to prosecute.*

The complainant before a Magistrate stated certain circumstances. The latter referred the matter to the Police with authority to investigate and report. The police submitted a report as to the result of their investigation. The Magistrate then made a further inquiry and examined S. (the suspected person) on solemn affirmation. During examination, S. made certain statements which appeared to be false. The Magistrate, acting under S. 476, Cr. P. C. sent S. to another Magistrate for enquiry whether S. had committed the offence of perjury. The Sessions Judge referred the case to the High Court being of opinion that the order was unsustainable, first because, the Magistrate had no jurisdiction to refer the matter to the Police, there being no complaint before the Magistrate as required by S. 202, Cr. P. C. and no examination of the complainant by him; and, secondly, because S. was illegally sworn, he being an accused person: *Held*, that the Magistrate was empowered to refer the matter to the Police for investigation, under S. 155, Cl. 2,

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Cr. P. C., in cases of non-cognizable offences, and under S. 156, Cl. 3, in cases of cognizable offences. That the statements taken by the Magistrate were in a stage of the inquiry under the provisions of Cr. P. C. and that he had, therefore, powers, under S. 164 of the Code to administer an oath to S. and a charge of perjury could be framed with regard to the statements made on oath. *Emperor v. Vishwanath*.
4 Cr. L. J. 183 :
8 Bom. L. R. 589.

—S. 155—Irregularities.

Irregularities affect only weight of evidence but do not vitiate proceedings. *Abdullah Khan v. Emperor*.
34 Cr. L. J. 256 :
141 I. C. 879 : I. R. 1933 Sind 79 :
A. I. R. 1933 Sind 188.

—Ss. 155, 190—Jurisdiction—Non-cognizable offence, information of—Powers of the Police—No complaint or Police report—Magistrate's order to investigate—Jurisdiction.

Upon receiving information of the commission of a non-cognizable offence, a Police officer can, instead of merely referring the informant to a Magistrate, report the case to a Magistrate under Cl. (1) of S. 155 for orders under Cl. (2) of the same section, and the Magistrate can order an investigation without first taking cognizance of the offences in one of the three ways mentioned in S. 110, Cr. P. C. *In re : Asadulla Hussain Khan*.
11 Cr. L. J. 156 (a) :
4 I. C. 1043 : 6 M. L. T. 259.

—S. 155—Procedure—Investigation—Non-cognizable case reported by Police.

When a Magistrate receives a Police report in a non-cognizable case and has reason for doubting its correctness, he can order an investigation under S. 155, Cr. P. C., but he cannot examine the Police Officer who submitted the report as if he was a complainant. *U. B. Naga Saw Ke v. Emperor*.
16 Cr. L. J. 97 :
27 I. C. 145 : U. B. R. 1914 II 19 :
A. I. R. 1914 U. Bur. 31.

—S. 155—Procedure—Police Officer investigating non-cognizable offence.

A non-cognizable case can, under S. 155, be investigated by a Police Officer under orders of a Magistrate of the first or second class having powers to try such case or commit the same for trial. But when such order is given and the Police Officer proceeds to make an investigation, such investigation is made under Chap. XIV, which includes both Ss. 153 and 172. *Hira Lal v. Emperor*.
19 Cr. L. J. 517 :
45 I. C. 277 : 18 P. W. R. 1918 Cr :
16 P. R. 1918 Cr. : 63 P. L. R. 1918 :
A. I. R. 1918 Lah. 171.

—S. 155—Scope.

The District Magistrate can order an investigation into a case under S. 204-A, Penal Code, even though such offence cannot be tried without the complaint of the Local Government. *General Relief Association, Lahore v. Emperor*.
32 Cr. L. J. 678 :
138 I. C. 751 : 33 P. L. R. 824 :
I. R. 1932 Lah. 534 : A. I. R. 1932 Lah. 581.

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—S. 156.

—Applicability.
—Investigation.
—Magistrate, powers of.
—Order directing inquiry.
—Powers of Police.
—Procedure.
—Scope.

—S. 156. See Cr. P. C., S. 155.

—Ss. 156 (3), 200, 202, 203, 204—Applicability—District Magistrate taking cognizance of complaint—Order for Police enquiry with direction to submit charge-sheet—Duty of District Magistrate to pass order on Police report.

Where a District Magistrate takes cognizance of a complaint under S. 200, Cr. P. C. and refers the case to a Police for inquiry under S. 202, it is for him to pass the necessary order on the Police report either under S. 203 or S. 204. He cannot direct the Police, if they find the case to be established, to submit a charge-sheet to the Magistrate concerned. S. 156 (3) does not apply to such a case as the section only empowers the Magistrate to order a Police inquiry in a case when the Magistrate does not himself issue process at once. Where the Sub-Divisional Magistrate accepts the charge-sheet submitted by the Police under such circumstances, and proceeds with the case without any order by the District Magistrate under S. 204 or any order of transfer of the case to him under S. 192, his proceedings are void. *Isaf Nasya v. Emperor*.
28 Cr. L. J. 577 :
102 I. C. 545 : 54 Cal. 303 :
8 A. I. Cr. R. 238 : A. I. R. 1928 Cal. 24.

—Ss. 156, 96—Investigation—Issue of search warrant in general terms—Legality of—Incriminating articles found on search, returning of, to accused.

Where an Inspector is conducting an investigation under S. 156, and not an enquiry, the issue of a search warrant in general terms and not for search of a particular document or things, is illegal under S. 96 (1). But though the warrant is illegally issued when among the things found are documents or things which incriminate the accused persons in whose possession they were found, they cannot be returned to them because the warrant was issued on a faulty basis. *Mamsa v. Emperor*.
38 Cr. L. J. 983 :
170 I. C. 870 : 10 R. Rang. 111 :
A. I. R. 1937 Rang. 206.

—S. 156—Magistrate, powers of.

A Magistrate has power to refer the matter to Police under S. 156 in cognizable offences. *Emperor v. Vishwanath*.
4 Cr. L. J. 183 :
8 Bom. 589.

—Ss. 156, 202—Order directing inquiry—Magistrate's competency of, to direct inquiry by Police after issue of process—Private complaint, cognizance of by Magistrate, whether debars inquiry by Police.

After the issue of process, a Magistrate has no power to direct the Police to inquire into the case under S. 156 (3), Cr. P. C. and

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the Police have no power to charge sheet such a case; the mere fact, that a private complaint is filed in a Court and the Magistrate takes cognizance of the private complaint does not deter the Police from enquiring into offences which have been committed and which come to their knowledge not from the complainant party but on the information which they secure in the course of their duty from other persons, and from submitting a charge-sheet. *In re: Vijayaraghavachari.*

30 Cr. L. J. 326 :
114 I. C. 365 : I. R. 1929 Mad. 285 :
A. I. R. 1928 Mad. 1268.

S. 156—Powers of Police.

Powers given to Police are not affected when order for investigation under S. 202 is made. Police can send charge-sheet. *Rashid Ahmad v. Emperor.*

33 Cr. L. J. 737 :
139 I. C. 139 : 33 P. L. R. 840 :
I. R. 1932 Lah. 561 :
A. I. R. 1932 Lah. 579.

Ss. 156, 165—Powers of Police—Investigation by Police—Entry into house of stranger.

The authority which a Police Officer making an investigation has to enter a house without a search warrant is when he has reasonable grounds for believing that anything necessary for purposes of an investigation into any offence which he is authorised to investigate, may be found in any place within the limits of the Police Station of which he is in charge. He has no power to make promiscuous entries into houses simply to satisfy himself as to the truth of an allegation made by a complainant, or an accused or a witness during investigation. *Jagannath v. Emperor.*

29 Cr. L. J. 272 :
107 I. C. 688 : L. R. 9 All. 13 Cr. :
9 A. I. Cr. R. 102 : 26 A. L. J. 410 :
A. I. R. 1928 All. 185.

Ss. 156, 202—Power of Police.

On receiving information in a complaint forwarded under S. 202, Cr. P. C. the Police need do no more than report; but they can investigate under S. 156 if they choose to do so. *Gopal Naick v. Alagirisami Naick.*

32 Cr. L. J. 690 (a) :
131 I. C. 176 : 33 L. W. 460 :
1931 M. W. N. 368 : I. R. 1931 Mad. 512 :
60 M. L. J. 520 : 51 Mad. 598 :
A. I. R. 1931 Mad. 770.

Ss. 156, 173—Procedure—Magistrate sending case to Police for enquiry—Police filing complaint before Sub-Divisional Magistrate—without reporting result—Proceedings, whether irregular.

Where a Magistrate forwarded a case for investigation to the Police, and the Police, after enquiry filed a complaint before the Sub-Divisional Magistrate without reporting the result of the enquiry to the Magistrate: *Held*, that the Police, acting under S. 173, Cr. P. C. were justified in making a report of the offence found which was triable by a First Class Magistrate to the Sub-Divisional Magistrate, as a Magistrate empowered to

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take cognizance of the offence on a Police report. *In re: Ponnuseami Udayar.*

30 Cr. L. J. 469 :
115 I. C. 481 : 28 L. W. 769 :
I. R. 1929 Mad. 433 :
A. I. R. 1929 Mad. 115.

S. 156 (3)—Scope.

The third clause of S. 156 is not intended to provide an alternative procedure to that laid down in Section 200 *et seq.* *In re: Arula Kotiah.*

12 Cr. L. J. 463 :
11 I. C. 999 : 10 M. L. T. 120 :
1911 2 M. W. N. 74.

S. 156 (3)—Scope.

The utility of the section will be much diminished if the section were held to apply only to those cases in which a Magistrate takes cognizance on his knowledge or suspicion. *Emperor v. Ghulam Nabi.*

34 Cr. L. J. 763 :
144 I. C. 409 : 27 S. L. R. 67 :
I. R. 1933 Sind 185 : A. I. R. 1933 Sind 136.

S. 157.

Enquiry.
Failure to report.
Information received.
Power of Magistrate.
Power of Police.
Procedure.

S. 157—See also—(i) Cr. P. C., 1898,
S. 154.

S. 161—See also—(ii) Cr. P. C., 1898,
S. 161.

Ss. 157, 159, 202, 476—Enquiry by a Magistrate—Enquiry without jurisdiction—Magistrate's action under S. 476 not sustainable.

A report was made that a certain person had committed an offence. The Sub-Inspector reported that the case was a false one. The District Magistrate then verbally directed the Superintendent of Police to enquire and report. The Superintendent reported that the case was not true but suggested that a Magisterial enquiry should be made. The District Magistrate ordered a Deputy Magistrate to hold a Magisterial enquiry. The Deputy Magistrate found the case to be false and took steps under S. 476, Cr. P. C., against persons who had given false evidence before him to support the case: *Held*, that the order of the Deputy Magistrate was without jurisdiction, as the enquiry held by him was not under any section of the Cr. P. C. or any other legal sanction. *Abdul Rahman v. Emperor.*

10 Cr. L. J. 424 :
3 I. C. 952.

S. 157—Failure to report.

Omission to send to Magistrate report and copy of first information does not vitiate trial. *Hafiz Muhammad Sani v. Emperor.*

32 Cr. L. J. 638 :
131 I. C. 17 : 12 P. L. T. 393 :
A. I. R. 1931 Pat. 150.

S. 157 (1)—Failure to report—Effect.

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An omission to send a report to the Magistrate as required by S. 157 (1), is a serious neglect of duty and lays the Police open to grave suspicion of the concoction of false evidence. *Emperor v. Balochhan*.

11 Cr. L. J. 498 :
7 I. C. 601 : 4 S. L. R. 38.

———S. 157.—“Information received.”

These words in S. 157 refer to the information given in S. 154. *Jagdami Pershad Singh v. Mahadeo Kundoo*.

11 Cr. L. J. 201 :
[5 I. C. 693 : 14 C. W. N. 326.

———S. 157, 159—Power of Magistrate—First Class Magistrate, whether can depute Sub-Magistrate to hold preliminary inquiry.

Under Ss. 157 and 159, Cr. P. C., a First Class Magistrate can depute a Sub-Deputy Magistrate to hold an investigation or preliminary inquiry. *Harendra Nath v. Emperor*.

26 Cr. L. J. 307 :
84 I. C. 451 : 40 C. L. J. 313 :
A. I. R. 1925 Cal. 161.

———Ss. 157, 159, 169, 170, 173, 190 (1) (c)—Power of Magistrate to order prosecution of offender not arrested by police—First Information Report—Final report.

In a case by the Police, the Magistrate acquitted the accused, but ordered that another person should be sent up for trial. The Magistrate was not empowered under S. 190 (1) (c) of the Cr. P. C., to take cognizance of offences of his own motion: *Held*, that the Magistrate, although not so empowered, was competent to order the prosecution of any person implicated on receipt of the First Information Report from the Police, and *a fortiori* after having received the final report and having himself examined witnesses. *Hakim Ally v. Emperor*.

7 Cr. L. J. 414 :
4 L. B. R. 137.

———Ss. 157, 165—Powers of Police—Locking of doors of accused's house by Police—Legality.

The wording of S. 165 limits the powers of a Police officer to places within the limits of the station in his charge or to which he is attached and although the locking doors of an accused's house is a step which facilitates the search of the house and makes the search a thing of some value, yet the locking doors and guard over the house are also a part of the ordinary duties of the Police and there is no provision preventing the Police of one Police station from acting under S. 157 in the jurisdiction of another Police station. *Natha Singh v. Emperor*.

16 Cr. L. J. 551 :
29 I. C. 823 : 12 P. R. 1915 Cr. :
A. I. R. 1915 Lah. 376.

———Ss. 157, 173, 195, 476—Procedure—Sanction for prosecution under S. 211, Penal Code, for false charge made to Police.

Upon a first information of an offence under S. 379, Penal Code, laid before the Police, the Police submitted a final report under S. 173, Cr. P. C. to the effect the case appeared to be false, thereupon the Magistrate ordered the complainant to prove his case (without the complain-

Cr. P. CODE (1898), S. 160

ant applying to the Magistrate to investigate into the matter) and after the examination of some witnesses, declared the case to be maliciously false and sanctioned the prosecution of the complainant under S. 211, Penal Code : *Held*, that the order for sanction to prosecute was bad both under S. 195 and S. 476; that the procedure adopted by the Magistrate was not contemplated by law, as the report by Police was not under S. 157 so as to entitle the Magistrate to proceed under S. 159. *Tayabullah v. Emperor*.

18 Cr. L. J. 13 :
36 I. C. 845 : 24 C. L. J. 134 :
20 C. W. N. 1265 : 43 Cal. 1152 :
A. I. R. 1917 Cal. 593.

———S. 159.

See also (i) Cr. P. C., 1898, S. 157.
(ii) Cr. P. C., 1898, S. 190.

———S. 159—Enquiry.

The mere fact that the enquiry was not held by a particular officer as suggested by the Magistrate in his order, does not make the submission of the charge-sheet on the part of the investigating Police, contrary to the provisions of the Code. *Osman Sheikh v. Hari Pada Biswas*.

37 Cr. L. J. 139 (1) :
159 I. C. 660 : 62 Cal. 469 :
8 R. C. 342 (1) : A. I. R. 1935 Cal. 731.

———S. 159—Identification—Accused not identified immediately after arrest—Conviction, whether good.

In no dacoity case would a Court convict a person, who was not identified in the Jail or before a proper authority, immediately after the arrest, simply on the strength of identification conducted in the Court of the Committing Magistrate or the Sessions Judge. *Kishen Lal v. Emperor*.

26 Cr. L. J. 501 :
85 I. C. 245 : 22 A. L. J. 501 :
L. R. 5 All. 177 Cr. : A. I. R. 1924 All. 645.

———S. 159—Identification—S. 159, if covers reference to mashirnama as to what was done or seen.

S. 159, Cr. P. C., is wide enough to cover reference to a *mashirnama* as to what was done or seen but not as to what was said. There should then be no practical difficulty in the way of adducing sufficient evidence of identification tests in Court to preserve their utility. *Mor Mahomud v. Emperor*.

41 Cr. L. J. 924 :
190 I. C. 499 : 1940 Kar. 487 :
13 R. S. 81 : A. I. R. 1940 Sind 168.

———S. 160.

See Penal Code, 1860, S. 173.

———S. 160—Order, in writing, absence of, effect of.

The absence of an order in writing as required by S. 160, Cr. P. C., is no doubt an irregularity. It would certainly justify the failure or refusal of the suspects to obey the order but it can have no effect when the irregularity is waived by them. *Dina Nath v. Emperor*.

41 Cr. L. J. 757 :
189 I. C. 591 : I. L. R. 1940 Nag. 232 :
13 R. N. 58 : 1940 N. L. J. 667 :
A. I. R. 1940 Nag. 186.

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—S. 160.

Police constable acting without written order, whether acting in discharge of duty—Assault—Offence. See Penal Code, S. 353.

—S. 160—Scope.

S. 160 deals with Police Officer's power to require attendance of witnesses, and in an investigation an accused person is not bound to attend if the Police require him to do so. *Shivlal v. Emperor*. 39 Cr. L. J. 68 :

172 I. C. 156 : 10 R. N. 169 :
20 N. L. J. 280 : A. I. R. 1938 Nag. 110.

—Ss. 160, 161—Perjury—III. (b), 476—Penal Code (Act XLV of 1860), S. 193—Witness not bound to speak the truth before Police—Statements of witness made on oath before Magistrate contradicting that made before Police—Contradictory statements on oath before a Magistrate.

Where the prosecution of a witness, who had made a statement on oath contradicting his previous statement to the Police was directed under S. 476, Cr.P.C. and he was convicted under S. 193, I. P. C. : *Held*, that the words 'an investigation under this chapter' in S. 160, Cr.P.C. referred to all investigations (including those under Ss. 174 and 175, Cr.P.C.) and that it was only in investigations of the nature of an inquest that a witness was bound to speak the truth ; that inquest consisted, under S. 174, Cr.P.C. of investigation into the apparent cause of death : that such an investigation ceased when the cause of death was determined such as whether the death was natural, suicidal, accidental, or homicidal ; that, if the death was due to homicide, then investigation, as regards the persons guilty of homicide, became an investigation under S. 161, Cr. P. C. *Rabari Bhura v. Dawait*. 2 Cr. L. J. 590 : 15 K. L. R. 148.

—S. 161.

See also (i) Cr. P. C., Ss. 154, 172.

(ii) Penal Code, S. 182.

—S. 161—Accused's right to copy.

Inquest report mentioning that no witness could give clue to murder—Prosecution of accused based on her alleged confession, to some of the witnesses—Accused, is entitled to a copy of inquest report. *Majeswari Debi v. Emperor*. 35 Cr. L. J. 530 :

147 I. C. 1007 : 37 C. W. N. 732 :
6 R. C. 383 : A. I. R. 1933 Cal. 861.

—S. 161—Confession—Incriminating statement by accused—Admissibility.

Any incriminating statement made by accused at an inquiry under S. 161, Cr. P. C., would be excluded at trial under S. 25, Evidence Act, as having been made to a Police Officer. Such parts of a confessional statement as lead to discovery of incriminating facts as also statements made to police by accused which are not of an incriminating nature, are admissible under S. 27, Evidence Act. The question whether a particular statement, whether positive or negative, verbal or expressed by conduct, is or is not a confession,

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must be decided on facts of each case. *Umer Duraz Munshi v. Emperor*.

26 Cr. L. J. 778 :
86 I. C. 410 : A. I. R. 1925 Sind 237.

—S. 161—Construction—'Any person', meaning of.

"Any person" in S. 161, Cr. P. C., refers to a witness and not to the person who is accused of the offence. *Umer Duraz Munshi v. Emperor*. 26 Cr. L. J. 778 :

86 I. C. 410 : A. I. R. 1925 Sind 237.

—S. 161—Detention of suspect by Police during investigation without arrest, wrongful confinement.

The investigating officers are entitled to summon the suspects supposed to be acquainted with the facts of the case. But detention of persons suspected of crime by Police in a specified place for investigation would amount to an offence of wrongful confinement. When the suspect's examination is over, he must either be arrested or allowed to depart. Informal detention without arrest is illegal and amounts to wrongful confinement. When the restraint is imposed by a will or power exterior to one's own, that restraint is unlawful. *Dina Nath v. Emperor*.

41 Cr. L. J. 757 :
189 I. C. 591 : 1 L. R. 1940 Nag. 232 :
1940 M. L. J. 667 : 13 R. N. 58 :
A. I. R. 1940 Nag. 186.

—S. 161—Power of Magistrate to re-examine.

A Committing Magistrate is justified to examine under S. 540 the witnesses whom the investigating Police Officer had examined. *Bhagauti v. Emperor*. 35 Cr. L. J. 1042 :

150 I. C. 205 : 11 O. W. N. 581 :
6 R. O. 615 : A. I. R. 1934 Oudh 362.

—S. 161—Refusal to answer—Penal Code (Act XLV of 1860), Ss. 176, 179, 187—Witness examined by Police—Refusal to answer—Offence.

A refusal to answer questions asked by a Police Officer under S. 161 is not punishable under S. 176, 179 and 187 of the Penal Code. *Gul Assan Shah v. Emperor*.

9 Cr. L. J. 105 :
40 P. W. R. 1908 Cr. : 27 P. R. Cr. 1908.

—S. 161—Scope.

S. 161 does not prevent the Police Officer from examining and recording the statement of any person who may subsequently be accused of an offence. *Shivlal v. Emperor*.

39 Cr. L. J. 68 :
171 I. C. 156 : 10 R. N. 169 :
20 N. L. J. 280 : A. I. R. 1938 Nag. 110.

—S. 161—Statement—Statements of witnesses recorded by Police—Accused's right to copies.

Any statements of witnesses that are recorded, in whatever form they may be recorded, are recorded under S. 161 and the defence have the right to ask for a copy of such statements and to use the statements for the pur-

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pose of contradicting the witnesses for the prosecution. *Sadhu Shaikh v. Emperor*.

29 Cr. L. J. 531 :
109 I. C. 355 : 32 C. W. N. 280 :
A. I. R. 1928 Cal. 260.

—————**S. 161—Statement—Statement of witnesses recorded in course of investigation, whether “information” given to Police.**

A statement made by a witness to Police during an investigation under Chap. XIV of the Cr.P.C., and recorded by the Police under S. 161 cannot be treated as information given to the Police under S. 154 and, therefore, if false, is not punishable under S. 182, Penal Code. *Sultan v. C. de M. Wellbourn*.

26 Cr. L. J. 1532 :
90 I. C. 316 : 3 Rang. 577 :
4 Bur. L. J. 261 :
A. I. R. 1925 Rang. 364.

—————**S. 161—Statement, what is.**

It is doubtful whether a statement of a witness to the Police that he knew nothing about the occurrence is not a statement within the meaning of S. 161. *Aseruddin v. Emperor*.

28 Cr. L. J. 273 :
100 I. C. 353 : 53 Cal. 980 :
7 A. I. Cr. Rang. 417 :
A. I. R. 1927 Cal. 257.

—————**S. 161, 162—Construction — Any ‘person’, meaning of.**

The words “any person” occurring in S. 161, Cr. P. C., must be read in conjunction with S. 162, Cr. P. C. and include any person who may subsequently be accused of the crime. The Police Officers are fully authorised to require the personal attendance of the suspects during the investigation. *Dina Nath v. Emperor*.

41 Cr. L. J. 757 :
189 I. C. 591 : I. L. R. 1940 Nag. 232 :
1940 N. L. J. 667 : 13 R. N. 58 :
A. I. R. 1940 Nag. 186.

—————**S. 162.**

—————Admissibility.
—————Amendment.
—————Analogous Law.
—————Applicability.
—————Confession.
—————Construction.
—————Contradiction.
—————Effect on Evidence Act.
—————Extent of use.
—————Granting copies.
—————Jury.
—————Miscellaneous.
—————Object.
—————Oral statement.
—————Police Diary.
—————Police proceedings.
—————Procedure.
—————Proof.
—————Scope.
—————Scope and object.
—————Statement, Use.

—————**S. 162—Admissibility.**

A statement made by an accused person which is admissible under S. 27, Evidence Act, does

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not become inadmissible because it was made to Police. *Emperor v. Faujdar*.

34 Cr. L. J. 875 :
144 I. C. 1021 (2) : L. R. 14 All. 153 Cr. :
55 All. 463 : 1933 A. L. J. 1518 :
6 R. A. 43 : A. I. R. 1933 All. 440.

—————**S. 162 — Admissibility—Complainant’s statement to Police.**

Where S. lodged an information against J. and made some statements before the Police during investigation, and S. was subsequently charged under Ss. 193, 192 and 211, Penal Code : *Held*, that the statements made by S. to the Police were not inadmissible under S. 162 but were admissible as *res gestae*. *Jogesu Chandra Roy v. Surendra Mohan Roy*. 33 Cr. L. J. 60 :
134 I. C. 1265 : 35 C. W. N. 838 :
I. R. 1932 Cal. 49 : A. I. R. 1931 Cal. 637.

—————**S. 162—Admissibility.**

Copies of statements of witnesses cannot be admitted after evidence of witness is closed.

Suraj Bali v. Emperor. 36 Cr. L. J. 65 :
152 I. C. 249 : 56 All. 750 : 7 R. A. 320 :
A. I. R. 1934 All. 340.

—————**S. 162—Admissibility—Evidence of witness that he identified accused before Police Officer in village.**

S. 162 should be read upon its plain terms. Therefore, a statement made by a witness to Police is not evidence at a trial. Where, however, a witness says that he identified the accused before the Police in village, such evidence is admissible. *Lahung v. Emperor*. 40 Cr. L. J. 240 :
179 I. C. 692 : 68 C. L. J. 103 :
42 C. W. N. 620 : 11 R. C. 577 :
A. I. R. 1939 Cal. 176.

—————**S. 162—Admissibility—Evidence Act (I of 1872), S. 145—Statement of witnesses before Police, whether evidence in case.**

Per Tek Chand, J.—Only those portions of the statements of witnesses made before the Police as have been actually used under S. 162, Cr. P. C., to contradict the witnesses in the manner provided in S. 145, Evidence Act, during their cross-examination or re-examination, are parts of judicial record and can be treated as evidence in the case. *Sabhai v. Emperor*.

31 Cr. L. J. 299 :
121 I. C. 66 : A. I. R. 1930 Lah. 449.

—————**S. 162—Admissibility.**

Girl taken away from her husband’s place at M.—Girl seen with accused in suspicious circumstances at D.—Constable’s report—Statement of girl to Sub-Inspector—In proceedings under S. 366, Penal Code, it cannot be admitted against accused in evidence. *Kharati v. Emperor*.

34 Cr. L. J. 1215 :
146 I. C. 199 : 1933 A. L. J. 929 :
L. R. 14 All. 470 Cr. : 55 All. 979 :
6 R. A. 275 : A. I. R. 1933 All. 665.

—————**S. 162—Admissibility in statements by witnesses to the Police.**

The Sessions Judge, apparently of his own motion, admitted in evidence the statements made by two of the witnesses to the Police : *Held*, that it was directly opposed to the ex-

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PLICIT provisions of S. 162. *Shwe Hla v. Emperor*. 1 Cr. L. J. 189 :

10 Bur. L. R. 29 : 2 L. B. R. 125.

———S. 162—*Admissibility—List of stolen property given to Police Officer before commencement of investigation.*

A list of property alleged to have been stolen given to Police before investigation is not a statement made to the Police during investigation within the meaning of S. 162, and is not inadmissible in evidence under that section, it may be regarded as an addition to the F. I. R. *Aular v. Emperor*. 31 Cr. L. J. 1017 :

126 I. C. 498 : 7 O. W. N. 456.

———S. 162—*Admissibility—List of stolen properties handed over to Police Officer during investigation, admission of—Misdirection.*

A list of stolen properties handed over to an Investigating Police Officer during investigation is a statement in writing made to Police within the meaning of S. 162, Cr. P. C., and not admissible in evidence. Where such evidence is admitted in a Jury trial, there is misdirection. *Fulbash Sheikh v. Emperor*.

31 Cr. L. J. 127 :

120 I. C. 458 : A. I. R. 1929 Cal. 448.

———S. 162—*Admissibility—List of stolen property.*

Lists of stolen property prepared in the presence of a Police Officer before the actual commencement of the investigation by the Police, cannot be excluded from evidence as being statement made to a Police Officer during investigation. *Emperor v. Narain*.

32 Cr. L. J. 630 :

131 I. C. 72 : 8 O. W. N. 31 :

I. R. 1931 Oudh 184 : A. I. R. 1931 Oudh 83.

———S. 162—*Admissibility—Oral statements to Police Officers in course of investigation.*

The words "any such statement" in the first paragraph of Cl. (1) of S. 162, cover not only written statements but oral statements as well, all of which statements are inadmissible in evidence. *Chinna Thimmappa v. Tabu Kunta Thimmappa*.

29 Cr. L. J. 1098 :

112 I. C. 682 : 28 L. W. 314 :

55 M. L. J. 351 : 51 Mad. 967 :

A. I. R. 1928 Mad. 1028.

———S. 162—*Admissibility—Police Officers deposing to identification of accused.*

Evidence of Police Officers who depose to certain of the accused having been identified by some prosecution witnesses in an identification parade, is not inadmissible as coming under S. 162, as these witnesses are not deposing to a statement made to the police but to an actual fact or circumstance seen and observed by them. *Ramdhin Brahmin v. Emperor*.

29 Cr. L. J. 963 :

112 I. C. 51 : A. I. R. 1929 Nag. 36.

———S. 162—*Admissibility—Procedure—Evidence Act (I of 1872), Ss. 145, 155-B, scope of—Statements made before Police, admissibility of—Procedure to be followed in admitting such statement.*

Under S. 162, Cr. P. C., a statement made before the Police by a witness can be used for

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the purpose of contradicting such witness when produced at the trial but after strict compliance with the provisions of S. 145, Evidence Act. The proper procedure would, therefore, be to ask a witness first whether he made such and such statement before the Police Officer. If the witness returns the answer in the affirmative, the previous statement in writing need not be proved and the cross-examiner may, if he so chooses, leave it to the party who called the witness to have the discrepancy, if any, explained in the course of re-examination. If, on the other hand, the witness denies having made the previous statement attributed to him or states that he does not remember having made any such statement and it is desired to contradict him by the record of the previous statement, the cross-examiner must read out to the witness the relevant portion or portions of the record which are alleged to be contradictory to his statement in Court and give him an opportunity to reconcile the same, if he can. It is only when the cross-examiner has done so, that the record of the previous statement becomes admissible in evidence for the purpose of contradicting the witness and can then be proved in any manner permitted by law. S. 155, Evidence Act, only lays down that the credit of a witness may be impeached, *inter alia*, by "proof of former statements inconsistent with any part of his evidence which is liable to be contradicted" but it does not lay down the manner in which the former statement is to be proved. The mode of proof of such a statement in writing when it is sought to be tendered in evidence for contradicting a witness is provided in S. 145 of the Act. *Gopi Chand v. Emperor*.

31 Cr. L. J. 1071 :

126 I. C. 573 : 11 Lah. 460 :

A. I. R. 1930 Lah. 491.

———S. 162—*Admissibility—Statement by complainant to Police.*

The statement by the complainant to the Investigating Officer that the accused was the person who had attempted to rob her is inadmissible. *Krishna Chandra Dhenki v. Emperor*.

36 Cr. L. J. 1470 (1) :

158 I. C. 843 : 39 C. W. N. 488 : 62 Cal. 918 :

8 R. C. 221 (1) : A. I. R. 1935 Cal. 311.

———S. 162—*Admissibility.*

Statement of Police Officer explaining his conduct during investigation is admissible. *Mohan Lal v. Emperor*.

32 Cr. L. J. 682 :

131 I. C. 276 (2) : I. R. 1931 Lah. 404 :

A. I. R. 1931 Lah. 177.

———S. 162 (1)—*Admissibility—Statement by person ultimately accused.*

Words "any person" in S. 162 (1), ordinarily would include any person though he may thereafter be accused. Investigation into crime often includes the examination of a number of persons, none of whom or all of whom may be suspected at the time. The words of the section prohibiting the statement, if recorded, from being signed, must apply to all statements made and must, therefore, apply to a statement

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made by a person possibly not then even suspected but eventually accused. "Any such statement" must, therefore, include such a case; the words of the section therefore lead to the conclusion that the statement is not admissible even when made by the person ultimately accused. *Pakala Narayana Swami v. The King-Emperor*. 40 Cr. L. J. 364 :

180 I. C. 1 : 1939 M. W. N. 185 :
1939 O. W. N. 282 : 20 P. L. T. 265 :
49 L. W. 349 : 43 C. W. N. 473 :
1939 O. L. R. 134 : 11 R. P. C. 166 :
41 Bom. L. R. 428 : 41 P. L. R. 272 :
69 C. L. J. 273 : 5 B. R. 449 : 1939 1 M. L. J. 756 :
18 Pat. 234 : 66 I. A. 66 (P. C.) :
A. I. R. 1939 P. C. 47.

———S. 162—Admissibility—Statement by witness made to police.

When a witness making statement to Police is examined in Court, that statement can be used to contradict and sometimes to corroborate him but it is not substantive evidence by itself and a conviction cannot be based on it. *Shiam Sunder v. Emperor*. 25 Cr. L. J. 204 :

76 I. C. 572 : A. I. R. 1923 All. 469.

———S. 162—Admissibility—Statements by witnesses to Investigating Officer at time of identification of accused.

The statements made by prosecution witnesses, to Police while picking out accused persons are hit by the prohibition contained in S. 162, Cr. P. C., and are inadmissible. 158 Ind. Cas. 843 (1), 84 Ind. Cas. 451 (2) and 92 Ind. Cas. 430 (3), relied on. *Krishna Kahar v. Emperor*.

41 Cr. L. J. 405 :
187 I. C. 129 : I. L. R. 1939 2 Cal. 569 :
43 C. W. N. 1117 : 12 R. C. 550 :
A. I. R. 1940 Cal. 189.

———S. 162—Admissibility—Statement made to Police by witness—Map containing hearsay matter.

In the course of a Sessions trial, the Investigating Sub-Inspector of Police, when examined as a prosecution witness, was asked whether he had, during the investigation, examined any witness on behalf of the accused. He stated that he had examined certain witnesses but that they had denied their presence at the occurrence. One of the persons named by the Sub-Inspector had been summoned by the accused as a defence witness: *Held*, that the statement of the Sub-Inspector was not admissible in evidence having regard to the provisions of S. 162. A person who makes a map in a criminal case ought not to put upon it anything more than what he sees himself. Particulars derived from witnesses examined on the spot should not be noted on the body of the map but on a separate sheet of paper annexed to the map as an index thereto. Such particulars are hearsay evidence and are not admissible. *Bhagirathi v. Emperor*.

27 Cr. L. J. 222 :
92 I. C. 174 : 30 C. W. N. 142 :
A. I. R. 1926 Cal. 550.

———S. 162—Admissibility—Statement of accused by gesture in Police custody.

A statement can be made by means other than words. Therefore, the gestures of the accused pointing out to the Police where

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revolver lies, is inadmissible in evidence. *Emperor v. Nga Kyaing*. 27 Cr. L. J. 658 :
94 I. C. 706 : 3 Rang. 656 :
A. I. R. 1926 Rang. 112.

———S. 162—Admissibility—Statements of witnesses recorded by Police—Evidence Act (I of 1872), S. 32 (1).

The statements of witnesses during investigation by Police cannot be used during trial except in the way laid down in S. 162 with the single exception in Cl. (2). Where, therefore, the statement recorded by the Police does not refer to the cause of the death of the person making it, as set out in S. 32 (1), Evidence Act, such statement can only be used when a witness is called for the prosecution on request by accused, if the Court thinks it expedient in the interest of justice, after the accused has been furnished with a copy thereof. *Nga Ba Than v. Emperor*.

19 Cr. L. J. 715 :
46 I. C. 299 : 3 U. B. R. 1918 81 :
A. I. R. 1918 U. Bur. 16.

———S. 162—Admissibility—Statement of witness to Police.

Statements made even by witnesses to a Police during an investigation are not permitted to be used in evidence for any purpose, except as provided in S. 162, that is to say, on the request of accused, the Court shall refer to the written statement and direct that the accused be furnished with a copy of it in order that the witness may be contradicted by the use of this statement. *Bhagwan Das v. Emperor*. 36 Cr. L. J. 733 :

155 I. C. 560 : 1935 A. L. J. 385 :
7 R. All. 944 : A. I. R. 1935 All. 717.

———S. 162—Admissibility—Statement of witness to Police.

The statement of a Sub-Inspector as to what the witnesses told him during the course of the investigation is admissible in evidence under S. 162 (1), Cr. P. C. *Labh Singh v. Emperor*.

26 Cr. L. J. 1153 :
88 I. C. 513 : 6 Lah. 24 :
A. I. R. 1925 Lah. 337.

———S. 162—Admissibility.

The complainant in an assault case can be cross-examined on behalf of the accused by confronting him with a statement which the complainant made to Police when they were investigating a case different from the case of assault. *Koravu Sabbayya v. Pepla Veeraya*.

34 Cr. L. J. 137 (1) :
141 I. C. 276 : 36 L. W. 759 :
1932 M. W. N. 1074 : 63 M. L. J. 794 :
56 Mad. 154 : I. R. 1933 Mad. 102 (1) :
A. I. R. 1933 Mad. 65 (1).

———S. 162—Admissibility.

Explanation to the Police, and before the trial Court, given by accused charged under Ss. 399 and 402, Penal Code, explaining circumstances which brought the accused together, differing—Evidence to show the same is admissible as showing conduct. *Chotu v. Emperor*. 33 Cr. L. J. 302 :

136 I. C. 523 : 25 S. L. R. 391 :
I. R. 1932 Sind 43 : A. I. R. 1932 Sind 16.

Cr. P. CODE (1898), S. 162**—S. 162—Admissibility.**

Where the map is prepared by a Police Officer, such particulars are also inadmissible under S. 162, Cr. P. C. *Bhagirathi v. Emperor*.

27 Cr. L. J. 222 :
92 I. C. 174 : 30 C. W. N. 142 :
A. I. R. 1926 Cal. 550.

—S. 162—Admissibility—Witnesses, statement to Police.

Signature of witnesses obtained by Police Officers to their statements reduced into writing—Evidence of such witnesses must be rejected. *Bhuneswari Peishad v. Emperor*.

32 Cr. L. J. 860 :
132 I. C. 234 : 8 O. W. N. 503 :
I. R. 1931 Oudh 250 : A. I. R. 1931 Oudh 172.

—S. 162—Admissibility—Witness's statement to Police.

Under S. 162 Police Officer can be allowed to depose to what a witness had said to him in the course of the investigation for the purpose of corroborating the testimony of that witness before the trial Court. *Emperor v. Hanmaraddi Ramaraddi*.

15 Cr. L. J. 690 :
26 I. C. 138 : 16 Bom. L. R. 603 :
39 Bom. 58 : A. I. R. 1914 Bom. 263.

—S. 162 (1) — Admissibility — Statement made to Police Officer, whether admissible.

A statement recorded by Police under S. 162, Cl. (1) is inadmissible in evidence at any inquiry or trial in respect of any offence, under investigation at the time when such statement was made. *Bahadur v. Emperor*.

26 Cr. L. J. 1063 :
88 I. C. 7 : A. I. R. 1925 Sind 289.

—S. 162—Amendments, application of—"Such statement," meaning of.

The phrase "such statement" in S. 162 means "statement if reduced to writing." The application of S. 162, as amended in 1923, is confined, as that of the old one was, to written statements. The new action, was designed to confer on an accused person a legal right, which the old section did not give, of having a copy of the written statement of a witness before the Police for contradicting the witness. *In re : Grandhe Venkatasubbiah*.

26 Cr. L. J. 721 :
86 I. C. 209 : 1925 M. W. N. 68 :
21 L. W. 190 : 48 M. L. J. 195 :
48 Mad. 640 : A. I. R. 1925 Mad. 579.

—S. 162—As amended by (Act XVIII of 1923)—Amendment, "Subject to the provisions of Indian Evidence Act," meaning of—Evidence taken by Committing Magistrate, when can be used at trial.

The addition of the words "subject to the provisions of the Indian Evidence Act, 1872" to S. 162, Cr. P. C. as amended in 1923, means that evidence duly taken before a Committing Magistrate can be used for all purpose in a Trial Court so long as the evidence is evidence within the meaning of the Evidence Act; or, in other words, that Magisterial depositions can be utilized in a Trial Court as of evidential

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value only if the matter contained therein is, according to the rules of evidence laid down in the Evidence Act, of evidential value. But unless there is clearly present, besides the evidence given before the Committing Magistrate, evidence which will show that the evidence given before the Committing Magistrate should be preferred to and substituted for that given before the Sessions Judge, the evidence given before the Committing Magistrate cannot be effectively utilized in support of a conviction. *Jehal Teli v. Emperor*. 26 Cr. L. J. 270 : 84 I. C. 334 : 3 Pat. 781 : 6 P. L. T. 53 : A. I. R. 1925 Pat. 51.

—S. 162—Amendments, effect of.

Alteration introduced into S. 162 in 1923 has not made any material change in S. 172. *Emperor v. Hari*.

36 Cr. L. J. 1161 (2) :
157 I. C. 697 : 28 S. L. R. 397 :
A. I. R. 1935 Sind 145.

—Ss. 161, 162—Evidence Act (I of 1872), Ss. 27, 28, 30, 157—Amendments, object of—Statements by accused and witnesses before Police, admissibility of.

While statements made by witnesses during Police investigation, except for certain limited purposes, have been entirely excluded, the statements of the accused provided they do not amount to a confession, are still admissible in law. *Jagwa Dhanuk v. Emperor*.

27 Cr. L. J. 484 :
93 I. C. 884 : 5 Pat. 63 : 7 P. L. T. 396 :
A. I. R. 1926 Pat. 232.

—S. 162—Amendments—Oral statements, admission of.

As regards proof and use of oral statements, the law is unaltered and is as it was before. All oral statements which were previously admissible under the Evidence Act and the use of which was not prohibited by the Cr. P. C. are still admissible in evidence *In re : Grandhe Venkatasubbiah*.

86 I. C. 209 : 1925 M. W. N. 68 :
21 L. W. 190 : 48 M. L. J. 195 : 48 Mad. 640 :
A. I. R. 1925 Mad. 579.

—S. 162—Analogous law.

S. 162, Cr. P. C., corresponds to S. 63, Bombay City Police Act IV of 1902. *Emperor v. Isap Mahamad*. 6 Cr. L. J. 164 : 9 Bom. L. R. 148 : I. L. R. 31 Bom. 218.

—S. 162—Applicability—Approver's statement to Police before tender of pardon.

S. 162 applies to statements made by an approver to the Police before he was tendered pardon. But, even if it does not, such a statement could be used to corroborate or contradict the approver as a previous statement of a witness under Evidence Act. *Hazara Singh v. Emperor*. 29 Cr. L. J. 348 : 108 I. C. 167 : 9 A. I. Cr. R. 559 : 9 Lah. 391 : A. I. R. 1928 Lah. 257.

—S. 162—Applicability—Counter-complaint after F. I. R. whether covered by S. 162.

Counter informations laid against a complainant after the First Information against accused, come under S. 154, Cr. P. C., and

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must be recorded and signed and, therefore, cannot come within S. 162, Cr. P. C., Whether such information is admissible at the trial depends on circumstances and has to be decided under the Evidence Act. The police cannot treat statements as information unless they are really received as such and come truly and properly within S. 154, Cr. P. C. *Azimaddy v. Emperor*. 28 Cr. L. J. 99 : 29 I. C. 227 : 44 C. L. J. 253 : 54 Cal. 237 : A. I. R. 1927 Cal. 17.

—S. 162—Applicability—F. I. R.—Statements by third parties.

The F. I. R. against accused is not statement under S. 162, inasmuch as it is not made during investigation. However important F. I. Reports may be, they have to be tendered in evidence under one or other of the provisions of Evidence Act. Statements made by third parties to Police in investigation and not recorded, cannot be used in evidence in any circumstances or for either side or for any purpose. Even if such statements are recorded, they cannot be used for any purpose but the one specified and that by the defence. *Azimaddy v. Emperor*. 28 Cr. L. J. 99 : 29 I. C. 227 : 44 C. L. J. 253 : 54 Cal. 237 : A. I. R. 1927 Cal. 17.

—S. 162—Applicability.

S. 162, Cr. P. C., applies to witnesses and not to the accused under trial. *Neeraj Ali Molla v. Emperor*. 30 Cr. L. J. 916 : 118 I. C. 368 : 33 C. W. N. 257 : I. R. 1929 Cal. 656.

—S. 162—Applicability—Proceeding on complaint.

S. 162 is not applicable to cases where the Police, after investigation, had refused to *challan* and the proceedings were started on a complaint. *Hari Gore v. Emperor*. 28 Cr. L. J. 14 : 99 I. C. 46 : 9 N. L. J. 167 : 7 A. I. Cr. R. 170 : A. I. R. 1927 Nag. 24.

—S. 162—Applicability.

S. 162 does not apply in the case of accused persons. *Tura Sardar v. Emperor*. 32 Cr. L. J. 231 : 129 I. C. 101 : 52 C. L. J. 177 : I. R. 1931 Cal. 117 : A. I. R. 1930 Cal. 710.

—S. 162—Applicability.

S. 162, Cr. P. C., does not apply to statements made in an investigation other than that which results in a trial in which those statements are sought to be used. *Shivlal v. Emperor*. 39 Cr. L. J. 68 : 172 I. C. 156 : 10 R. N. 169 : 20 N. L. J. 280 : A. I. R. 1938 Nag. 110.

—S. 162—Applicability.

S. 162, Cr. P. C., is not inapplicable to accused person. *Kalesha v. Emperor*. 33 Cr. L. J. 132 : 135 I. C. 364 : 1931 M. W. N. 715 : 34 L. W. 388 : 62 M. L. J. 71 : I. R. 1932 Mad. 108 : A. I. R. 1931 Mad. 779.

—S. 162—Applicability.

S. 162 shuts out statements written or oral,

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express or implied, made by witnesses to the Police during investigation ; but care must be taken not to shut out evidence, of what a witness saw or did. *Mor Mahomud v. Emperor*. 41 Cr. L. J. 924 : 190 I. C. 499 : 1940 Kar. 487 : 13 R. S. 81 : A. I. R. 1940 Sind 168.

—S. 162—Applicability—Statement made to Customs Officer.

The Excise Act (Bengal Act V of 1909) does not give the Customs Officer any powers of investigation as conferred upon Police under Cr. P. C. Consequently a statement made to a Customs Officer does not come within the mischief of S. 162, Cr. P. C. and is, therefore, admissible in evidence. *Ghulam Dastgir Khan v. Emperor*. 41 Cr. L. J. 40 : 184 I. C. 581 : 12 R. C. 244 : A. I. R. 1939 Cal. 623.

—S. 162—Applicability.

The protective provisions of S. 162 which apply to statements by accused to Police, have their origin in the infirmities which may affect the evidence of the Police in India as to statements made by accused persons. Such considerations are not applicable to statements made to Magistrate either under S. 164 or S. 342. *Allabazarayo Daryakhan v. Emperor*. 41 Cr. L. J. 477 : 187 I. C. 576 : 1939 Kar 800 : 12 R. S. 250 : A. I. R. 1940 Sind 53.

—S. 162—Applicability.

The provisions of S. 162 are applicable to the trial of a summons case as well as to the trial of warrant case. *Dinanath Sahay v. Emperor*. 40 Cr. L. J. 509 : 180 I. C. 845 : 17 Pat. 622 : 20 P. L. T. 70 : 5 B. R. 501 : 11 R. P. 545 : A. I. R. 1939 Pat. 174.

—S. 162—Applicability to Calcutta Police Act, 1866.

Ss. 162 and 172 are not applicable to Calcutta Police Act. *Panchanan Mukerjee v. Emperor*. 30 Cr. L. J. 577 : 116 I. C. 160 : 33 C. W. N. 203 : I. R. 1929 Cal. 448 : A. I. R. 1929 Cal. 275.

—S. 162—Applicability — Tracker's evidence.

A tracker can say in Court that during Police investigation he recognized on a certain day at a certain place certain track, and that the tracks were of a particular person if he knew him already or of a person at the scene of the crime, if he did not know him already. *Mor Mahmud v. Emperor*. 41 Cr. L. J. 924 : 190 I. C. 499 : 1940 Kar. 487 : 13 R. S. 81 : A. I. R. 1940 Sind 168.

—S. 162—Applicability.

Where the statement has not been made during investigation of the offence in respect of which the trial is held, neither the main part of S. 162 nor the proviso has any application. *Kovuru Subbayya v. Peta Veeraya*. 34 Cr. L. J. 137 (1) : 141 I. C. 276 : 36 L. W. 759 : 1932 M. W. N. 1074 : 63 M. L. J. 794 : 56 Mad. 154 : I. R. 1933 Mad. 102 (1) : A. I. R. 1933 Mad. 65 (1).

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—S. 162—*Confession—Discovery made—Exclusion—Section, if excludes any confession made to Police Officer in course of investigation, whether discovery is made or not.*

S. 162 is plainly wide enough to exclude any confession made to Police in investigation whether a discovery is made or not. *Pokala Narayana Swami v. The King-Emperor.*

40 Cr. L. J. 364 :
180 I. C. 1 : 1939 M. W. N. 185 :
1939 O. W. N. 282 : 20 P. L. T. 265 :
49 L. W. 349 : 43 C. W. N. 473 :
1939 O. L. R. 134 : 11 R. P. C. 166 :
1939 A. L. J. 298 : 41 Bom. L. R. 428 :
41 P. L. R. 272 : 67 C. L. J. 273 :
5 B. R. 449 : 1939 M. L. J. 756 :
18 Pat. 234 : 66 I. A. 66 :
A. I. R. 1939 P. C. 47.

—S. 162—*Construction—“In the course of”, meaning of.*

The words “in the course of” in the context of S. 162 import that the statement must be made as a step in a pending investigation to be used in that investigation. The words “in the course of” do not refer merely to that period of time which elapses between the beginning and the end of the investigation. Consequently a report made independently of any pending investigation and not designed to promote a pending investigation but to start one having no reference at all to the investigation which has, in fact, begun, cannot be said to have been made “in the course of” the investigation of the case. *Emperor v. Aftab Mohammad Khan.*

41 Cr. L. J. 647 :
188 I. C. 649 : 1940 A. L. J. 206 :
13 R. A. 55 : 1940 A. W. R. 85 :
A. I. R. 1940 All. 291.

—S. 162 — *Construction — Investigation, meaning of.*

The investigation under S. 162 refers to an investigation with regard to the commission of either a non-cognizable offence in which order is given by Magistrate to a Police Officer to inquire, or a cognizable offence in which a Police Officer is entitled to make an investigation without the order of a Magistrate. *In re : Barjorji Eramji Bharucha.*

33 Cr. L. J. 797 :
139 I. C. 628 : 34 Bom. L. R. 258 :
I. R. 1932 Bom. 518 : A. I. R. 1932 Bom. 196.

—S. 162 — *Construction — ‘Any person’ meaning of.*

The words “statement of any person” in S. 162 refer to the statement of any witness in the course of a Police investigation and not to the statement of an accused person in respect of whom such investigation is held. *Umar Duraz Munshi v. Emperor.*

26 Cr. L. J. 778 :
86 I. C. 410 : A. I. R. 1925 Sind 237.

—S. 162, Cl. (1)—*Construction—Statement by any person, meaning of.*

The expression “statement made by any person” in Cl. 1 of S. 162, includes statements by persons accused of the offence under investigation. *In re : Syamo Maha Patro. (F. B.)*

33 Cr. L. J. 418 :
137 I. C. 9 : 1932 M. W. N. 305 :
35 L. W. 705 : 62 M. L. J. 742 :
I. R. 1932 Mad. 338 :
A. I. R. 1932 Mad. 391.

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—S. 162 — *Construction — Statement, meaning of—Application to statement of accused.*

As the word ‘statement’ in S. 162 is intended to refer to statements recorded under the provisions of Ss. 160 and 161 and as S. 161 is not intended to apply to an arrested accused, S. 162 does not refer to statements made by an accused after arrest. *Shcobalak v. Emperor.*

29 Cr. L. J. 400 :
108 I. C. 442 : 11 N. L. J. 7 :
9 I. A. Cr. R. 408 : A. I. R. 1928 Nag. 108.

—S. 162 — *Construction — Statement, meaning of.*

To attract the operation of S. 162 of the Cr. P. C., there must be a statement which is capable of being recorded and reduced into writing and, therefore, a statement by a witness that he did not make any statement to the Police cannot be said to be a statement within the meaning of this section. *Ascrudain v. Emperor.*

28 Cr. L. J. 273 :
100 I. C. 353 : 53 Cal. 980 :
7 A. I. Cr. R. 417 : A. I. R. 1927 Cal. 257.

—S. 162—*Construction.*

The unsatisfactory form in which S. 162 is drafted, pointed out. *Nga Lu v. Emperor.*

35 Cr. L. J. 792 :
148 I. C. 810 : 6 R. Rang. 254 :
A. I. R. 1933 Rang. 378.

—S. 162—*Proviso (1)—Construction.*

The words of the first proviso to S. 162 “when any witness is called for the prosecution in such enquiry or trial” must refer to a time when an enquiry or trial in which such a witness is called is in process. This excludes the possibility of an order being made either by a Committing Magistrate after he has dealt with a case by committing it to the Sessions, or by a Sessions Judge in anticipation. *Babar Ali Sardar v. Emperor.*

30 Cr. L. J. 580 :
116 I. C. 167 : 49 C. L. J. 197 :
I. R. 1929 Cal. 455 : 56 Cal. 840 :
A. I. R. 1929 Cal. 182.

—S. 162—*Contradiction, what is.*

Contradiction means the setting up of one statement against another and not the setting up of a statement against nothing at all. *Sakhawat v. Emperor.*

38 Cr. L. J. 330 :
167 I. C. 61 : 19 N. L. J. 320 :
9 R. N. 163 : I. L. R. 1937 Nag. 277 :
A. I. R. 1937 Nag. 50.

—S. 162—*Contradiction.*

Contradiction of witness by omission in statement to police—Practice in Bengal considered better than that in Lahore as regards proof of omissions. *Bihari Mahton v. Emperor.*

32 Cr. L. J. 797 :
131 I. C. 801 : 10 Pat. 107 :
12 P. L. T. 798 : I. R. 1931 Pat. 241 :
A. I. R. 1931 Pat. 152.

—S. 162—*Contradiction.*

Discrepancies between statements of approver and other witnesses—Reference to approver's statement made before Police to explain discrepancies is not legal. *Asa Singh v. Emperor.*

35 Cr. L. J. 517 (1) :
147 I. C. 935 : 35 P. L. R. 969 :
6 R. L. 470 : A. I. R. 1934 Lah. 102.

Cr. P. CODE (1898), S. 162**—S. 162—Contradiction.**

Even if the statement is recorded in the form of a memorandum of what the witnesses had said to the Police Officer, it is available for the purpose of contradicting the witness. It is not necessary in order that an accused person may be allowed under S. 162 to contradict the witness that the statement must contain the very words used by the witness. *Mafizaddi v. Emperor*. 28 Cr. L. J. 805 :

104 I. C. 245 : 45 C. L. J. 561 :
31 C. W. N. 940 : A. I. R. 1927 Cal. 644.

—S. 162—Contradiction—Procedure.

If the defence desires to contradict a witness by his statement recorded in the Police diary, the proper procedure is to proceed in the manner laid down in S. 162. But the defence cannot ask the witness at the end of the cross-examination whether he made the statement to the Police. *Ram Bharosey v. Emperor*.

35 Cr. L. J. 762 :
148 I. C. 913 : L. R. 14 All. 184 Cr. :
6 R. A. 821.

—S. 162—Contradiction—Procedure.

The only way a witness can be contradicted by statements made to the Police under the provisions of S. 162 is to prove his written statement and put it to the witness under S. 145, Evidence Act, to permit him to explain the contradictions, if any. Statements made to Police cannot be used at a trial in any other way. *Emperor v. Ibrahim*.

28 Cr. L. J. 983 :
105 I. C. 807 : 8 Lah. 605 :
28 P. L. R. 649 : 9 A. I. Cr. Rang. 132 :
A. I. R. 1928 Lah. 17.

—S. 162—Contradiction—Procedure.

When it is sought to contradict a witness for prosecution by reference to previous statement recorded by Police, his attention should be drawn to alleged discrepancy and he should be afforded opportunity to explain it. *Emperor v. Najibuddin*.

35 Cr. L. J. 379 :
147 I. C. 142 : 14 P. L. T. 543 :
6 R. P. 339 : A. I. R. 1933 Pat. 589.

—S. 162—Contradiction—Procedure.

Under S. 162 the statement of a witness in evidence can only be contradicted by his alleged statement to Police on two conditions : (i) that the application for contradiction is made by the accused, and (ii) that the statement of Police should be proved by a certified copy of the diary. *Wesley v. Emperor*.

40 Cr. L. J. 4 :
178 I. C. 183 : 11 R. A. 276 :
1938 A. W. R. 505 :
A. I. R. 1938 All. 571.

—S. 162—Contradiction—Scope of.

S. 162, Cr. P. C., cannot bear the construction that while any part of the statement of a witness to the Police may be used to contradict him, yet if the contradiction consists in this that a statement made at the trial was not made in any part of the statement

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to the Police, such a contradiction cannot be proved. *Illaf Khan v. Emperor*.

27 Cr. L. J. 796 :
95 I. C. 396 : 5 Pat. 346 :
7 P. L. T. 634 : A. I. R. 1926 Pat. 362.

—S. 162—Contradiction—Statement before Police during investigation, use of, at trial.

Statements made by any person to a Police Officer in course of an investigation under Ch. XIV, Cr. P. C., cannot be used for any purpose except to contradict a witness at the request of the accused in the manner provided in second paragraph of S. 162 of the Code. *Gahur Howldar v. Emperor*. 27 Cr. L. J. 641 :

91 I. C. 593 : 30 C. W. N. 503 :
A. I. R. 1926 Cal. 793.

—S. 162—Contradiction—Statement made by witness to Police, how far relevant—Statement made before Magistrate—Conflicting statements—Evidence, value of.

A statement made by witness to Police during investigation is relevant only for contradicting the testimony of the witness given at trial, and any statement previously made by a witness before a Magistrate, including a statement made before the Committing Magistrate which has not been transferred to the Sessions record under S. 288, Cr. P. C., is relevant only for contradicting or corroborating the statement made by the witness at the trial. No reliance can be placed on the statement of a witness made at the trial when it is in hopeless conflict with the previous statement of the witness. *Ram Karan v. Emperor*.

27 Cr. L. J. 289 :
92 I. C. 577 : 2 Lah. Cas. 197 :
7 L. L. J. 371 : A. I. R. 1925 Lah. 483.

—S. 162—Contradiction—Statements made to Investigating Officer.

Statements made by witnesses to an Investigating Officer and attested by him can be used for the purpose of contradicting the evidence of the witnesses under S. 162. *Jadunandan Brahman v. Emperor*. 28 Cr. L. J. 802 :

104 I. C. 242 : 4 O. W. N. 699 :
2 Luck. 605 : A. I. R. 1927 Oudh 321.

—S. 162—Effect on Evidence Act, as amended by Act XVIII of 1923, whether repeals S. 27 of the Evidence Act.

The provisions of S. 27, Evidence Act, are quite independent of those of S. 162, Cr. P. C., and when the latter section was amended in 1923, the Legislature did not intend that it should repeal or in any way affect S. 27, Evidence Act. *Gola Takhat Khangar v. Emperor*.

30 Cr. L. J. 258 :
114 I. C. 273 : 24 N. L. R. 158 :
I. R. 1929 Nag. 49 : A. I. R. 1929 Nag. 17.

—S. 162—Effect on Evidence Act, S. 162, Cr. P. C., and S. 27, Evidence Act, scope of.

Per *Ramesam, J.*—S. 27, Evidence Act, is not affected by S. 162, Cr. P. C., but S. 162, Cr. P. C., is affected by S. 27, Evidence Act. S. 162, Cr. P. C., relates generally to the admissibility of statements and provides that statements are inadmissible. S. 27, Evidence Act, which relates to a more particular matter

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creates an exception to the general inadmissibility of statements made to Police, namely, where the statement consists of information received from the accused in custody in consequence of which a certain fact is discovered. *Chinna Thimmappa v. Talukunta Thimmappa*.

29 Cr. L. J. 1098 :
112 I. C. 682 : 28 L. W. 314 :
55 M. L. J. 351 : 51 Mad. 967 :
A. I. R. 1928 Mad. 1028.

—S. 162—Effect on Evidence Act—S. 162, Cr. P. C., and S. 157, Evidence Act, relation between.

S. 157, Evidence Act, must be taken to be controlled by special provisions in S. 162, Cr. P. C. *Bhulai Singh v. Emperor*.

11 Cr. L. J. 117 :
5 I. C. 357 : 13 O. C. 7.

—S. 162—Effect on Evidence Act, S. 162 if affects S. 27, Evidence Act (I of 1872).

S. 162, Cr. P. C., contains provisions plainly and directly, and, therefore, specifically, affecting S. 27, Evi. Act, *quoad* statements made under that section by an accused person to a Police in the course of an investigation. In other words there is a "specific provision to the contrary" within the meaning of S. 1 (2), Cr. P. C., and affects S. 27, Evi. Act. Where an accused makes a statement to Police to the effect that the knife with which he and the other co-accused had killed the deceased was at his house under heap of *pyal*, the statement is inadmissible in evidence under S. 27, Evi. Act, by reason of S. 162, Cr. P. C. *Baldeo v. Emperor*.

41 Cr. L. J. 627 :
188 I. C. 562 : 1940 A. L. J. 241 :
I. L. R. 1940 All. 396 : 13 R. A. 48 ;
1940 A. W. R. 229 : A. I. R. 1940 All. 263.

—S. 162—Effect on Evidence Act, S. 162, if shuts out statements admissible under S. 27, Evidence Act (I of 1872).

S. 162, Cr. P. C., is wide to include statements made to Police which would be admissible under S. 27, Evidence Act, as constituting information in consequence of which some fact has been discovered. But S. 162 does not shut out statements which are admissible under S. 27, Evidence Act, since S. 27 is a special law which cannot be derogated from by the general rule enacted in S. 162, Cr. P. C. *In re : Subbiah Tevar*.

41 Cr. L. J. 41 :
184 I. C. 593 : 50 L. W. 318 :
1939 2 M. L. J. 455 : 1939 M. W. N. 1000 :
I. L. R. 1939 Mad. 947 : 12 R. M. 469 :
A. I. R. 1939 Mad. 856.

—S. 162—Effect on Evidence Act, Evidence Act (I of 1872), Ss. 27, 145, 155, 157, how far conflict with S. 162, Cr. P. C.

The object of S. 162 is to prevent statements of witnesses made before Police from being used by prosecution under S. 145, 155 and 157, Evidence Act, which sections are not confined to criminal cases, and, not to repeal S. 27, Evidence Act. *Azimaddy v. Emperor*.

28 Cr. L. J. 99 :
29 I. C. 227 : 44 C. L. J. 253 : 54 Cal. 237 :
A. I. R. 1927 Cal. 17.

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—S. 162—Effect on Evidence Act—Evidence Act (I of 1872), Ss. 27, 157—Statement made by accused person to Police during investigation, whether can be proved at trial—Interpretation of Statutes.

Held, by the Full Bench.—The provisions of S. 162 prohibit the use of statements made to Police during the course of an investigation, whether the statements are oral or are reduced into writing except the latter statements which may be used in the restricted manner laid down by the Section : *Held*, by majority (*Hcald, J.* dissenting).—S. 27, Evidence Act, is neither repealed nor affected by S. 162, Cr. P. C., and consequently "information received from a person accused of any offence in the custody of a Police Officer" is not a statement under S. 162 (1) of the Cr. P. C., and its proof at trial is not prohibited by provisions of the latter section. The words "nor shall any such statement" in S. 162 (1) of the Cr. P. C. mean and refer to a statement made by any person to a Police, and during investigation under Ch. XIV. The words "if reduced into writing" only apply to the words "be signed by the person making it" and the use of an oral statement is, therefore, equally prohibited along with that of a written statement. Per *Rulledge, C. J.*—The ban of S. 162 of the Cr. P. C. applies only to statements made to Police making an investigation under Ch. XIV of the Code. If the investigation under that Chapter is finished, then the section cannot be invoked to prohibit statements made to Police at some time subsequent to investigation, if, on the other hand, statements made to Police when preparing a map or holding an identification parade, are statements made during investigation under Ch. XIV, then they are prohibited under S. 162. Per *Duckworth, J.*—S. 157, Evidence Act, is affected by S. 162, Cr. P. C., so far as statements to Police taken under S. 161 of the Code whether oral or recorded are concerned, but S. 27, Evidence Act, deal with information received from persons accused of an offence and in Police custody is not affected by the aforesaid section of the Code. Per *Hcald, J.*—S. 27, Evidence Act to the extent to which it allows proof of a statement made by an accused person to the Police while in the custody of the Police, during the investigation of a case, must be regarded as having been repealed by the amended S. 162, Cr. P. C. Statutes are not to be held to be repealed by implication unless the repugnancy between the new provision and the former Statute is plain and unavoidable. *Emperor v. Nga Tha Din*.

27 Cr. L. J. 881 ;
96 I. C. 145 : 5 Bur. L. J. 30 : 4 Rang. 72 :
A. I. R. 1926 Rang. 116.

—S. 162—Effect on Evidence Act—Evidence Act (I of 1872), S. 157—Penal Code (Act XLV of 1860), Ss. 300, 302—Criminal trial—Statement of witness made to Police, admissibility of.

S. 157 of the Evidence Act lays down that

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in order to corroborate testimony of a witness any former statement made by such witness relating to the same facts is admissible in evidence, but this general rule is controlled by the special provisions in S. 162 relating to criminal trials. Under that section not only is record of statement of a witness to the Police taken under S. 161 excluded from evidence, but also proof of such statement by oral evidence for corroborating the testimony of a witness for the prosecution. *Rakha v. Emperor*.

27 Cr. L. J. 438 :
93 I. C. 230 : 2 L. Cas. 62 : 6 Lah. 171 :
A. I. R. 1925 Lah. 399.

—S. 162—*Effect on Evidence Act—Police investigation—Statement made by witness to Police officer in investigation—“Reduced to writing”—Police diary, whether admissible in evidence—“Writing” and “statement”, distinction between—Evidence Act (I of 1872), Ss. 91, 157—Statement made by a witness—Proof for the purpose of corroboration.*

Per Knox, J.—The general provisions of the Evidence Act contained in S. 157, are controlled by the special provisions of S. 162, Cr. P. C. The deposition of a police having reference to his diary, as to the statement of a certain witness made during investigation cannot be admitted in evidence under S. 157 to corroborate the testimony of that witness. Per Karamat Hussain, J.—S. 162 prohibits only the use as evidence of recorded statements of the witness made to the investigating police officer; that section so far as the oral statements are concerned, is not in conflict with S. 157, Evidence Act, and oral statements made to the police may be proved by calling him as a witness in order to corroborate the testimony of the witnesses. S. 91 of the Evidence Act has no application to an oral statement made to an investigating Police officer for it is not a matter which is required by law to be reduced to the form of a document. *Rustom v. Emperor*.

11 Cr. L. J. 235 :
6 I. C. 101.

—S. 162—*Effect on Evidence Act.*

S. 162 does not modify S. 27, Evidence Act. *Emperor v. Faujdar*. 34 Cr. L. J. 875 :
144 I. C. 1021 (2) : L. R. 14 All. 153 Cr. :
55 All. 463 : 1933 A. L. J. 1518 :
6 R. A. 43 : A. I. R. 1933 All. 440.

—S. 162—*Effect on Evidence Act—If repeals provisions of S. 27, Evidence Act.*

Obiter.—S. 162, Cr. P. C. may *pro tanto* repeal provisions of S. 27, Evidence Act, which would otherwise apply. If they do not, presumably it would be on the ground that S. 27, Evidence Act, is a “special law” within the meaning of S. 1 (2), Cr. P. C. *Pokala Narayanaswami v. The King-Emperor*.

40 Cr. L. J. 364 :
180 I. C. 1 : 1939 M. W. N. 185 :
1939 O. W. N. 282 : 20 P. L. T. 265 :
49 L. W. 349 : 43 C. W. N. 473 :
1939 O. L. R. 134 : 11 R. P. C. 166 :
41 Bom. L. R. 428 : 41 P. L. R. 272 :
69 C. L. J. 273 : 5 B. R. 449 :
1939 1 M. L. J. 756 : 18 Pat. 234 :
66 I. A. 66 P. C. , A. I. R. 1939 P. C. 47.

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—S. 162—*Effect on Evidence Act.*

S. 162 is an application of the rule in S. 60, Evidence Act. Statement made to Investigating Police Officer cannot be used by prosecution or defence for corroborating testimony given at trial. *Emperor v. Najibuddin*.

35 Cr. L. J. 379 :
147 I. C. 142 : 14 P. L. T. 543 :
6 R. P. 339 : A. I. R. 1933 Pat. 589.

—S. 162—*Effect on Evidence Act.*

S. 162 overrides S. 27 of the Evidence Act. *Bawa Rawther v. Emperor*. 26 Cr. L. J. 321 :
84 I. C. 545 : 3 Bur. L. J. 245 :
A. I. R. 1925 Rang. 101.

—S. 162—*Effect on Evidence Act.*

S. 162 plainly constitutes an exception to the ordinary rule of evidence. The proviso engrafts an exception upon the exception. *Emperor v. Narayan*. 6 Cr. L. J. 164 :
9 Bom. L. R. 789 : 2 M. L. T. 414 :
32 Bom. 111.

—S. 162—*Effect on Evidence Act.*

S. 162, Cr. P. C., prevails over the provisions of S. 27 of the Evidence Act. *Emperor v. Nga Kyaing*. 27 Cr. L. J. 658 :
94 I. C. 706 : 3 Rang. 656 :
A. I. R. 1926 Rang. 112.

—S. 162—*Effect on Evidence Act.*

S. 162 (1) has the effect of modifying S. 155, Evidence Act. *Emperor v. Najibuddin*. 35 Cr. L. J. 379 :
147 I. C. 142 : 14 P. L. T. 543 :
6 R. P. 339 : A. I. R. 1933 Pat. 589.

—S. 162—*Effect on Evidence Act.*

Ss. 21, 27, Evidence Act, are not affected in any way by S. 162, Cr. P. C. Therefore, the confessional statements made by accused in Police custody, or to the Police, leading to the discovery of relevant facts can be proved by oral evidence. *Ganpati v. Emperor*.

12 Cr. L. J. 60 :
8 I. C. 1181 : 6 N. L. R. 180.

—S. 162—*Effect on Evidence Act—Statements made to the Police—Oral evidence of such statements, whether excluded—S. 162, effect of, on Evidence Act—Examination of accused—Answer given, whether may be used at trial.*

Although the written record of statements made to the Police during an investigation cannot be used as evidence, oral evidence of the statements, whether taken down in writing or not, is not excluded by S. 162, Cr. P. C. which section does not override general provisions of the Evidence Act as to oral evidence of such statements to corroborate the evidence of a witness. *Baldeo Koeri v. Emperor*.

22 Cr. L. J. 433 :
61 I. C. 785 : 6 P. L. J. 241 : 2 P. L. T. 565 :
A. I. R. 1921 Pat. 122.

—S. 162—*Effect on Evidence Act—Whether overrides S. 27, Evidence Act (I of 1872).*

S. 162, Cr. P. C., overrides the provisions of S. 27, Evidence Act. *Bhagia v. Emperor*. 28 Cr. L. J. 340 :
100 I. C. 820 : 7 A. I. Cr. R. 575 :
A. I. R. 1927 Nag. 203.

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—S. 162—*Effect on Evidence Act—Whether repeals S. 27 of Evidence Act.*

S. 162, Cr. P. C. does not, by implication, repeal S. 27, Evidence Act, and the statement of an accused made to the Police during investigation is admissible in evidence if it falls under S. 27 Evidence Act. *Sheobalak v. Emperor.*

29 Cr. L. J. 400 :
108 I. C. 442 : 11 N. L. J. 7 : 9 A. I. Cr. R. 408 :
A. I. R. 1928 Nag. 108.

—S. 162—*Effect on Evidence Act—Witness's statement to Police—Admissibility.*

S. 157, Evidence Act, has not been overriden by the special provisions of S. 162, Cr. P. C. and therefore the oral evidence of a statement made to the Police by a witness to corroborate that witness's deposition at the trial may be admitted. *Fanindra Nath Banerji v. Emperor.*

9 Cr. L. J. 452 :
1 I. C. 970 : 38 Cal. 281 : 9 C. L. J. 199 :
5 M. L. T. 97 : 13 C. W. N. 197.

—S. 162—*Extent of use.*

Record of statements made by a witness to police during investigation cannot be used as evidence for corroborating the statement of the witness. It can only be used to impeach the credit of a witness for the prosecution under certain conditions. *Bhulai Singh v. Emperor.*

11 Cr. L. J. 117 :
5 I. C. 357 : 13 O. C. 7.

—S. 162—*Granting copies—Accused's right to copies of statement recorded by Police—Time for making application.*

Under S. 162, Cr. P. C., when a prosecution witness is produced in Court, the accused is entitled to apply for a copy of his statement recorded by Police, and if he makes an application at that stage, the Court is bound to refer to the writing and to direct that the accused be furnished with a copy thereof, subject to the 2nd proviso. *Ramgulam Teli v. Emperor.*

29 Cr. L. J. 297 :
107 I. C. 817 : 9 P. L. T. 92 : 7 Pat. 205 :
10 A. I. Cr. R. 12 : A. I. R. 1928 Pat. 215.

—S. 162—*Granting copies—Accused's statutory right—Failure of Court to comply with prayer—Effect on trial.*

S. 162, gives a statutory right to accused to get copies of the Police statements to enable him to show by cross-examination that the witnesses are making statements in Court which are directly contradictory to their views to statements to Police, and the Courts should be careful to see that the trial of an accused is conducted in the manner so carefully laid down by the Code. *Dinanath Sahay v. Emperor.*

40 Cr. L. J. 509 :
180 I. C. 845 : 17 Pat. 622 : 20 P. L. T. 70 :
5 B. R. 501 : 11 R. P. 545 :
A. I. R. 1939 Pat. 174.

—S. 162—*Granting copies—Application by accused for copies of statements—Duty of Court to grant copies—Grounds for refusal.*

Under S. 162, Cr. P. C., it is obligatory on Court not only to refer to statements made by the prosecution witnesses before the Police, if

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required, but also to grant copies thereof, subject to exclusions specified there in 2nd proviso. The fact that the statement of witness before Police does not, in opinion of Magistrate, contradict the evidence of witness in Court is no reason for refusing to grant copy. It is not necessary for accused to satisfy the Court that he will be able to use the copy for the purposes indicated in S. 145, Evidence Act. *Usman v. Emperor.*

31 Cr. L. J. 592 :
123 I. C. 689 : 24 S. L. R. 239 :
A. I. R. 1930 Sind 153.

—S. 162—*Granting copies—Application for copies of statements—Time for making such application—No effort to obtain copies—Validity of trial.*

The accused made an application for copies under S. 162 to the Committing Magistrate after the completion of the enquiry. An application was subsequently made to the Sessions Judge and an order for granting copies was made. The accused's Pleader without praying for any adjournment said that it was very inconvenient to file folios at that stage and that it was of no use to get copies subsequently. Folios were not filed and copies were not obtained and the case was decided: *Held*, that the trial was not bad inasmuch as the conduct of the accused was rather to create a grievance than to obtain copies. *Babarali Sardar v. Emperor.*

30 Cr. L. J. 580 :
116 I. C. 167 : 49 C. L. J. 197 :
I. R. 1929 Cal. 455 : 56 Cal. 840 :
A. I. R. 1929 Cal. 182.

—S. 162—*Granting copies.*

Complaint by persons of disturbance in religious worship by conduct of applicants—Inquiry by Police examining witnesses—Proceedings taken under S. 107—S. 162 does not apply to investigation—Applicants are not entitled to copies of statements made by witnesses. *In re : Barjorji Framji Bharucha.*

33 Cr. L. J. 797 :
139 I. C. 628 : 34 Bom. L. R. 258 :
L. R. 1932 Bom. 521 : A. I. R. 1932 Bom. 196.

—S. 162—*Granting of copies—Condition to be fulfilled.*

Amended S. 162 is mandatory and Court has no power to refuse an application for copies unless the case falls under Proviso 2, Sub-s. (1). There is nothing in the section to authorize the Court to look into the statements in the police diaries for the purpose of finding out whether or not it contains anything contradictory to the statements made in Court before granting the application. *Murtza Khan v. Emperor.*

A. I. R. 1934 Nag. 138.

—S. 162—*Granting copies—Condition to be fulfilled.*

S. 162 does not require the Court to satisfy itself before granting a copy to accused that a certain contradiction exists and subject to the provisions of the second Proviso regarding any part of the statement, the Court must grant the copy and it is for the accused's Counsel to see

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after it is granted what contradictions exist.
In re : Daslagir.

39 Cr. L. J. 54 :
171 I. C. 962 : 1937 M. W. N. 730 :
46 L. W. 323 : 1937 2 M. L. J. 402 :
10 R. M. 418 : I. L. R. 1938 Mad. 180 :
A. I. R. 1937 Mad. 822.

———S. 162—*Granting copies—Condition to be fulfilled.*

Under S. 162 it is not necessary for the Judge before granting an application for copies to consider whether a foundation has been laid by way of cross-examination showing that the statements are wanted to contradict the witness. *Babarali Sardar v. Emperor.*

30 Cr. L. J. 580 :
116 I. C. 167 : 49 C. L. J. 197 :
I. R. 1929 Cal. 455 : 56 Cal. 840 :
A. I. R. 1929 Cal. 182.

———S. 162—*Granting copies—Court's duty to act suo motu.*

S. 162 entitles an accused person to request a trial Court to refer to a statement previously made by a prosecution witness to Police during investigation. The Court when so requested, is bound to refer to such statement and bound to provide a copy of it unless of opinion that it is irrelevant. The onus of moving the Court rests upon accused, but the accused may not know what a witness has stated to the Police and, therefore, may not use his privilege when it might assist him. A Judge is at liberty to adopt a course at his own instance, which he is bound to do if requested by the accused and a trial Court should refer to previous statements of witnesses, even if not requested by the accused, and if such reference reveals any point materially in favour of the accused, it should not be disregarded but the Court should give a copy to accused of its own motion to prevent a failure of justice. *Sultan Mir v. Emperor.*

38 Cr. L. J. 347 :
166 I. C. 876 : 9 R. Pesh. 75 :
A. I. R. 1937 Pesh. 10.

———S. 162—*Granting copies—Discretion of Court.*

Court has no discretion to refuse copies unless proviso applies. In furnishing copy of witnesses' statement to Police, Court should ensure that it can be properly used under S. 145, Evidence Act. *Emperor v. Hari.*

36 Cr. L. J. 1161 (2) :
157 I. C. 697 : 28 S. L. R. 397 :
A. I. R. 1935 Sind 145.

———S. 162—*Grant of copies.*

If the statement to the Police of a material prosecution witness would, in the opinion of the Court, have been of assistance to the defence, it would be only proper to hold that the omission to supply a copy of it has occasioned a substantial failure of justice. *Emperor v. Hari.*

36 Cr. L. J. 1161 (2) :
157 I. C. 697 : 28 S. L. R. 397 :
A. I. R. 1935 Sind 145.

———S. 162—*Granting copies—Magistrate's discretion, stage for exercising.*

It is only after a statement has been referred to, that the Court may exercise its

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discretion in the matter of giving a copy to the accused. It is while the evidence of a witness is in progress, that a copy of his statement to the Police is likely to be of use to the accused in indicating points on which the witness should be questioned, and the whole object of the proviso to S. 162 (1) would be defeated, if the Court were to postpone referring to statement made by the witness before the Police till after the witness's evidence had been concluded. *Sultan v. Emperor.*

22 Cr. L. J. 578 :
62 I. C. 818 : A. I. R. 1921 Lah. 93.

———S. 162—*Granting of copies—Magistrate's discretion.*

Under S. 162 a Magistrate has no discretion to refuse to grant a copy of the statement made by a prosecution witness, to the Police, on the ground that, in his opinion, no contradiction was established. *Nek Ram v. Emperor.*

32 Cr. L. J. 370 :
129 I. C. 267 : I. R. 1931 All. 139 :
L. R. 12 All. 36 Cr. :
A. I. R. 1931 All. 273.

———S. 162—*Granting copies—Magistrate's power of refusal—Previous statements, proper use of.*

A Court has no power to reject an application for copies made by an accused under S. 162, merely because in its opinion the previous statements made to the Police of which copies are applied for are not in any way contradictory to the statements made by the witness in Court. There is nothing in S. 162 to authorize the Court to look into the statement in the Police diaries before granting the application. Statements made before the Police can be used only by the accused and that also only for the purpose of contradicting the prosecution witnesses. *Jhari Gope v. Emperor.*

30 Cr. L. J. 858 :
118 I. C. 130 : 8 Pat. 279 :
10 P. L. T. 460 : I. R. 1929 Pat. 482 :
A. I. R. 1929 Pat. 268.

———S. 162—*Granting copies.*

Neither under Cr. P. C. nor under English Law accused under remand is entitled to copies of statements under S. 162 before commencement of enquiry against him. *In re : Muthia Swamiyar.*

6 Cr. L. J. 346 :
17 M. L. J. 471 : I. L. R. 30 Mad. 466.

———S. 162—*Granting copies—Omission to supply—Effect.*

Omission to supply copies of statements made by prosecution witnesses to the Police, as required by S. 162 is an illegality sufficient to vitiate the proceedings. *Emperor v. Bansi Dhar.*

32 Cr. L. J. 562 :
130 I. C. 625 : 1931 A. L. J. 157 :
I. R. 1931 All. 289 : A. I. R. 1931 All. 262.

———S. 162—*Granting of copies—Omission to supply copies to accused—Effect.*

An improper omission to comply with the request of the accused under S. 162, Cr. P. C., to call for Police diary and to supply him with copies of the statements made by a prosecution

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witness before the investigating officer vitiates a trial. *Hari Gore v. Emperor*.

28 Cr. L. J. 14 :
99 I. C. 45 : 9 N. L. J. 167 :
7 A. I. Cr. R. 170 : A. I. R. 1927 Nag. 24.

—S. 162—Granting copies—Oral request—Refusal—Reasons.

A request for copies under S. 162 must be entertained even if it is oral. The law does not prescribe that there should be written application. When a copy of a statement made by a witness before the Police is asked for, it is the bounden duty of the Magistrate, to refer to the statement made before the Police and furnish a copy, or record a definite order that he did not think it expedient in the interest of justice to furnish the accused with such a copy. *Ghasoo v. Emperor*.

31 Cr. L. J. 555 :
123 I. C. 685 : 1930 A. L. J. 606 :
A. I. R. 1930 All. 737.

—S. 162—Granting of copies.

Per Division Bench.—Ss. 162 and 172—Departmental inquiry held not under Chap. XIV. Accused is entitled to see statements. *Muhammad Rahim v. Emperor*.

36 Cr. L. J. 581 :
154 I. C. 762 : 29 S. L. R. 92 :
7 R. S. 167 : A. I. R. 1935 Sind 13.

—S. 162—Granting copies—Police diary—Statement of witness—Right of accused to get a copy.

An accused is not entitled to see Police diaries, but when statement of a prosecution witness before an investigating officer has been recorded whether in a Police diary or otherwise, the accused is entitled under S. 162, Cr. P. C., to ask Court to refer to it and to get a copy of it. *Sulaiman Mohamed v. Emperor*.

30 Cr. L. J. 538 :
115 I. C. 899 : 6 Rang. 672 :
I. R. 1929 Rang. 131 :
A. I. R. 1929 Rang. 87.

—S. 162—Granting copies—Preliminary inquiry by Criminal Investigation Officer—Statement of witnesses, whether falls within S. 162—Accused's right to copies.

Statements taken by Criminal Investigation Officer in a preliminary enquiry against a Public Officer before sanction for prosecution was given and he was ordered by a Magistrate to investigate under S. 155 (2) are not statements falling within the purview of S. 162. To all intents and purposes they are on a par with statements made in a departmental enquiry, and the accused is not entitled to copies of such statements. *Jehangir Ardeshir Cama v. Emperor*.

28 Cr. L. J. 1012 :
106 I. C. 100 : 29 Bom. L. R. 996 :
8 A. I. Cr. R. 324 : A. I. R. 1927 Bom. 501.

—S. 162—Granting copies—Procedure—Practice—Magistrate's right to refer to copies.

In order to accommodate the accused, the Magistrate might arrange to have copies ready when they are applied for. A Magistrate is also within his rights if he refers to the statements before granting the copies. But as a

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matter of practice, it would be convenient if the Magistrate were to refer beforehand to the Police and enquire if there is any objection to the copies being granted, and if the Prosecution does not object, the Magistrate need not refer to the statements at all. If the objection is made, then he need refer only to the portion objected. *Ghulam Nabi v. Emperor*.

30 Cr. L. J. 760.
117 I. C. 377 : I. R. 1929 Lah. 649 :
A. I. R. 1929 Lah. 429.

—S. 162—Granting copies—Procedure.

When a witness for the prosecution is being examined, if an accused has reason to believe that the statement which the witness is making in Court differs from the statement which he made to the Police, then the defence are entitled to a copy of the record of the statement. That copy must then be proved, and the witness may be cross-examined on that statement under S. 145 of the Evidence Act, and his attention must be drawn to the particular points in which his statement in Court differs from the record of his statement to the Police. *Babu Singh v. Emperor*.

29 Cr. L. J. 701 :
110 I. C. 333 : 10 A. I. Cr. R. 403 :
6 Rang. 137 : A. I. R. 1928 Rang. 150.

—S. 162—Granting copies—Proper use of copies, stage for considering.

S. 162 is imperative. The Court shall, on request by accused, direct that the accused be furnished with a copy of the statements of the witnesses before the Police. The use that that copy may be put to later on may be the subject-matter of enquiry, when the proper time arises and then it may be open to the Court to accept or reject the contention of the accused that he is making a proper use of the copy in terms of the section. *Chedi Prasad Singh v. Emperor*.

28 Cr. L. J. 597 :
102 I. C. 773 : 8 P. L. T. 613 :
8 A. I. Cr. R. 271 : A. I. R. 1927 Pat. 325.

—S. 162—Granting of copies—Public interest.

Under the amended S. 162, it is obligatory on the part of a Judge to give the accused copies of the statements recorded under S. 161 excluding matters which the public interest requires should not be disclosed. *Madari Sikdar v. Emperor*.

28 Cr. L. J. 582 :
102 I. C. 550 : 54 Cal. 307 :
8 A. I. Cr. R. 112 : A. I. R. 1927 Cal. 514.

—S. 162—Granting copies—Refusal, ground for.

The fact that Police did not record the statements of prosecution witnesses in full but only made a memorandum is not sufficient reason for refusing copies to the accused under S. 162. *Emperor v. Bansidhar*.

32 Cr. L. J. 562 :
130 I. C. 625 : 1931 A. L. J. 157 :
I. R. 1931 All. 289 : A. I. R. 1931 All. 262.

—S. 162—Granting of copies—Refusal—Public interest—Refusal to supply, when justified—Reasons to be recorded.

A refusal to grant copies can only be made if the requirements of the second proviso to

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S. 162 are satisfied, namely, if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the enquiry or trial, or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, the Court shall record such opinion before excluding such parts from the copy of the statement furnished to the accused. *Chedi Prasad Singh v. Emperor*.

28 Cr. L. J. 597 :
102 I. C. 773 : 8 P. L. T. 613 :
8 A. I. Cr. R. 271 : A. I. R. 1927 Pat. 325.

———S. 162—*Granting copies—Right of accused, nature of.*

An accused has, under S. 162, an absolute right to get a copy of the statements of witnesses for the prosecution recorded in the Police diary and the Magistrate cannot refuse to grant it on the ground that there is no apparent contradiction between it and the statement made by the witness in the trial of the case. *Fazludd'n v. Emperor*.

30 Cr. L. J. 728 :
117 I. C. 213 : I. R. 1929 Nag. 197 :
A. I. R. 1929 Nag. 172.

———S. 162—*Granting copies—Right of accused to get copies of statements to Police—Refusal—Reason.*

Accused is not entitled as of right to be furnished with copies of statements made under S. 162, to Police, and if Magistrate refuses to furnish him with copies, it is not necessary for him to say in so many words that he does not think it expedient in the interests of justice to grant the copies. *In re : Thiruvengada Mudali*.

15 Cr. L. J. 289 :
23 I. C. 497 : 27 M. L. J. 182 :
1914 M. W. N. 484 : A. I. R. 1914 Mad. 376.

———S. 162—*Granting copies—Right of accused.*

Under S. 162, accused is entitled to apply after examination of prosecution witnesses and before their cross-examination, for copies of statements of those witnesses recorded under S. 161. *Tahal Saithwar v. Emperor*.

32 Cr. L. J. 578 :
130 I. C. 696 : 1931 A. L. J. 10 :
53 All. 94 : L. R. 12 All. 40 Cr :
I. R. 1931 All. 312 : A. I. R. 1931 All. 34.

———Ss. 162, 172—*Granting copies—Right of accused.*

Whether a statement is recorded under S. 162 or S. 172, an accused person is entitled to a copy of it for cross-examination. *Mafizaddi v. Emperor*.

28 Cr. L. J. 805 :
104 I. C. 245 : 45 C. L. J. 561 :
31 C. W. N. 940 : A. I. R. 1927 Cal. 644.

———S. 162—*Granting of copies, stage for.*

An accused is not entitled under S. 162 to a copy of the statement made by a prosecution witness before the witness on behalf of the prosecution, who is sought to be cross-examined by such statement is in the witness-box. The request has to be made to the Court when the witness on behalf of the prosecution is

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under cross-examination. *Emperor v. Shaikh Usman*.

29 Cr. L. J. 221 :
107 I. C. 57 : 29 Bom L. R. 1581 :
52 Bom. 195 : 9 A. I. Cr. R. 476 :
A. I. R. 1928 Bom. 23.

———S. 162—*Granting of copies, stage for.*

An accused person is not entitled to a copy of statement made by a prosecution witness under S. 162 until the witness is sought to be cross-examined. But as a matter of practice, there is no harm if a copy of the statement is given at an earlier stage. *Ghulam Nabi v. Emperor*.

30 Cr. L. J. 760 :
117 I. C. 377 : I. R. 1929 Lah. 649 :
A. I. R. 1929 Lah. 429.

———S. 162—*Granting of copies, stage for.*

An application for copies under S. 162 can be made even before the cross-examination of the witness concerned is begun. *Hari Gore v. Emperor*.

28 Cr. L. J. 14 :
99 I. C. 46 : 9 N. L. J. 167 :
7 A. I. Cr. R. 170 :
A. I. R. 1927 Nag. 24.

———S. 162—*Granting of copies, stage for—Copy of statement made by prosecution witness to Police.*

The stage in inquiry or trial at which an accused person is entitled under S. 162 to ask the Court to furnish him with a copy of a statement made by a prosecution witness to Police in investigation is when the witness is called for the prosecution ; that is, when he is under cross-examination, and has already made the statement which the accused wishes to contradict by proof of his former statements to the Police. *In re : Peramasami Ragudu*.

27 Cr. L. J. 100 :
91 I. C. 532 : 22 L. W. 784 :
A. I. R. 1926 Mad. 183.

———S. 162—*Granting of copies, stage for.*

If, and so soon as, any prosecution witness gives evidence in support of the charge against him, the accused is entitled to request the Court to refer to that witness's statement to the Police, and unless the Court is of opinion that any part of the statement falls within the second proviso to S. 162, the Court must direct that the accused be furnished with a copy of the entire statement of the witness to the Police. *Emperor v. Nga Lun Thaung*. (F. B.)

36 Cr. L. J. 1487 :
158 I. C. 784 : 13 Rang. 570 :
8 R. Rang. 202 : A. I. R. 1933 Rang. 370.

———S. 162—*Granting of copies, stage for.*

It is only at the time of cross-examination and when the cross-examination shows that the evidence given by the witness in Court is contradicted by his statement recorded under S. 161, that the accused is entitled to ask the Judge to refer to the writing and grant him copies. S. 162 does not impose a duty upon the Judge of granting copies before the cross-examination has been opened. *Madari Sikdar v. Emperor*.

28 Cr. L. J. 582 :
102 I. C. 550 : 54 Cal. 307 :
8 A. I. Cr. R. 112 :
A. I. R. 1927 Cal. 514.

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———**S. 162—Granting of copies, stage for—Late application—Procedure.**

In this case, the Court was not moved under S. 162 when the first prosecution witness, whom it was subsequently desired by the defence to test by reference to his statement recorded in the diaries, appeared, in the box. But after the prosecution witnesses had all been examined, the defence moved the Court to examine the Sub-Inspector as a Court witness, and on this being refused, they applied to the Court to summon the Sub-Inspector to appear with his diary as a witness for the defence: *Held*, that this application was obviously under S. 172 and rightly rejected. The diary could not be used for the purpose of proving statements made by witnesses to the Sub-Inspector under S. 161. If the Court even at the late stage of the case, on perusing the diaries, found that it was expedient in the interests of justice to make use of such statement to impeach the credit of the witnesses, it could no doubt have directed the recall of such witnesses, furnished the accused with copies of the statement and permitted further cross-examination but this would be a most unusual practice and highly inconvenient and nothing could justify it but the clearest conviction in the mind of the Court that a miscarriage of justice would otherwise result. *Dadan Gazi v. Emperor*.

4 Cr. L. J. 79 :
10 C. W. N. 890 : I. L. R. 33 Cal. 1023.

———**S. 162—Granting of copies, stage for.**

Quere.—Whether the right time to apply for copies under S. 162 is when the witness enters the box or when his evidence-in-chief is concluded. *Baburahi Sardar v. Emperor*.

30 Cr. L. J. 580 :
116 I. C. 167 : 49 C. L. J. 197 :
I. R. 1929 Cal. 455 : 56 Cal. 840 :
A. I. R. 1929 Cal. 182.

———**S. 162—Granting of copies, stage for.**

So far as proceedings before charge are concerned, copies of statements to Police under S. 162 should not be granted until the stage of cross-examination is reached. If application is not made at that stage an accused must wait until the witness is again cross-examined before he can claim grant of copy. Upon a request for copy, the Court must necessarily afford the accused a reasonable opportunity for obtaining it before he is deprived of the opportunity to cross-examine upon it. *Public Prosecutor, Madras v. Vedi*.

31 Cr. L. J. 414 :
122 I. C. 463 : 1929 M. W. N. 885 :
31 L. W. 241 : A. I. R. 1930 Mad. 185 :

———**S. 162—Granting of copies, stage for.**

The accused is entitled, as of right, to obtain a copy, not when the witness has been examined, but as soon as he is called for the prosecution. *Murtza Khan v. Emperor*.

A. I. R. 1934 Nag. 138.

———**S. 162—Granting of copies, stage for.**

The accused may apply for a copy of statement of witness to Police at any time after the witness has entered the witness-box and

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while he is giving evidence. *Nga v. Khine v. Emperor*.

36 Cr. L. J. 665 :
155 I. C. 66 : 13 Rang. 1 :
7 R. Rang. 332 : A. I. R. 1935 Rang. 98.

———**S. 162—Granting of copies, stage for.**

The Court has no power to refuse granting of the copy until the cross-examination has been opened, and the accused has by his questions, laid a foundation for holding that there is contradiction between the statements made in Court and those made before the Police. *Ramghulam Teli v. Emperor*.

29 Cr. L. J. 297 :
107 I. C. 817 : 9 P. L. T. 92 :
7 Pat. 205 : 10 A. I. Cr. R. 12 :
A. I. R. 1928 Pat. 215.

———**S. 162—Granting of copies, stage for.**

The opportune moment for accused for applying for copies of statements by prosecution witnesses before the Police is when the prosecution witnesses have been examined and before they are cross-examined. It is not necessary that the accused should have "laid the foundation" in cross-examination for showing that the witnesses had made different statements before the Police from those made in Court before they could be entitled to obtain copies of those statements. *Sri Krishna Sinha v. Emperor*.

29 Cr. L. J. 715 :
110 I. C. 459 : 10 A. I. Cr. R. 383 :
A. I. R. 1928 Pat. 593.

———**S. 162—Granting copies—Statement before Police—Rules as to granting of copies to accused.**

Per Macpherson, J.—There is no real obscurity in the proviso to S. 162 (1) so far as the grant of copy is concerned. Two points must always be remembered. Firstly the furnishing to accused a copy of the statement of a witness recorded by Police during investigation does not at all arise until the witness is called for the prosecution at inquiry or trial; and secondly, the Court cannot direct that the accused be furnished with a copy unless it contains something constituting a contradiction to a statement made by the witness in his deposition at such inquiry or trial. *Saadat Mian v. Emperor*.

28 Cr. L. J. 709 :
103 I. C. 597 : 6 Pat. 329 :
8 A. I. Cr. R. 383 : 8 P. L. T. 780 :
A. I. R. 1927 Pat. 243.

———**S. 162—Granting copies.**

The report of the Police under S. 202, Cr. P. C., is part of the record and there is no reason to refuse a copy of the same to the accused. *Muthukumara Pillai v. Emperor*.

32 Cr. L. J. 689 (2) :
131 I. C. 174 (2) :
1931 M. W. N. 325 : 33 L. W. 570 :
I. R. 1931 Mad. 510 :
A. I. R. 1931 Mad. 429.

———**S. 162—Granting copies—Statements of prosecution witnesses to Police—Right of accused to copies,**

Accused has a legal right to statements

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made by the prosecution witnesses whenever they are reduced to writing. The fact that the statements were only reduced to writing in the shape of rough memoranda or notes does not relieve the prosecution of this liability. If the notes are in existence, satisfactory reasons must be given for their non-discovery. A mere statement by a witness that it will not be possible to trace them is not enough, in the absence of evidence to show what efforts were made to do so. It is for the Court to decide whether they are really traceable or not. *Vishwanath Pandurang Kunbi v. Emperor*.

38 Cr. L. J. 936 :
170 I. C. 638 : I. L. R. 1937 Nag. 178 :
10 R. N. 70 : A. I. R. 1936 Nag. 249.

—S. 162—Granting copies—Statements of witnesses in Police diary—Rejection of application for copies by accused—Conviction, legality of—Appeal—Remand.

An accused person is entitled to copies of statements made by prosecution witnesses before the Police and recorded in the Police diary and where the trial Court has failed to dispose of an application made by the accused for such copies and to grant him such copies, the Appellate Court should remand the case with a direction that the accused be allowed such copies. *Raghya v. Emperor*.

30 Cr. L. J. 1097 :
119 I. C. 675 : I. R. 1929 Nag. 307 :
A. I. R. 1929 Nag. 240.

—S. 162—Granting copies—Witnesses tendered but not examined—Accused's right to copies of previous statements.

Where a witness is tendered by the prosecution for examination, but is discharged without being examined or cross-examined, the accused is not entitled under S. 162, Cr. P. C., to get copies of his previous statements to the Police. *Wajid Ali v. Emperor*.

30 Cr. L. J. 273 :
114 I. C. 220 : 7 Pat. 153 :
I. R. 1929 Pat. 140 : 10 P. L. T. 297 :
A. I. R. 1929 Pat. 34.

—S. 162, 172—Granting copies—Procedure.

Statements whether recorded in the special diary under S. 172 or not, fall under the provisions of S. 162 and are liable to be produced under the conditions laid down in that section, i. e., when any witness is called for the prosecution whose statement has been taken down in writing, the Court shall, on the request of the accused, refer to such writing and may then, if the Court thinks it expedient in the interest of justice, direct that the accused be furnished with a copy thereof, and such statement may be used to impeach the credit of such witness in manner provided by the Evidence Act. But the provisos as to the cross-examination of the Police Officers under Ss. 161 and 145 which refer to his own statement, do not apply to those statements of witnesses. *Dadan Gazi v. Emperor*.

4 Cr. L. J. 79 :
10 C. W. N. 890 : I. L. R. 33 Cal. 1023.

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—S. 162.

See also (i) Calcutta Police Act, 1866, S. 78-A.
(ii) City of Bombay Police Act, 1902, S. 63.
(iii) Evidence Act, 1872, Ss. 2, 27, 30, 67, 155, 165.
(iv) Penal Code, 1860, Ss. 182, 201, 302, 411.

—Ss. 162, 367—Jury—Charge—Heads of charge, stage for writing.

Although there is nothing in S. 367 as to when the heads of the charge to the jury should be written, and although it is not necessary that the direction to the jury should be reduced to writing before delivery, yet it ought to be written out as soon as possible after the charge to the jury has been actually delivered and when the facts of the case are fresh in the mind of the Judge. There is nothing that makes it incumbent upon any Judge to read the whole of the depositions of the witnesses to the jury. *Fanindra Nath Banerji v. Emperor*.

9 Cr. L. J. 452 :
1 I. C. 970 : 38 Cal. 281 :
9 C. L. J. 199 : 5 M. L. T. 97 :
13 C. W. N. 197.

—S. 162—Miscellaneous.

Accused in appeal cannot complain that trial Court refused to refer to statement and at the same time say that Appellate Court is not entitled to refer to them. *Nga U Khine v. Emperor*.

36 Cr. L. J. 665 :
155 I. C. 66 : 13 Rang. 1 :
7 R. Rang. 332 :
A. I. R. 1935 Rang. 98.

—S. 162—Miscellaneous—Compliance.

Provisions of S. 162 of the Code must be strictly followed. *Bana Singh v. Emperor*.

29 Cr. L. J. 701 :
110 I. C. 333 : 6 Rang. 137 :
10 A. I. Cr. R. 403 :
A. I. R. 1928 Rang. 150.

—S. 162—Miscellaneous—Compliance.

Provisions of S. 162 should be clearly understood and strictly complied with. *Nga Ba Than v. Emperor*.

19 Cr. L. J. 715 :
46 I. C. 299 : 3 U. B. R. 1918 81 :
A. I. R. 1918 U. Bur. 16.

—S. 162—Miscellaneous—Cr. P. C., (Act V of 1898), S. 162—S. 162 is specific provision to contrary.

Per *Young C. J., Tek Chand and Din Mohammad, JJ., Dalip Singh and Bhide, JJ. Contra.*—S. 162, Cr. P. C., is "specific provision to the contrary" within the meaning of S. 1 (2) of the Code. *Hakam Khuda Yar v. Emperor*. (F.B.) 41 Cr. L. J. 591 :
188 I. C. 498 : I. L. R. 1940 Lah. 242 :
13 R. L. 1 : A. I. R. 1940 Lah. 129.

—S. 162—Object.

S. 162 is designed to keep out evidence which it is suggested is not of a free and of a fair nature but may have been induced

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by some form of Police duress. *Delbar Mandal v. Emperor*.

37 Cr. L. J. 1117 :
164 I. C. 350 : 9 R. Rang. 122 :
A. I. R. 1936 Rang. 382.

—S. 162—Object—Statement of accused, use of.

S. 162 was intended to prevent the use of statements made by the accused to the Police, and questions designed to show, by process of elimination, that matters subsequently mentioned by the accused were omitted from such statements are within the mischief aimed at by the section. *Isuf Mohammad v. Emperor*.

32 Cr. L. J. 1077 :
133 I. C. 748 : 55 Bom. 435 :
33 Bom. L. R. 305 : I. R. 1931 Bom. 396 :
A. I. R. 1931 Bom. 311.

—S. 162—Object.

The object of S. 162 is plainly to exclude altogether the hearsay evidence of Police Officers except for the purpose of contradicting a witness in the manner provided by S. 145, Evidence Act. *Emperor v. Najibuddin*.

35 Cr. L. J. 379 :
147 I. C. 142 : 14 P. L. T. 543 :
6 R. P. 339 : A. I. R. 1933 Pat. 589.

—S. 162—Object.

The provisions of S. 162 are enacted with object of guarding against true case being spoilt by unscrupulous investigating Police. Provisions must be conformed with when investigating Police Officer is being examined. *Debendra Chandra Sarkar v. Emperor*.

35 Cr. L. J. 904 :
149 I. C. 139 (2) : 6 R. C. 521 :
A. I. R. 1934 Cal. 458.

—S. 162—Object of.

Purpose of S. 162 is to protect accused from being prejudiced by a statement made to Police who may be in a position to influence the maker of it and, on the other hand, to protect accused from the prejudice at the hands of persons who are prepared to tell untruths. *Emperor v. Aftab Mohammad Khan*.

41 Cr. L. J. 647 :
188 I. C. 649 : 1940 A. L. J. 206 :
13 R. All. 55 : 1940 A. W. R. 85 :
A. I. R. 1940 All. 291.

—S. 162—Oral statement.

Accused arrested by Police made to give statement to Headman—Headman giving oral evidence of it—Practice condemned. *Nga Ba Kyang v. Emperor*.

37 Cr. L. J. 531 :
162 I. C. 6 : 8 R. Rang. 543 :
A. I. R. 1936 Rang. 131.

—S. 162—Oral statements.

Oral statements made by Police during investigation are not admissible except under S. 162. *Mazar Ali v. Emperor*.

34 Cr. L. J. 870 :
144 I. C. 985 : 35 Bom. L. R. 474 :
57 Bom. 400 : 6 R. Bom. 25 :
A. I. R. 1933 Bom. 266.

—S. 162—Oral statement—Statement before Police—Admissibility.

It is not necessary under S. 162 that

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statements made to the Police in the course of an investigation should be reduced to writing. S. 91 of the Evidence Act has, therefore, no application and it is open to the prosecution to prove by the oral statements of the Police Officer what the contents of the statements made to the Police by the witnesses were. *Pitumal v. Emperor*.

26 Cr. L. J. 1137 :
88 I. C. 449 : 18 S. L. R. 342.

—S. 162—Oral Statements to Police—Admissibility.

Oral statements no less than written statements made to Police during investigation of a case, come within S. 162, and are not admissible in evidence even if the Police Officer was not acting under Chap. XIV, Cr. P. C., nor was investigating under S. 156 or S. 157. *In re : Koganti Appayya*.

40 Cr. L. J. 108 :
178 I. C. 616 : 1938 M. W. N. 825 :
48 L. W. 322 : 11 R. M. 478 :
A. I. R. 1938 Mad. 893.

—S. 162—Police diary.

Contents of Police diary are not at disposal of the defence and cannot be used except strictly in accordance with Ss. 162 and 172. *Mohinder Singh v. Emperor*.

33 Cr. L. J. 97 :
135 I. C. 209 : I. R. 1932 Lah. 81 :
A. I. R. 1932 Lah. 103.

—S. 162—Police Diary—First Information Report, omission in, whether can be supplied by reference to Police diaries.

It was contended on behalf of the defence in a criminal trial that the name of one of the accused was not mentioned in the F. I. R. and that a certain material witness had not been produced by the prosecution. In dealing with these contentions, the Sessions Judge stated in his judgment that the omission to mention the name of one of the accused in the F. I. R. had been set right in the first *zimni* report written up by the Sub-Inspector who proceeded at once to the spot and that the *zimmis* showed that an attempt had been made to secure the attendance of the witness but that he could not be found at his residence : *Held*, (1) that if the prosecution desired to explain away the omission of the name of one of the accused from the F. I. R., questions should have been put to the Sub-Inspector as to when the name of the accused was first mentioned, and that the omission could not be made up by a reference to the *zimmis*; (2) that with regard to the omission to produce a particular witness, the Sessions Judge was not entitled to discover the explanation from the *zimmis*. *Kundan Singh v. Emperor*.

26 Cr. L. J. 1191 :
88 I. C. 711 : 6 L. L. J. 271 :
A. I. R. 1924 Lah. 720.

—S. 152—Police diary—Police diary containing abstract statements of witnesses, ascertained as a result of questioning—Use by accused under S. 162.

If a Police diary purported to be kept under S. 172, does not contain statement by any witness, but contains only brief records of what the investigation officer saw on the spot, and

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of information which he ascertained as a result of questioning several people, the accused is not entitled to use it in the manner provided by S. 162. *Mobarak Ali Shaikh v. Emperor*.

40 Cr. L. J. 386 :
180 I. C. 516 : 68 C. L. J. 397 :
11 R. C. 693 : A. I. R. 1939 Cal. 252.

—S. 162—*Police Diary—Proper use—Police-Inspector, statement of, as to what particular witness said, whether admissible.*

It is only what is written in the Police diaries that can be used under S. 145 of the Evidence Act. Evidence to contradict a witness and the statement of a Police Officer as to what a witness said or did not say is inadmissible. The way to prove those portions of the written statement of a witness which have been specifically put to him in order to contradict him is for the accused to mark the passage or passages in the copy from the Police diaries given to him and then to ask the writer of the statement to say that it is a true copy. *Dharam Singh v. Emperor*.

29 Cr. L. J. 343 :
108 I. C. 162 : 9 A. I. Cr. R. 567 :
A. I. R. 1928 Lah. 507.

—S. 162—*Police Diary—Statements in police diary—Use of.*

Statements in the police diary are ordinarily privileged and cannot be given to outsiders except under S. 162, and that is limited to the case of an accused who is being tried for an offence under investigation at the time when the statement was made. *Jogannath Rao Dani v. Emperor*.

A. I. R. 1935 Nag. 23.

—S. 162—*Police Diary—Use of.*

A Magistrate is not justified in referring to the statements in the Police diaries unless and until the witnesses have been confronted by these statements. *Municipal Committee, Simla v. Mukand Singh*.

27 Cr. L. J. 607 :
94 I. C. 271 : A. I. R. 1926 Lah. 365.

—Ss. 162—*Police Diary, use of.*

It is contrary to law to make use of the Police diary for the purpose of corroborating the evidence of prosecution witnesses as given in Court, especially having regard to S. 162 of the Cr. P. C.. *Sakal Ahir v. Palakdhari Ahir*.

32 Cr. L. J. 733 :
131 I. C. 535 :
11 P. L. T. 837 : I. R. 1931 Pat. 215.
A. I. R. 1931 Pat. 96.

—S. 162—*Police Diary.*

S. 162 forbids reference to Police diaries or their use as evidence either for or against an accused person and a consent of the defence Counsel cannot legalise reference or use. *Manna Lal v. Emperor*.

25 Cr. L. J. 49 :
75 I. C. 753 :
27 O. C. 40 : 1925 A. I. R. Oudh 1.

—S. 162—*Police Diary, use of.*

To believe a witness because a perusal of the Police diaries shows that he was examined and had made the same statement is an improper use of the diaries. *Fazal v. Emperor*.

27 Cr. L. J. 614 :
94 I. C. 453 : A. I. R. 1926 Lah. 363.

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—S. 162—*Police Diaries, use of.*

When a Sub-Inspector does not remember what witnesses stated at the investigation and refuses to refresh his memory from the diaries, the Court should compel him to look into the diaries for the purpose of answering the question. *Sayed Sultan Hussain v. Emperor*.

2 Pat. L. R. 202 Cr. :
1924 A. I. R. Pat. 828.

—S. 162—*Police proceedings.*

Joint statement by prosecution witnesses recorded—Defence should not be allowed to use statement. *Emperor v. Karimuddi Sheikh*.

33 Cr. L. J. 725 :
139 I. C. 245 : 36 C. W. N. 106 :
I. R. 1932 Cal. 592 : A. I. R. 1932 Cal. 375.

—S. 162—*Police proceedings.*

Police proceedings in themselves are not substantive evidence.

29 Cr. L. J. 493 :
109 I. C. 221 : 10 A. I. Cr. R. 230 :
A. I. R. 1928 Lah. 820.

—S. 162—*Police proceedings.*

Those parts of statements to Police which are used in cross-examination to contradict the witness must be proved and brought on to the record. *Nga U Khine v. Emperor*.

36 Cr. L. J. 665 :
155 I. C. 66 : 13 Rang. 1 :
7 R. Rang. 332 : A. I. R. 1935 Rang. 98.

—S. 162—*Procedure.*

An accused was being tried of an offence under S. 182, Penal Code. Before the examination of the prosecution witnesses actually began, the accused put in a petition to the Magistrate complaining that although he made an application asking for a copy of the final report in the case, which was the basis of the complaint against him, he had not been supplied any copies so far. He also stated in that petition that he was not in possession of the statements of the witnesses in the Police diary and, therefore, he prayed that the Court may be pleased "to order the copies to be given to him before he was asked to cross-examine the witnesses." The Magistrate, thereupon, merely directed the Police Sub-Inspector to show the final report to the accused before the case was taken up. Thereafter the witnesses for the prosecution were examined and cross-examined by the accused without his being in possession either of a copy of the final report or of the statements of the prosecution witnesses. The accused was subsequently convicted: *Held*, that the whole trial was vitiated by reason of failure of the Magistrate to comply with the provisions of S. 162. *Dinanath Sahay v. Emperor*.

40 Cr. L. J. 509 :
180 I. C. 845 : 17 Pat. 622 :
20 P. L. T. 70 : 5 B. R. 501 :
11 R. P. 545 : A. I. R. 1939 Pat. 714.

—S. 162—*Procedure—Asking questions in contravention of S. 162.*

There is nothing in S. 162 to warrant the view that a breach of the provisions of the section, however slight, is sufficient to vitiate a trial. *Sajjad Mirza v. Emperor*.

28 Cr. L. J. 446 :
101 I. C. 478 : 45 C. L. J. 199 :
A. I. R. 1927 Cal. 372.

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—S. 162—*Procedure—Copies of statements of witnesses before police—Statements sent for but no order recorded.*

Where the Magistrate upon the application of the accused ordered the police to produce the statements of certain witnesses, which had been recorded in the special diary, and then returned them without stating that he did not think it expedient in the interest of justice to furnish the accused with a copy, and where the Magistrate also refused to summon a witness named by the accused; and the order of the Magistrate convicting the accused was confirmed by the Sessions Judge: *Held*, that the Sessions Judge be directed to re-hear the appeal after examining the witness and he should himself send for and consider the statements of the witnesses, and if he finds that the accused would be advantaged by being allowed to cross-examine thereon, he should re-summon those witnesses for cross-examination after supplying copies of their statements to the accused. *Salt v. Emperor*. 10 Cr. L. J. 88 : 2 I. C. 591 : 36 Cal. 560.

—S. 162—*Procedure—Duty of Court or P. P. to advise accused to apply for copies of statements.*

There is no legal obligation imposed upon either the Public Prosecutor or the Court to advise the accused to request the Court to refer to the statement of any witness to the Police under S. 162, but it is the duty of the Public Prosecutor not to persecute the accused, and a responsibility rests upon him not to allow the Court or jury to place reliance unwittingly upon the evidence of a witness who, to his knowledge, made a contradictory statement to the Police. *Emperor v. Nga Lun Thaug (F. B.)*. 36 Cr. L. J. 1487 : 158 I. C. 784 : 13 Rang. 570 : 8 R. Rang. 202 : A. I. R. 1935 Rang. 370.

—S. 162—*Procedure—Effect of non-compliance.*

Whether any irregularity in applying S. 162 has caused prejudice to the accused to such an extent as to vitiate the trial, must be decided in each case. *Mohinder Singh v. Emperor*.

33 Cr. L. J. 97 : 135 I. C. 209 : I. R. 1932 Lah. 81 : A. I. R. 1932 Lah. 103.

—S. 162—*Procedure—Non-compliance—Effect.*

Failure to observe the provisions of S. 162 amounts to an error curable under S. 537 if there has been no miscarriage or possible miscarriage of justice. *Emperor v. Hari*.

36 Cr. L. J. 1161 (2) : 157 I. C. 697 : 28 S. L. R. 397 : A. I. R. 1935 Sind 145.

—S. 162—*Procedure—Non-compliance—Effect.*

Use of statements of prosecution witnesses to police without bringing them on record is mere irregularity curable under S. 537. *Nur-mahomed Kadarbhai v. Emperor*.

32 Cr. L. J. 239 : 129 I. C. 156 : 32 Bom. L. R. 1279 : I. R. 1931 Bom. 140 : 54 Bom. 934 : A. I. R. 1930 Bom. 595

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—S. 162—*Procedure.*

Placing before jury the statements contained in police papers, for corroboration of the confessional statements is in direct contravention of the provisions contained in S. 162. *Kassim Ali v. Emperor*. 36 Cr. L. J. 70 : 152 I. C. 231 : 38 C. W. N. 586 : 7 R. C. 256 : A. I. R. 1934 Cal. 651.

—S. 162—*Procedure—Police investigation, statements made in, admissibility of—Procedure.*

In admitting statements made by persons to Police during the investigation, the procedure prescribed by S. 162, must be strictly followed. A court is not justified in admitting such statements unless the accused or his Advocate asks the Court to refer to such record. *Nga Po Chan v. Emperor*.

27 Cr. L. J. 1371 : 98 I. C. 491 : 4 Rang. 356 : A. I. R. 1927 Rang. 80.

—S. 162—*Procedure.*

Procedure to be followed when defence seeks to prove affirmatively before Sessions Court that prosecution witnesses are unreliable stated. *Jasim-ud-Din v. Emperor*.

32 Cr. L. J. 1245 : 134 I. C. 763 : 35 C. W. N. 164 : I. R. 1931 Cal. 875 : A. I. R. 1931 Cal. 622.

—S. 162—*Procedure.*

Procedure under S. 162 applies where witness agrees with statement—Witness cross-examined—Court should make reference to written statement to Police and make note of it—Relying on memory of witness is not proper. *Emperor v. Sheo Dayal*.

35 Cr. L. J. 360 : 147 I. C. 15 : 55 All. 689 : 6 R. A. 437 : A. I. R. 1933 All. 535.

—S. 162—*Procedure—Reference to statements before Police to contradict prosecution witness, legality of.*

Magistrate cannot refer to statements made by a witness before Police with a view to contradict a subsequent statement made by him until copies of statements have been given to accused on trial and an attempt has been made to prove those statements. *Emperor v. Ahmad*.

29 Cr. L. J. 14 : 106 I. C. 350 : 9 A. I. Cr. R. 346 : A. I. R. 1928 Lah. 144.

—S. 162—*Procedure—Statement by witnesses in inquest report, use of.*

There is no provision in Cr. P. C., for reading out to assessors brief statements of witnesses incorporated in the Inquest Report unless they have been put to the witnesses themselves. Such statements can be made use of only under S. 162. *Banta Singh v. Emperor*.

31 Cr. L. J. 444 : 122 I. C. 491 : A. I. R. 1930 Lah. 457.

—S. 162—*Procedure.*

Statements by witness to Police—Statements, how to be used. See Criminal trial—Trial by jury. *Emperor v. Mahomed Adam Chohan*.

38 Cr. L. J. 327 : 167 I. C. 43 : 38 Bom. L. R. 1186 : 9 R. R. 274 : A. I. R. 1937 Bom. 60

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———S. 162—*Procedure—Statement made to the Police—Signature obtained to it—Examination as witness as to that signature—Order to prosecute in respect of the explanation given—Illegal.*

To obtain signature of a witness to his statement before the Police, then to examine him as to that signature, and then to prosecute him in respect of the explanation given in respect of it, is a procedure which contravenes the policy of Ss. 161, 162, Cr.P.C. and cannot form basis of a prosecution under S. 193, I. P. C. *Emperor v. Mahomed.*

14 Cr. L. J. 302 :
19 I. C. 958 : 6 S. L. R. 277.

———S. 162—*Procedure.*

Where a statement to Police has been signed by the maker, there is an irregularity. It would not, by itself, be sufficient ground for quashing a conviction. *Muhammad Panah v. Emperor.*

35 Cr. L. J. 1170 :
150 I. C. 917 : 7 R. S. 33 :
A. I. R. 1934 Sind 78 (2).

———Ss. 162, 537—*Procedure—Improper use, whether of itself ground for re-trial.*

Where a Magistrate referred to statements of the witnesses for prosecution made to Police, but not proved as required under S. 162, and took into consideration statements made to Police during the investigation by persons not examined at all by the prosecution or the defence: *Held*, that the use of this inadmissible evidence vitiated the finding: *Held*, further, that this irregularity was not, however, of itself a ground for ordering a new trial or reversal but the Court was bound to see if the accused was guilty on the legal evidence on the record. *Devi Das v. Emperor.*

31 Cr. L. J. 343 :
122 I. C. 93 : 10 Lah. 794 : 31 P. L. R. 742 :
A. I. R. 1930 Lah. 318.

———S. 162—*Proof.*

In proving the statement the provisions of S. 136, Evidence Act, may be taken advantage of so as to allow the fact that the copy of the statement is a true copy to be proved after the discrepancy has been proved. *Mohinder Singh v. Emperor.*

33 Cr. L. J. 97 :
135 I. C. 209 : I. R. 1932 Lah. 81 :
A. I. R. 1932 Lah. 103.

———S. 162—*Proof—Statement before Police.*

In applying S. 162, if the witness when asked if he made the statement actually recorded by the Police replies in affirmative, the record of the statement need not be proved and the cross-examiner may leave it to the party who called the witness to have the discrepancy, if any, explained during re-examination. If, on the other hand, the witness denies having made the statement attributed to him or states that he does not remember it and it is desired to contradict him by previous statement, the cross-examiner must put to the witness the relevant portion or portions of the record which are alleged to be contrary to his statement in Court and thus give him an opportunity to reconcile the same if he can. When the cross-examiner

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has done so, the previous statement becomes admissible for the purpose of contradiction and may be proved. *Mohinder Singh v. Emperor.*

33 Cr. L. J. 97 :
135 I. C. 209 : I. R. 1932 Lah. 81 :
A. I. R. 1932 Lah. 103.

———S. 162—*Proof.*

Omissions in notes of statements taken down by investigating officer are of no use in proving that witness did not state to officer matters to which he deposes at the trial. *Emperor v. Najibuddin.*

35 Cr. L. J. 379 :
147 I. C. 142 : 14 P. L. T. 543 :
6 R. P. 339 : A. I. R. 1933 Pat. 589.

———S. 162—*Proof—Proof of statement, mode of.*

The statement by which it is sought to contradict the prosecution witness under S. 162, must be either proved by the investigating officer, or must be admitted by the witness in his cross-examination, or must be proved in some other way before it is put to the witness under S. 145, Evidence Act. *Emperor v. Shaikh Usman.*

29 Cr. L. J. 221 :
107 I. C. 57 : 29 Bom. L. R. 1581 :
52 Bom. 195 : 9 A. I. Cr. R. 476 :
A. I. R. 1928 Bom. 23.

———S. 162—*Proof—Statement to Police, when admissible—"If duly proved," significance of.*

The words "if duly proved" in S. 162 clearly show that the record of the statement cannot be admitted in evidence straightway but that the officer before whom the statement was made should be examined as to any alleged statement that is relied upon by the accused for contradicting the witness; and the provisions of S. 67, Evidence Act, apply to this case, as well as to any other similar case. *Vithu Balu Kharat v. Emperor.*

26 Cr. L. J. 223 :
83 I. C. 1007 : 26 Bom. L. R. 965 :
A. I. R. 1924 Bom. 510.

———S. 162—*Proof.*

The record of the statement made during the investigation must be proved before it can be used to contradict a witness and the attention of the witness must be drawn to the particular points in which his evidence differs from the record of his statement made by the Police. *Emperor v. Najibuddin.*

35 Cr. L. J. 379 :
147 I. C. 142 : 14 P. L. T. 543 :
6 R. P. 339 : A. I. R. 1933 Pat. 589.

———S. 162 (1)—*Proof—Statement to Police, proof of.*

There is no presumption as to the genuineness of the statement of witnesses entered in Police diaries and unless the statements are duly proved, the evidence given in Court cannot be contradicted by them. *Labh Singh v. Emperor.*

26 Cr. L. J. 1153 :
88 I. C. 513 : 6 Lah. 24 :
A. I. R. 1925 Lah. 337.

———S. 162—*Scope.*

Inquiries under Chap. VIII are not inquiries into offences and S. 162 does not shut out statements given to Police in such

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inquiries when they are afterwards called as witnesses. *In re : Hari Singh*.

34 Cr. L. J. 951 :
145 I. C. 379 (1) : 1933 M. W. N. 720 :
38 L. W. 393 : 65 M. L. J. 478 :
56 Mad. 987 : 6 R. M. 54 (1) :
A. I. R. 1933 Mad. 688 (2).

———**S. 162—Scope.**

Per Shah, J.—S. 162 excludes only the writing. *Emperor v. Hanmaraddi Ramaraddi*.

15 Cr. L. J. 690 :
26 I. C. 138 : 16 Bom. L. R. 603 :
39 Bom. 58 : A. I. R. 1914 Bom. 263.

———**S. 162—Scope.**

Prosecution cannot invoke in their aid S. 162. *Jasim-ud-Din v. Emperor*. 32 Cr. L. J. 1245 :
134 I. C. 763 : 35 C. W. N. 164 :
I. R. 1931 Cal. 875 :
A. I. R. 1931 Cal. 622.

———**S. 162—Scope—Applicability.**

S. 162 is applicable to memoranda and not merely to verbatim statements. *Hamidkhan Musalman v. Emperor*.

34 Cr. L. J. 127 :
140 I. C. 825 : 28 N. L. R. 291 :
I. R. 1933 Nag. 15 :
A. I. R. 1933 Nag. 4.

———**S. 162—Scope.**

Statement by complainant to Police before commencement of investigation do not come under S. 162. *Mazarali v. Emperor*.

34 Cr. L. J. 870 :
144 I. C. 985 : 35 B. L. R. 474 :
57 Bom. 400 : 6 R. B. 25 :
A. I. R. 1933 Bom. 266.

———**S. 162—Scope.**

Statement during investigation on charge of dacoity entered into police diary by Police Sub-Inspector—Person making that statement murdered—Sub-Inspector dead—murder trial : Held, that statement in police diary could be brought into evidence as S. 162 did not apply and also under S. 32 (2), Evidence Act. *Abdul Aziz v. Emperor*.

34 Cr. L. J. 109 :
140 I. C. 578 : 1932 A. L. J. 301 :
I. R. 1933 All. 16 : A. I. R. 1932 All. 442.

———**S. 162—Scope—Statement of witness to Police—Admissibility—Object and scope.**

Under S. 162 no witness may be asked what he said to the Police during the investigation, nor may any Police Officer be asked what a witness said to him during the investigation, nor may any by-stander be questioned as to what he heard another person say to a Police Officer during the investigation. *Bana Singh v. Emperor*.

29 Cr. L. J. 701 :
110 I. C. 333 :
6 Rang. 137 : 10 A. I. Cr. R. 403 :
A. I. R. 1928 Rang. 150.

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———**S. 162—Scope—Statement to Police, when may be used.**

The statement of a prosecution witness alone can be used at the trial and only if it has been reduced to writing and only that part of it can be used which is in contradiction of the evidence of the witness given in Court provided it is duly proved and the attention of the witness has been drawn to it. A statement made to the Police which does not contradict the testimony of the witness given in Court cannot be proved in any circumstances, and it is not permissible to use the recorded statement as a whole to show that the witness did not say something to the investigating officer. *Badri Choudhry v. Emperor*.

27 Cr. L. J. 362 :
92 I. C. 874 : 6 P. L. T. 620 :
A. I. R. 1926 Pat. 20.

———**S. 162—Scope—Statement to Police—Whether can be used to prove omissions in statements.**

S. 162 does not permit the use of statements to the Police for proving the omissions in the statement. The section provides that such statements can be used only for the purpose of contradiction. *Sukhwat v. Emperor*.

38 Cr. L. J. 330 :
167 I. C. 61 : 19 N. L. J. 320 : 9 R. N. 163 :
I. L. R. 1937 Nag. 277 : A. I. R. 1937 Nag. 50.

———**S. 162—Scope—Sub-Inspector receiving information of shooting incident—His going to spot and recording statement of witness—Statement, admissibility of.**

The question whether a statement was recorded during investigation or not is a question of fact. On receiving information of a shooting incident from a constable, a Sub-Inspector of Police entered the information in his diary and started enquiry. He had no information of commission of cognizable offence then. On the spot of the occurrence, the Sub-Inspector took the statement of a witness. While this statement was put in evidence, objection was raised that the statement was inadmissible in evidence under S. 162 : Held, that the statement was admissible in evidence as it could not be said that it was recorded during investigation of offence as the Sub-Inspector had no information of the commission of a cognizable offence when he went to the spot. *In re : Mylasawami Chetty*.

40 Cr. L. J. 308 (b) :
180 I. C. 78 : 1938 2 M. L. J. 750 :
1938 M. W. N. 905 : 11 R. M. 653 :
A. I. R. 1939 Mad. 66.

———**S. 162—Scope.**

The prosecution is not entitled to ask a prosecution witness what statement he made to the Police or whether he made a certain statement to the Police. There is nothing in S. 162 to prevent the question being put whether the witness made any statement to the Police or whether he was questioned by the Police. *Mohan Banjari v. Emperor*.

35 Cr. L. J. 577 :
147 I. C. 1122 : 30 N. L. R. 55 :
6 R. N. 159 : A. I. R. 1933 Nag. 384.

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The section controls S. 157 of Evidence Act. *Emperor v. Kumaramuthu Pillai*.

20 Cr. L. J. 354 (b) :
50 I. C. 834 : 1919 M. W. N. 199 :
25 M. L. T. 379 : 10 L. W. 239.

———S. 162—*Scope*.

The statements contemplated in S. 162 refer to statements other than those made by the accused. *Mrs. M. F. Rego v. Emperor*.

34 Cr. L. J. 505 :
I. R. 1933 Nag. 153 :
143 I. C. 17 : 29 N. L. R. 251 :
A. I. R. 1933 Nag. 136.

———S. 162—*Scope*.

Under S. 162 no statement or any record thereof whether in a Police diary or otherwise or any part of such statement made by any person to Police during investigation under Chap. XIV, Cr. P. C., is admissible as evidence except as provided in the second paragraph of that section. *Karamat Mandal v. Emperor*.

27 Cr. L. J. 263 :
92 I. C. 439 : 42 C. L. J. 524 :
A. I. R. 1926 Cal. 320.

———S. 162—*Scope—Witness asked whether he made particular statement to Police—Police Officer, whether can be asked by prosecution as to whether statement was in fact made.*

Under S. 162 statements made to the Police by witnesses can be used by the defence only for the purpose of contradicting the prosecution witnesses. Where, however, a witness has been asked by the defence whether he had made a particular statement to the police and the Sub-Inspector of Police has also been asked whether the witness did make the particular statement to him, but neither the witness nor the Sub-Inspector are asked as to the statement the witness made to the Sub-Inspector, there is nothing to prevent the prosecution from asking the Sub-Inspector whether in fact the witness had made that statement to him. In asking such a question, there is no use of the statement recorded by the Police during their investigation, the witness or the Sub-Inspector is merely asked a question as to a certain fact. *Ghui Mian v. Emperor*.

27 Cr. L. J. 524 :
93 I. C. 988 : 4 Pat. 204 :
A. I. R. 1925 Pat. 450.

———S. 162—*Scope of—Police Dairies, use of by Court.*

Court should not use Police dairies to see when the various witnesses were examined. This information can be elicited by questioning the various investigating officers. *Basant Singh v. Emperor*.

31 Cr. L. J. 442 :
122 I. C. 568 : 31 P. L. R. 185 :
A. I. R. 1930 Lah. 484.

———S. 162—*Scope of—Statement, made to Police Officer.*

S. 162, Cr. P. C., does not prohibit the use of statements, made by any person to a Police Officer in the course of an investigation under Chap. XIV of that Code, in

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proceedings under S. 476 of the Code, in cases where the alleged offence which is under consideration in the proceedings under S. 476 was not under investigation at the time when the statements were made. *U Htin Gyaw v. Emperor*.

28 Cr. L. J. 433 :
101 I. C. 465 : 5 Rang. 26 :
6 Bur. L. J. 32 : 8 A. I. Cr. R. 22 :
A. I. R. 1927 Rang. 113.

———S. 162—*Second Proviso—Scope*.

The purpose for which the Magistrate refers to the statement is in order to see whether any part of statement ought to be excluded under the second proviso to the section, and not for the purpose of deciding whether there is in the statement material for cross-examination of the witness. *Nga U Khine v. Emperor*.

36 Cr. L. J. 665 :
155 I. C. 66 : 13 Rang. 1 :
7 R. Rang. 332 :
A. I. R. 1935 Rang. 98.

———S. 162—*Second Proviso—Scope*.

The words "the Court shall refer to such writing" in S. 162 are obviously for enabling the Court to exercise discretion under the second proviso, and not for the purpose of restricting the right of the accused to obtain a copy, the discretion wherein was expressly taken away by the Legislature. *Ramgulum Teli v. Emperor*.

29 Cr. L. J. 297 :
107 I. C. 817 : 9 P. L. T. 92 :
7 Pat. 205 : 10 A. I. Cr. R. 12 :
A. I. R. 1928 Pat. 215.

———S. 162 (1) proviso,—*Scope of—Statement before Police, reference to.*

The proviso to S. 162 (1), Cr. P. C. makes it obligatory on the Court to refer to the statement made to the Police by the witness who is being examined, when requested to do so by the accused. *Sultan v. Emperor*.

22 Cr. L. J. 578 :
62 I. C. 818 : A. I. R. 1921 Lah. 93.

———S. 162—*Scope and object—Application to statement of accused—Explanation of his conduct by Police Officer.*

S. 162 does not apply to statements made by accused persons themselves. It would be going beyond the intention of S. 162, to lay down that a Police officer-in-charge of an investigation is not at liberty to explain his conduct by making a statement that he did not receive any information to a certain effect during his investigation. *Tota Meah Chowdhury v. Emperor*.

30 Cr. L. J. 1015 :
119 I. C. 139 : I. R. 1929 Cal. 747 :
56 Cal. 1106 : A. I. R. 1929 Cal. 298.

———S. 162—*Scope and object.*

Before the present section was amended, statements made by witnesses to the police, and recorded by the police might not be used as evidence against the accused but there is nothing to prevent them being used in favour of the accused. The effect of the amended section is to restrict the privilege of the accused. He can only obtain access to written

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statements made by prosecution witnesses to the police, at the discretion of the Court. It is no longer a matter of right. The proviso is clearly limited to the purpose of this single concession, in derogation of the universal prohibition contained in the body of the section to the accused. He can get copy of the recorded statements of prosecution for the only purpose of breaking down the evidence of the prosecution witnesses. The proviso does not cover the case of a witness for the defence, whose statement may have been recorded by a police man, nor allows the prosecution to impeach the credit of such a witness by examining him upon any written statements he may have made to the police. *A fortiori* the proviso could never have been intended to allow the prosecution to impeach the credit of its own witnesses for its own purposes, and against the wish of the accused, by reference to the police testimony. *Emperor v. Narayan*.

6 Cr. L. J. 164 :
9 Bur. L. R. 789 : 2 M. L. T. 414 :
32 Bom. 111.

—S. 162—*Scope and object—Police Officer explaining conduct for sending particular set of accused.*

S. 162, Cr. P. C., does not prevent Police from explaining his conduct in sending up a particular set of accused persons for trial by making a statement that he had received no particular information. *Basant Singh v. Emperor*.

31 Cr. L. J. 442 :
122 I. C. 568 : 31 P. L. R. 185 :
A. I. R. 1930 Lah. 484.

—S. 162—*Proof—Statement before Police—Mode of proof.*

In a case where the provisions of S. 162 do apply, those parts of the statement to the Police which are used in cross-examination to contradict the witness must be proved and brought on the record. This can ordinarily be done by the admission of the witness that he made the statement, or by examination of the Police Officer who recorded it. If the later course is necessary, in order to avoid delay, there can be no objection to allowing cross-examination subject to subsequent proof of the statement. Formal proof prior to the cross-examination of the witness on his previous statements is, therefore, unnecessary. If the statement, if not admitted, is subsequently not proved, the evidence based on it must, of course, be disregarded. This principle applies whether the provisions of S. 162 are applicable to the statement sought to be proved or not. *Shirlal v. Emperor*.

39 Cr. L. J. 68 :
172 I. C. 156 : 10 R. N. 169 :
20 N. L. J. 280 : A. I. R. 1938 Nag. 110.

—S. 162—*Statement by accused—Accused making statement during Police investigation and giving evidence subsequently in favour of prosecution against co-accused—Co-accused's right to copies of such statement.*

Where an accused person makes a statement to the Police during investigation and he is about to give evidence in favour of the prosecution under S. 337, Cr. P. C., against the other

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accused, the latter are entitled under S. 162 to copies of the statement made by the former in the course of the investigation. *Mammohan Bai v. Emperor*.

31 Cr. L. J. 1123 :
126 I. C. 851 : 9 Pat. 577 :
11 P. L. T. 754 : A. I. R. 1930 Pat. 510.

—S. 162—*Statement by accused—Admissibility.*

An Investigating Police Officer cannot be questioned as to matters which the accused is alleged to have stated to the Police before his arrest. *Sheosatyanarayanaul v. Emperor*.

27 Cr. L. J. 161 :
91 I. C. 944 : 8 N. L. J. 217 :
A. I. R. 1926 Nag. 1.

—S. 162—*Statement by accused—Admissibility.*

Every statement made by an accused person to a Police Officer is not a confession and is not *ipso facto* excluded from being received in evidence. Statements made by an accused person which are relied upon as being false, and not as confessions, are admissible. *Adho v. Emperor*.

26 Cr. L. J. 897 :
86 I. C. 961 : A. I. R. 1925 Sindh 257.

—S. 162—*Statement by accused—Admissibility.*

S. 162, Cr. P. C., as amended, has no application to statements of accused persons who are on their trial. *Azimoddy v. Emperor*.

28 Cr. L. J. 99 :
29 I. C. 227 : 44 C. L. J. 253 : 54 Cal. 237 :
A. I. R. 1927 Cal. 17.

—S. 162—*Statement by accused—Admissibility—Statement made by accused during course of Police investigation, admissibility of.*

"The statement of any person" in S. 162 refers to statement of any person examined as a witness in a Police investigation and not to statement of accused in respect of whom investigation is held. *Adho v. Emperor*.

26 Cr. L. J. 897 :
86 I. C. 961 : A. I. R. 1925 Sind 257.

—S. 162—*Statement by accused—Admissibility.*

Statements made to Police in the circumstances provided for by S. 27, Evidence Act, are admissible in evidence notwithstanding that they may have been made to an investigating officer during investigation. *Emperor v. Mayadhar Pothal*.

40 Cr. L. J. 625 :
181 I. C. 1001 : 20 P. L. T. 420 :
5 B. R. 206 : 11 R. P. 653 :
18 Pat. 45 : A. I. R. 1939 Pat. 577.

—S. 162—*Statement by accused—Admissibility—Test.*

Test of the admissibility of statements made by accused to Police is whether the statement is incriminating in itself or exculpatory. If the statement is incriminating in itself accused will not put it in evidence ; if it is exculpatory in itself, but may, by relation to the other evidence, be made an incriminating one, then it is admissible in evidence, because the accused's use of that statement as an exculpatory statement may well be permitted to prevail to his advantage over the use by the

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prosecution of that statement as an incriminating statement. *Pritam Hariomal v. Emperor*.

40 Cr. L. J. 882 :
184 I. C. 145 : 1939 Kar. 449 : 12 R. S. 90 :
A. I. R. 1939 Sind 185.

————S. 162 (1)—Statement by accused—Admissibility.

The record of the statement of the accused made by the Police cannot be used by itself as evidence. That is forbidden by S. 162, Cl. (1). *Emperor v. Robert Stewart*.

1 Cr. L. J. 451 :
8 C. W. N. 528 : I. L. R. 31 Cal. 1050.

————S. 162—Statement by accused—Admissibility.

Under S. 162, Cr. P. C. a statement made by accused to police is not admissible in evidence against him. *Khuda Bakhsh v. Emperor*.

2 Cr. L. J. 128 :
6 P. L. R. 65.

————S. 162—Statement by accused.

Considerations as to admissibility of a confession under S. 162, are different from those which attach to a confession made before a Magistrate. *Allahwarayo Daryakhan v. Emperor*.

41 Cr. L. J. 477 :
187 I. C. 576 : 1939 Kar. 800 :
12 R. S. 250 : A. I. R. 1940 Sind 53.

————S. 162—Statement by accused—Information, admissibility of.

Under S. 162, information obtained by a Police Officer as a result of a statement made by an accused person cannot be proved. *Barwa Rowther v. Emperor*.

84 I. C. 545 :
3 Bur. L. J. 245 : A. I. R. 1925 Rang. 101.

————S. 162—Statement by accused—Statement made by accused to third person in presence of Police whether statement to Police.

Per Young, C. J. and Bhide, J.—Where an accused makes a statement to another person in presence of the Police, whether that statement is made to the other person or to Police is a question of fact, and not of law. If it is found on the facts of any case, that a statement made to a third person, was in reality intended to be made to Police and was represented as made to a third person, merely as colourable pretence in order to evade the provisions of S. 162, Cr. P. C., the Court will hold it to be excluded by that section. But it would be going too far to lay down that every statement made to a person assisting the Police during an investigation should be treated as a statement made to Police, and as such, excluded by S. 162. The question is one of fact, and must be decided on facts of each case. *Hakam Khuda Yar v. Emperor*.

41 Cr. L. J. 591 :
188 I. C. 498 : I. L. R. 1940 Lah. 242 :
13 R. L. 1 : A. I. R. 1940 Lah. 129.

————S. 162—Statement by accused—Statements made in Police custody and admissible under S. 27, Evidence Act, if shut out by S. 162.

The statements by accused while in the custody of Police and apparently admissible

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under S. 27, Evidence Act, are not shut out by S. 162, Cr. P. C. *In re : Kapa Morcanna*.

41 Cr. L. J. 573 :
188 I. C. 311 : 1939 M. W. N. 877 :
50 L. W. 423 : 1939 2 M. L. J. 635 :
13 R. M. 16 : A. I. R. 1939 Mad. 840.

————S. 162—Statement by accused—Statement made to Police—Admissibility—Tests—Use of statement for corroborating prosecution evidence.

The fact that an accused has made a statement with the object of exculpating himself does not, by itself, render it admissible in evidence. If, notwithstanding the form in which it has been made, the statement is, nevertheless, an admission of incriminating circumstances and is used by the prosecution as such, it is not admissible in evidence; a test as to the admissibility of a statement by accused to Police is to ascertain the purpose for which it is being put to by the prosecution. *Mohamad Yusuf v. Emperor*.

31 Cr. L. J. 1026 :
126 I. C. 449 : A. I. R. 1930 Sind 225.

————S. 162—Statement by accused.

The use of the statement by accused, in a complaint subsequently made by him under S. 211, Penal Code, as of that made by any other person who made a statement during the investigation is governed by the provisions of the Evidence Act, and not by S. 162. *Shiv Lal v. Emperor*.

39 Cr. L. J. 68 :
172 I. C. 156 : 10 R. N. 169 :
20 N. L. J. 280 : A. I. R. 1938 Nag. 110.

————S. 162—Statement—Misuse—Effect—Misuse of statement under S. 162, effect of.

The misuse of a statement under S. 162 is not, in the absence of prejudice to the accused, sufficient to vitiate a trial. *Jehangir Ardeshtir Cama v. Emperor*.

28 Cr. L. J. 1012 :
106 I. C. 100 : 29 Bom. L. R. 996 :
8 A. I. Cr. R. 324 : A. I. R. 1927 Bom. 501.

————S. 162—Statement of accused.

Accused in custody being kept under detention soon after making report—S. 162 does not exclude statement made by him in the course of the Police investigation. *Mrs. M. F. Rego v. Emperor*.

34 Cr. L. J. 505 :
143 I. C. 17 : 29 N. L. R. 251 :
I. R. 1933 Nag. 153 : A. I. R. 1933 Nag. 136.

————S. 162.—Statement of accused.

“Such statement” means only oral statement and does not include oral statement reduced into writing. *Emperor v. Hari*.

36 Cr. L. J. 1161 (2) :
157 I. C. 697 : 28 S. L. R. 397 :
A. I. R. 1935 Sind 145.

————S. 162—Statement of accused.

Where arrest is made in course of investigation, statement made to Inspector by accused should be excluded. *Emperor v. Hari*.

36 Cr. L. J. 1161 (2) :
157 I. C. 697 : 28 S. L. R. 397 :
A. I. R. 1935 Sind 145.

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—S. 162—*Statement of accused, what is.*

Information received from person accused of offence is not a statement within the meaning of S. 162 (1). *Muhammad v. Emperor.*

36 Cr. L. J. 697 :
155 I. C. 260 : 35 P. L. R. 738 :
7 R. L. 674 : A. I. R. 1934 Lah. 695.

—S. 162—*Statement of accused—Whether protected.*

Though S. 162 applies to statements of persons examined as witnesses by the Police during an investigation, it does not apply to the statement of an accused person. *Muhammad v. Emperor.*

36 Cr. L. J. 697 :
155 I. C. 260 : 35 P. L. R. 738 :
7 R. L. 674 : A. I. R. 1934 Lah. 695.

—S. 162—*Statement of accused—Admissibility.*

Statements by a co-accused to Police might be admissible against himself, but inadmissible as against the accused by the ordinary rule that hearsay evidence is excluded. *Polram v. Emperor.*

36 Cr. L. J. 740 (2) :
155 I. C. 258 : 31 N. L. R. 246 :
7 R. N. 173 : A. I. R. 1935 Nag. 125 (2).

—S. 162—*Statements to Police.*

Statements made to a Sub-Inspector of Police are inadmissible in evidence under S. 162 of the Cr. P. C. *Harendra Nath v. Emperor.*

26 Cr. L. J. 307 :
84 I. C. 451 : 40 C. L. J. 313 :
A. I. R. 1925 Cal. 161.

—S. 162—*Use of entries in Police diaries—Extent of use.*

Under S. 162, the entries made in Police diaries can be used only for the limited purpose of contradicting the evidence of the witnesses for the prosecution and only when such entries have been duly proved. The mere signing of a particular entry does not raise an irrebuttable presumption of law as to passing of consideration against which no evidence can be adduced by the maker of the signature. *Emperor v. Ram Rang.*

29 Cr. L. J. 493 :
109 I. C. 221 : 10 A. I. Cr. R. 230 :
A. I. R. 1928 Lah. 820.

—S. 162—*Use—Statements before Police—Proper use of.*

Statements made by prosecution witnesses before the investigating Police Officers cannot be used except for the limited purpose specified in S. 162. *Hayat v. Emperor.*

29 Cr. L. J. 282 :
107 I. C. 766 : 10 L. L. J. 389 :
A. I. R. 1928 Lah. 380.

—S. 162—*Use—Scope—Statement by witnesses to Police during investigation—Use of.*

It is not permissible to use statements made to the Police during investigation to show that it was not a new story in the mouth of the witnesses. Such statements can only be used for the purpose of contradicting the prosecution witnesses and not for the purpose of corroborating the statements made

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by witnesses in Court. *Girahari Teli v. Emperor.*

41 Cr. L. J. 587 :
188 I. C. 429 : 6 B. R. 693 :
13 R. P. 9 : A. I. R. 1940 Pat. 605.

—S. 162, 172—*Use—Statement made to Police, use of, at trial.*

A statement made by witness during Police investigation can only be used to assist the accused showing that the witness who in Court deposes to certain facts has in his statement before Police given an account or made statements which are contradictory to the testimony which he gives in Court. The statement made to the Police cannot be used at large for the purpose of showing that the statement does not corroborate or assist the story as put forward in the First Information Report. *Badri Choudhry v. Emperor.*

27 Cr. L. J. 362 :
92 I. C. 874 : 6 P. L. T. 620 :
A. I. R. 1926 Pat. 20.

—S. 162—*Use—Statement to Police—Mode of use—Statements made to Police when and how to be used by Courts.*

A statement made by any person to Police in a criminal investigation can only be used at trial in strict accordance with the provisions of S. 162, Cr.P.C. *Mohammad v. Emperor.*

26 Cr. L. J. 1308 :
89 I. C. 252 : 1 L. C. 193 :
A. I. R. 1926 Lah. 54.

—S. 162—*Statement of witnesses to Police—Mode of use.*

Under S. 162, no statement made by a witness to Police in investigation, if not reduced into writing, can be used at the trial. It cannot be used either to corroborate or to contradict a witness, either for the benefit of the accused or against him. If such a statement has been reduced into writing, its use for any purpose whatsoever is also prohibited unless (a), it is a statement of a witness called for the prosecution; (b) the Court has ordered the accused to be furnished with a copy, and (c) the written record of the statement has been duly proved. It may then be used within the limits set forth in the proviso to S. 162. *Bahadur Singh v. Emperor.*

27 Cr. L. J. 803 :
95 I. C. 467 : 8 L. L. J. 174 :
7 Lah. 264 :
27 P. L. R. 379 :
A. I. R. 1926 Lah. 367.

—S. 162—*Use—Statement whether can be used to contradict defence witness.*

Statement of a prosecution witness recorded by the Police can only be used in the manner prescribed by S. 162. There is no provision of law by which the statement of a witness to the Police can be used to impeach his credit when he is called for the defence. *Nga Yen v. Emperor.*

19 Cr. L. J. 726 :
46 I. C. 406 : 3 U. B. R. 1918 84 :
A. I. R. 1919 U. Bur. 38.

Cr. P. CODE (1898), S. 162**—S. 162—Use—Statement to Police.**

Under S. 162, statements made to a Police Officer are prohibited from being used for any purpose save as provided in the subject; and there is no provision for allowing the Judge to use such statements for confronting the witnesses with them. To use the statements for this purpose is to contravene the provisions of S. 162 of the Code. *Karamat-Mandal v. Emperor*.

27 Cr. L. J. 277 :
92 I. C. 453 : 42 C. L. J. 528 :
A. I. R. 1926 Cal. 147.

—S. 162—Use—Witness's statement before Police.

A statement made before the Police by a prosecution witness can be utilised solely by the accused for the purposes of cross-examination and is not evidence upon which the conviction of an accused person can be founded. *Ausan Singh v. Emperor*.

33 Cr. L. J. 566 :
138 I. C. 159 : 9 O. W. N. 437 :
I. R. 1932 Oudh 291 : A. I. R. 1932 Oudh 247.

—S. 162—Use against accused—Accused committing two murders and causing grievous hurt to third—Separate informations lodged to Police—Reference in first information, to assault, if admissible in trial for murder.

Where in a case an accused has committed two murders and caused grievous hurt to a third person and separate information reports in respect of these offences are lodged with the Police, the references in the first information to the assault upon the person to whom grievous hurt was caused are, clearly inadmissible in a trial for the murder of two other people and should not be allowed to go to the jury. *Emperor v. Afsaruddi Naseraddi*.

40 Cr. L. J. 290 :
179 I. C. 910 : 67 C. L. J. 580 :
42 C. W. N. 1235 : 11 R. C. 632 :
A. I. R. 1939 Cal. 32.

—S. 162—Use against accused—Statement before Police.

Held, unanimously, that having regard to S. 162 (corresponding to S. 63 of the Bombay City Police Act), a statement taken down in writing, of a witness for prosecution, and recorded by a police officer, cannot be admitted or used in evidence against the accused. Per *Russell, Ag. C. J.*—Such a document might be used to contradict the witness, by putting it in the hands of the police to refresh his memory therefrom and thereby to enable him to contradict the statement of the witness. *Emperor v. Narayen*.

6 Cr. L. J. 164 :
9 Bom. L. R. 789 : 2 M. L. J. 414 :
32 Bom. 111.

—S. 162—Use against accused—Statement before Police—Writing and statement, distinction between.

Per *Chandavarkar, J.*—The use of the writing as evidence against the accused is opposed to the express terms of the section, but the statement contained in the writing could be used to impeach the credit of such witness in manner provided by the Indian Evidence Act. Per *Batty, J.*—The writing may be used for the purpose of refreshing the memory of the

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witness cross-examined as to the fact of the statement either on behalf of the prosecution or on behalf of the defence provided that it was treated by the prosecution only for the purpose of impeaching the credit or in corroboration of the witness who made it. Per *Beaman, J.*—The statement ought not to have been admitted at all, or its contents to have been allowed to be used by the prosecution even for the nominal purpose of contradicting the witness. The distinction between the "writing" and the "statement" which is embodied in the writing is a distinction of form rather than of substance. If the "statement" might properly be admitted and used to contradict the prosecution witness who made it, then there is no reason in principle why that statement should not be provable in the usual way and by the best evidence of it, namely, the written record of it. *Emperor v. Narayen*.

6 Cr. L. J. 164 :
9 Bom. L. R. 789 : 2 M. L. T. 414 :
32 Bom. 111.

—S. 162—Use against accused—Statement before Police—Statements made before Police, use of, for contradicting defence witnesses, legality of.

Statement made before Police during investigation and recorded in the Police diaries cannot be used for contradicting a defence witness. *Ganga v. Emperor*.

31 Cr. L. J. 689 :
124 I. C. 444 : 6 O. W. N. 1056 :
4 Luck. 726 : A. I. R. 1930 Oudh 60.

—S. 162—Use against accused—Statement of defence witness before Police.

It is illegal for a Public Prosecutor to ask a defence witness what he stated to the Police during the investigation or to ask the Investigating Officer about anything said to him by the defence witness and to use his answer to contradict what the defence witnesses state in Court. It is also illegal to question prosecution witnesses as to what they stated before the Police without the procedure detailed in the proviso to S. 162 being carried out. It is also illegal to allow the Investigating Officer to give evidence that such and such a person during the investigation gave him the names of certain accused persons. *Bahadur Singh v. Emperor*.

27 Cr. L. J. 803 :
95 I. C. 467 : 8 L. L. J. 174 : 7 Lah. 264 :
27 P. L. R. 379 : A. I. R. 1926 Lah. 367.

—S. 162—Use against accused—Statement of witness before Police—Statements of prosecution witnesses before Police—Their depositions before Magistrate—Comparison of two statements—Conviction based upon the comparison—Trial—Illegality.

It is illegal for a Magistrate trying an accused to use as evidence against him the statements made by the prosecution witnesses before Police by comparing them with their depositions, and as a result of that comparison, to convict him. *Emperor v. Lawman*.

6 Cr. L. J. 224 :
9 Bom. L. R. 895.

—S. 162—Use against accused—Statement made to Police during investigation.

A statement made to Police during investigation cannot be used in trial of any offence

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under investigation. Such a use is not warranted by S. 162, and if such evidence is used to demolish the most important portion of the defence case, it must be held that its admission prejudiced the accused to such an extent that the verdict of the jury cannot be upheld. *Ebrahim Mondal v. Emperor*.

40 Cr. L. J. 665 :
182 I. C. 405 : 43 C. W. N. 784 : 12 R. C. 61 :
A. I. R. 1939 Cal. 330.

—S. 162—Use, extent of.

A Police statement can only be used for one purpose, and that is by the accused to contradict a prosecution witness in the manner provided by S. 145, Evidence Act. *Vithu Balu Kharat v. Emperor*.

26 Cr. L. J. 223 :
83 I. C. 1007 : 26 Bom. L. R. 965 :
A. I. R. 1924 Bom. 510.

—S. 162—Use, extent of.

A statement made by a witness during investigation by Police can be used only for the purpose of contradicting him. The prosecution is not entitled to use such a statement for the purpose of corroborating the testimony of the witness. *Diwan v. Emperor*.

33 Cr. L. J. 637 :
138 I. C. 528 : 33 P. L. R. 208 :
I. R. 1933 Lah. 509.

—S. 162—Use, extent of—Contradiction.

S. 162 prohibits use of statement of a witness at the trial held in respect of the same offence which was then under investigation, except for purpose of contradicting such witness in the manner provided by S. 145, Evidence Act. *Adho v. Emperor*.

26 Cr. L. J. 897 :
86 I. C. 961 : A. I. R. 1925 Sind 257.

—S. 162—Use, extent of—Contradiction—Statement made to Police during investigation, admissibility of, to meet suggestion of defence.

A statement to Police in investigation of an offence cannot be used for any purpose at trial of that offence except to contradict the evidence given at trial by that person. In particular, it cannot, even if admitted to contradict, be used to corroborate the evidence of that person or to meet a suggestion of the defence. *Ramyad Dusadh v. Emperor*.

27 Cr. L. J. 753 :
95 I. C. 273 : 1926 Pat. 13 : 7 P. L. J. 673 :
A. I. R. 1926 Pat. 211.

—S. 162—Use, extent of.

It is improper to make a general order permitting the defence to inspect all the Police diaries relating to a particular inquiry. *Emperor v. Dharam Vir*.

34 Cr. L. J. 464 :
142 I. C. 854 : 34 P. L. R. 541 :
I. R. 1933 Lah. 283 : A. I. R. 1933 Lah. 498.

—S. 162—Use, extent of.

In order to contradict a witness by a previous statement, the procedure laid down in S. 145, Evidence Act, must be observed. A witness should be informed of the part of his statement which is to be used to contradict him and he should be given an opportunity of explaining what he meant by

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that portion of his statement. *Raghuraj Singh v. Emperor*.

36 Cr. L. J. 188 :
152 I. C. 873 : L. R. 15 All. 157 Cr. :
7 R. A. 406 (2) : 4 A. W. R. 1 :
A. I. R. 1934 All. 956.

—S. 162—Use, extent of.

Part of statement can be excluded only if it is irrelevant or its disclosure to accused is both inexpedient in public interest and not essential in interest of justice. If Judge excludes any part, he must record opinion on which he bases such exclusion but not his reasons. *Nga U Khine v. Emperor*.

36 Cr. L. J. 665 :
155 I. C. 66 : 13 Rang. 1 : 7 R. Rang. 332 :
A. I. R. 1935 Rang. 98.

—S. 162—Use, extent of—Police Diaries, proper use of.

Statements recorded by Police in the Police Diaries cannot be used at an enquiry or trial except to the extent and in the manner mentioned in Ss. 162 and 172, Cr. P. C. *Devi Das v. Emperor*.

31 Cr. L. J. 343 :
122 I. C. 93 : 10 Lah. 794 :
31 P. L. R. 742 : A. I. R. 1930 Lah. 318.

—S. 162—Use, extent of.

Statement by witness to Police under S. 162, —Statement recorded in special diary under S. 172—Statement cannot be used except as provided in S. 162. *Emperor v. Nga Lun Thauing*. (F. B.)

36 Cr. L. J. 1487 :
158 I. C. 784 : 8 R. Rang. 202 :
A. I. R. 1935 Rang. 370.

—S. 162—Use, extent of.

Statements made to Police in the course of investigation cannot be used for corroboration. *In re : Kallam Narayana*.

34 Cr. L. J. 481 :
143 I. C. 46 : 64 M. L. J. 88 :
1932 M. W. N. 801 : 37 L. W. 220 :
56 Mad. 231 : I. R. 1933 Mad. 261 :
A. I. R. 1933 Mad. 233.

—S. 162—Use, extent of.

Statement of witnesses before Police not properly put in evidence—Judge is not entitled to use them to discredit witness. *Rahijaddi v. Emperor*.

32 Cr. L. J. 841 :
132 I. C. 159 : 58 Cal. 1009 :
35 C. W. N. 317 : I. R. 1931 Cal. 543 :
A. I. R. 1931 Cal. 189.

—S. 162—Use of.

It cannot be laid down broadly that the defence can use S. 162 to prove that in evidence at the trial witnesses had made statements which had not been included in records of previous statements made to Police. *Mohinder Singh v. Emperor*.

33 Cr. L. J. 97 :
135 I. C. 209 : I. R. 1932 Lah. 81 :
A. I. R. 1932 Lah. 103.

—S. 162—Use of statement against accused.

A statement under S. 162 can only be used in order to show that the witness in the box is contradicting something he said before.

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Such statements should not be used, in order to show 'development' of the prosecution case. *Ponnuswami Chetty v. Emperor*.

34 Cr. L. J. 582 :
143 I. C. 424 : 1933 M. W. N. 90 :
37 L. W. 441 : 64 M. L. J. 519 :
56 Mad. 475 : I. R. 1933 Mad. 299 :
A. I. R. 1933 Mad. 372 (2).

—S. 162—Use of statement without request of accused.

Statement made to Police in course of investigation cannot be used without request of accused. *Nga U Khinc v. Emperor*.

36 Cr. L. J. 665 :
155 I. C. 66 : 13 Rang. 1 : 7 R. Rang. 332 :
A. I. R. 1935 Rang. 98.

—Ss. 162, 172 (2)—Use of record of statement—Duty of Court.

Whether the record of a statement be proved and used under S. 162, or used under S. 172 (2) without being proved, it is necessary for the court to be astute to avoid using it otherwise than as provided by law. *Emperor v. Najibuddin*.

35 Cr. L. J. 379 :
147 I. C. 142 : 14 P. L. T. 543 :
6 R. P. 339 : A. I. R. 1933 Pat. 589.

—S. 162—Proviso—Proviso, whether applies to person not called by prosecution.

The proviso to S. 162, applies only to statements made by persons who are called as witnesses for the prosecution. It does not, therefore, apply to statements made by a person summoned by the Court at the instance of the defence. *Gurditta Shah v. Emperor*.

28 Cr. L. J. 828 :
104 I. C. 414 : A. I. R. 1927 Lah. 713.

—S. 164.

—Absconder.
—Admissibility.
—Certificate.
—Confession.
—Construction.
—Defects in Procedure.
—Evidentiary value.
—Extra-Judicial Confession.
—Granting Copies.
—Identification.
—Jurisdiction.
—Memorandum.
—Miscellaneous.
—Mode of Recording.
—Nature of.
—Object.
—Oral Confession.
—Oral Evidence.
—Procedure—
—Recording of Confession.
—Recording of Magistrate.
—Recording Statement.
—Retracted Confession.
—Retracted Statement.
—Scope.
—Scope and Object.
—Statement.
—Use of.

—S. 164.

See also (i) Confession.

(ii) Cr. P. C., Ss. 148, 155, 162, 164, 297, 339 (2).

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(iii) Criminal trial.

(iv) Evidence Act, 1872, Ss. 21, 24, 26, 27, 30, 32 (1), 157.

(v) General Clauses Act, S. 3, Cl. 52.

(vi) Jury.

(vii) Madras High Court.

—S. 164—Absconder—Arrest—Confession, legality of.

A challan was placed against two persons, one of whom was an absconder who was subsequently arrested and his confession recorded under S. 164 : *Held*, that the confession was properly recorded. *Mohinder Singh v. Emperor*.

33 Cr. L. J. 97 :
135 I. C. 209 : I. R. 1932 Lah. 81 :
A. I. R. 1932 Lah. 103.

—S. 164—Admissibility.

A confession made under circumstances showing that it was true and voluntary, is not excluded by S. 164, if it is otherwise admissible under Ss. 24 to 26, Evidence Act. *In re : Arunachala Reddi*.

33 Cr. L. J. 586 :
138 I. C. 240 : 55 Mad. 717 :
35 L. W. 607 : 62 M. L. J. 680 :
1932 M. W. N. 644 : I. R. 1932 Mad. 552 :
A. I. R. 1932 Mad. 500.

—S. 164—Admissibility—Confession—Compliance with law—Recording Magistrate, evidence of.

The evidence of the Magistrate that he observed all the provisions of S. 164 at the time of recording the confession of the accused is sufficient to prove that the law was complied with, and the confession so recorded is admissible in evidence. *Ramai Ho v. Emperor*.

26 Cr. L. J. 314 :
84 I. C. 458 : 3 Pat. 872 :
A. I. R. 1925 Pat. 191.

—S. 164—Admissibility—Confession during remand.

A confession made by accused during remand proceedings before a Magistrate is inadmissible. *Allah Dad v. Emperor*.

33 Cr. L. J. 377 :
137 I. C. 57 : 33 P. L. R. 25 :
I. R. 1932 Lah. 281.

—S. 164—Admissibility—Exculpatory statement in Police custody.

An exculpatory statement made by accused and duly recorded in accordance with S. 164 is admissible in evidence. *Abdul Rahim v. Emperor*.

26 Cr. L. J. 1279 :
88 I. C. 1055 : 41 C. L. J. 474 :
A. I. R. 1925 Cal. 926.

—S. 164—Admissibility of confession—Burden of proof.

Onus to show that confession recorded under S. 164 is inadmissible is on accused. Mere retraction is not enough. *Pharho v. Emperor*.

34 Cr. L. J. 147 :
141 I. C. 392 (2) : 26 S. L. R. 302 :
I. R. 1933 Sind 49 : A. I. R. 1932 Sind 201.

—S. 164—Admissibility of confession.

Where no questions were actually asked, S. 533, will not help ; but if the Magistrate's evidence

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shows that the questions were asked, then that is merely a defect of form and S. 533 will cure it. *Emperor v. Kommoji Brahman*.

41 Cr. L. J. 533 :
188 I. C. 57 : 19 Pat. 301 :
6 B. R. 577 : 12 R. P. 674 :
A. I. R. 1940 Pat. 163.

S. 164—Retracted confession—Admissibility.

There is no rule of law that a retracted confession cannot be treated as evidence unless it is corroborated in material particulars by independent evidence. *Rama Krujappa Picloi v. Emperor*.

31 Cr. L. J. 97 :
128 I. C. 350 : 31 Bom. L. R. 565 :
A. I. R. 1929 Bom. 327.

S. 164—Admissibility—Statement by prisoner in jail implicating another, whether admissible.

A statement by prisoner in jail implicating another person in the commission of the offence and subsequently retracted by him is not admissible in evidence against that other person. *Noor v. Emperor*.

21 Cr. L. J. 189 :
54 I. C. 898 : 18 A. L. J. 87 :
2 U. P. L. R. (A) 37 : A. I. R. 1919 All. 13.

S. 164—Admissibility—Statement recorded in Police custody.

Statement written and signed by accused in custody of Police is inadmissible. *Ram Baran Shukla v. Emperor*.

34 Cr. L. J. 574 :
143 I. C. 318 : L. R. 14 All. 67 Cr. :
1933 A. L. J. 479 : 55 All. 426 :
I. R. 1933 All. 221 : A. I. R. 1933 All. 356.

Ss. 164, 533—Admissibility—Recording of confession under S. 164—Actual questions and answers not recorded—Magistrate giving evidence—Court satisfied that usual precautions were taken—Admissibility.

It is not possible to lay down the particular questions in each particular case which ought to be put, but the Magistrate and the High Court have to be satisfied that the confession was in fact voluntary. Where confessions are recorded under S. 164, but the actual questions and answers put by the Magistrate to the confessing accused are not recorded if the Magistrate gives evidence, and satisfies the Court that questions had been asked and that the usual precautions had been taken by him, the confessions are admissible under Ss. 164 and 533 taken together. *Mohammad Din Meer Din v. Emperor*.

39 Cr. L. J. 488 :
174 I. C. 881 : I. L. R. 1937 Lah. 658 :
40 P. L. R. 401 : 10 R. L. 618 :
A. I. R. 1938 Lah. 200.

S. 164 (2)—Admissibility—Confession, law governing admissibility of.

S. 1 (2), Cr. P. C., shows that the Cr. P. C. does not affect any special or local law in force; so one must look to the Evidence Act for the admissibility of confessions rather than to the Cr. P. C. *Nga Thein Maung v. Emperor*.

37 Cr. L. J. 920 :
164 I. C. 162 : 9 R. Rang. 64 :
A. I. R. 1936 Rang 350.

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S. 164—Applicability—No production of accused before Court.

S. 164, Cr. P. C., is not applicable to a case if accused is not produced before the Magistrate for purpose mentioned therein. *Jog Raj v. Emperor*.

32 Cr. L. J. 290 :
129 I. C. 289 : I. R. 1931 Lah. 177 :
A. I. R. 1930 Lah. 534.

S. 164—Applicability.

Approver accepting tender of pardon can be examined under S. 164. *Emperor v. Hussaina*.

35 Cr. L. J. 111 :
146 I. C. 461 : 6 R. L. 230 :
A. I. R. 1933 Lah. 868.

S. 164—Applicability—Statements of witnesses, application to.

S. 164 is not confined to confession of the accused but applies also to statements taken from witnesses, and although it is not desirable that witnesses should be pinned down by statements under S. 164, recording statements of witnesses under that section is not illegal. *Jehangir Ardeshir Cama v. Emperor*.

28 Cr. L. J. 1012 :
106 I. C. 100 : 29 Bom. L. R. 996 :
8 A. I. Cr. R. 324 : A. I. R. 1927 Bom. 501.

S. 164—Certificate, necessity of.

For the admissibility of a confession, there need not be a certificate introduced in S. 164 (3) by the Amending Act XVIII of 1923, since S. 29, Evidence Act, was not amended. *Lal Singh v. Emperor*.

40 Cr. L. J. 132 :
178 I. C. 694 : 1938 A. L. J. 943 :
I. L. R. 1938 All. 875 : 11 R. A. 327 :
1938 A. W. R. 642 : A. I. R. 1938 All. 625.

S. 164—Certificate of confession defective—Magistrate stating in witness-box that he complied with formalities—Defect, cured.

A defect in the certificate or memorandum is cured if the Magistrate who records that confession states in evidence that he complied with all the requirements of the said section. *Rahmat v. Emperor*.

30 Cr. L. J. 49 :
113 I. C. 65 : I. R. 1929 Lah. 134 :
11 L. L. J. 5.

S. 164—Certificate, omission to append—Examination of Magistrate—Defect cured.

Omission of a Magistrate recording a confession to append a certificate that he had explained to accused that his confession might be used as evidence against him, is an irregularity cured by examining the Magistrate himself and proving that he had made the necessary explanation before recording the confession. *Amina v. Emperor*.

32 Cr. L. J. 579 :
130 I. C. 641, I. R. 1931 Lah. 321 :
A. I. R. 1931 Lah. 196.

Ss. 164, 533—Certificate—Omission to record.

When Magistrate has complied with the provisions of S. 164, Cr. P. C., but has failed to record necessary certificate on proof by the Magistrate that he had complied with the provisions of

Cr. P. CODE (1898), S. 164

S. 164, the record becomes admissible under S. 533. *Gog Raj v. Emperor*.

32 Cr. L. J. 290 :
129 I. C. 289 : I. R. 1931 Lah. 177 :
A. I. R. 1930 Lah. 534.

———S. 164 (3)—*Certificate appended—Presumption as to compliance with formalities.*

Where the certificate required by S. 164 (3) has been duly appended to record, there is a presumption that the precautions in the section have been duly taken. *Majhi v. Emperor*.

28 Cr. L. J. 807 :
104 I. C. 247 : A. I. R. 1927 Lah. 682.

———S. 164 (3)—*Certificate—Confession, recording of—Omission of certificate—Effect.*

Where a Magistrate in recording a confession refuses to make the memorandum referred to in S. 164 (3) on the ground that in his opinion the confession has not been voluntarily made, such confession cannot form part of any judicial record and is, therefore, inadmissible in evidence. *Ram Sudh v. Emperor*.

19 Cr. L. J. 507 :
45 I. C. 267 : 5 O. L. J. 70 :
A. I. R. 1918 Oudh 295.

———S. 164—*Certificate—Failure to observe formalities—Confession fulfilling all requirements of certificate except appending of certificate—Defect curable.*

Where a confession recorded under S. 164 fulfils all ingredients of the certificate except one, viz., that the Magistrate believed the confession to have been voluntarily made but that factor is supplied by the Magistrate in his oral evidence, the mere failure of the Magistrate to append the certificate is a formal defect curable under S. 533. *Maroti v. Emperor*.

41 Cr. L. J. 553 :
188 I. C. 146 : 1940 N. L. J. 210 :
12 R. N. 333 : A. I. R. 1940 Nag. 230.

———S. 164 (3)—*Certificate—Recording of confession—Certificate that confession was voluntary.*

S. 164 (3) requires the Magistrate first to satisfy himself from questions put to the accused that the accused is making the confession voluntarily, and finally to certify after he has recorded the confession, that the confession was, in his opinion, made voluntarily. After the confession has been recorded, the Magistrate is in a better position to say whether the confession was voluntary or not, for the manner in which it was made affords some indication whether it was made voluntarily. *Baliram Singh v. Emperor*.

40 Cr. L. J. 937 :
184 I. C. 274 : 12 R. N. 106 :
1939 N. L. J. 442 : A. I. R. 1939 Nag. 295.

———S. 164—*Confession—Absence of precautions—Admissibility.*

In recording a confession, where the Magistrate has not recorded the necessary preliminary questions, the confession is admissible in evidence provided the omission has not injured

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the accused in his defence on the merits. *Mohammad Ali v. Emperor*.

35 Cr. L. J. 385 :
147 I. C. 390 : 1933 A. L. J. 1551 :
6 R. A. 467 : L. R. 15 All. 39 Cr. :
A. I. R. 1934 All. 81 :

———S. 164—*Confession.*

Admission by accused before Magistrate associated with investigating officer—Magistrate not recording admission under S. 164 but making written memorandum—Oral evidence of Magistrate is admissible, and written memorandum though not admissible can be used to refresh memory. *Abdulla v. Emperor*. (F. B.)

34 Cr. L. J. 1025 (2) :
145 I. C. 467 : 34 P. L. R. 612 :
14 Lah. 290 : 6 R. L. 109 :
A. I. R. 1933 Lah. 716.

———S. 164—*Confession before Magistrate in Native State—Admissibility.*

A confession duly taken by a competent Magistrate of a Native State and certified by him to have been read over and explained to the accused is admissible against the accused on his trial in British India, but such a confession is not entitled to the same weight as a confession recorded by a British Magistrate. *Badan Singh v. King-Emperor*.

9 Cr. L. J. 297 :
1 I. C. 444 : 2 P. R. 1909 Cr. :
7 P. W. R. 1909 Cr.

———S. 164—*Confession by approver—Benefit of doubt.*

Where an approver relates also the details of some other earlier offence committed by himself and the accused and is not warned by the Magistrate against their irrelevancy, the benefit of doubt as to the extent of pardon should be given to him. *Nilo Madhab Choudhry v. Emperor*.

27 Cr. L. J. 957 :
96 I. C. 509 : 5 Pat. 171 :
A. I. R. 1926 Pat. 279.

———S. 164—*Confession by co-accused—Statement of co-accused, admissibility of.*

Per Chapman, J.—A statement of an accused implicating his co-accused is not relevant. *Jinbodham Bhuian v. Emperor*.

18 Cr. L. J. 623 :
39 I. C. 991 : 1 P. L. W. 388 :
1917 Pat. 149 : A. I. R. 1917 Pat. 475.

———S. 164—*Confession—Certificate, omission to append—Effect.*

Omission to record in certificate that accused was warned—Magistrate's testimony that he was warned—Confession, admissible. *Drummond v. Emperor*.

34 Cr. L. J. 712 :
144 I. C. 296 : 34 P. L. R. 702 :
I. R. 1933 Lah. 434 :
A. I. R. 1933 Lah. 311 (2) :

———S. 164—*Confession—Jurisdiction.*

Confession before Third Class Magistrate of Indian State is admissible. *Emperor v. Hulusi*.

34 Cr. L. J. 704 :
144 I. C. 157 : I. R. 1933 All. 392 :
A. I. R. 1933 All. 286.

———S. 164—*Confession—Confession by accused—Duty of Magistrate.*

Cr. P. CODE (1898), S. 164

When a prisoner is brought before a Magistrate to make a confession, the Magistrate is bound to question him with a view to discover whether he confesses voluntarily. This questioning is not a mere formality, but must be in pursuance of a real desire to find out the object of it. *Thein Maung v. Emperor*.

4 Cr. L. J. 198 :
3 L. B. R. 173.

—S. 164—*Confession—Confession made under threat and inducement, and that voluntarily made—Indian Evidence Act (I of 1872), Ss. 27, 28.*

If there has been no such lapse of time nor opportunity for calm reflection, as would enable a Judge to think that the accused had the chance realise his position to speak out voluntarily, it cannot be supposed that the impression of threat and inducement has been fully removed at the time of his confession, and in such a case mere usual stereotyped question whether the accused has been induced or threatened, and his answers in the negative do not show that the impression was removed, but show that he even then made an untrue statement and such a confession is inadmissible, being not voluntary within the terms of S. 28, I. E. A. *In re : Maretha Balu Dolatram*.

7 Cr. L. J. 166 :
17 K. L. R. 446.

—S. 164—*Confession—Construction.*

An admission or confession must be considered as a whole. *Emperor v. Dewan Kahar*.

24 Cr. L. J. 497 :
72 I. C. 961 : 4 P. L. T. 186 :
A. I. R. 1923 Pat. 13.

—S. 164—*Confession—Duty of Magistrate.*

A Magistrate recording a confession, must question the person making it as to whether he is making a voluntary statement. *Khushi Muhammad v. Emperor*.

25 Cr. L. J. 979 :
81 I. C. 627 : 6 L. L. J. 166 :
A. I. R. 1924 Lah. 481.

—S. 164—*Confession, essentials of.*

A confession need not make a clean breast of all the details in connection with the crime, but if Court is satisfied that it has been voluntary, it may take into consideration such parts of it as it may consider to be true. *Rama Kriyappa Pichi v. Emperor*.

31 Cr. L. J. 97 :
120 I. C. 350 : 31 B. L. R. 565 :
A. I. R. 1929 Bom. 327.

—S. 164—*Confession, essentials of.*

It is only when the utterance is made with an *animus confitendi* that it would become a confession. If, therefore, the declaration is made neither with an intention to confess, nor does it amount to an admission of facts from which guilt is directly deducible, the declaration would not be a confession. *Karu v. Emperor*.

38 Cr. L. J. 648 :
168 I. C. 976 : 20 N. L. J. 103 :
9 R. N. 285 : I. L. R. 1937 Nag. 524 :
A. I. R. 1937 Nag. 254.

—S. 164—*Confession—Genuineness, etc.—Duties of High Court and Sessions Court.*

The genuineness and truth of the confession

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and the fact of its being voluntarily made are matters which are within the exclusive province of the Court of Sessions and of the High Court and neither the Court of Sessions nor the High Court should blindly accept the ready-made opinions of the recording Magistrate. *Prug v. Emperor*.

32 Cr. L. J. 97 :
128 I. C. 215 : 7 O. W. N. 909 :
I. R. 1931 Oudh 23 : 6 Luck. 335 :
A. I. R. 1930 Oudh 449.

—S. 164—*Confession in presence of Police.*

The accused, in Police custody, made a confession and was produced before a Magistrate. The latter proceeded to record the confession in presence of Police and after recording it, remanded the accused to Police custody : *Held*, that the confession was not made voluntarily, and it could not be taken into consideration against the accused. *Neki v. Emperor*.

25 Cr. L. J. 116 :
76 I. C. 180 : A. I. R. 1924 Lah. 624.

—S. 164—*Confession—Inducement, effect of—Police Officer, presence of, effect of—Magistrate, failure of, to comply with precautions.*

A conviction based on confessions made by inducement by the Police, and recorded in presence of Police by Magistrate who fails to comply with the provisions of S. 164, and inconsistent with each other and with other evidence recorded, is bad. *Jinubodhan Bhuian v. Emperor*.

18 Cr. L. J. 623 :
39 I. C. 991 : 1917 Pat. 149 :
A. I. R. 1917 Pat. 475.

—S. 164—*Confession, legality of.*

Information to Deputy Magistrate that accused is willing to make confession—No written complaint of specific act—No Police investigation—Deputy Magistrate ordering confession to be recorded—Action held illegal. *Sheo Prasad v. Emperor*.

36 Cr. L. J. 927 :
156 I. C. 231 : 1935 O. W. N. 722 :
7 R. O. 667 : A. I. R. 1931 Oudh 416.

—S. 164—*Confession—Magistrate competent to record.*

A Magistrate should not record confession under S. 164 after the case has been sent up to him for enquiry even if the *challan* is taken back. *Pahlwan v. Emperor*.

31 Cr. L. J. 533 :
123 I. C. 540 :
A. I. R. 1930 Lah. 454.

—S. 164—*Confession—Magistrate competent to record—Trial by recording Magistrate.*

It is not always necessary that the recording Magistrate must be other than a Magistrate conducting enquiry into the guilt of the persons alleged to have been confederates of the confessing prisoner. *Mohindar Singh v. Emperor*.

33 Cr. L. J. 97 :
135 I. C. 209 : I. R. 1932 Lah. 81 :
A. I. R. 1932 Lah. 103.

—S. 164—*Confession—Magistrate's duty to record.*

The section leaves it optional with the

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Magistrate to record the confession or not. He is not bound to record it even though the person is willing to make a voluntary confession. *Sidheswar Nath v. Emperor*.

36 Cr. L. J. 45 :
152 I. C. 174 : 1934 A. L. J. 178 :
58 All. 730 : 7 R. A. 280 :
A. I. R. 1934 All. 351.

———S. 164—Confession—Magistrate not acting under S. 164 or S. 364 but giving oral evidence of confession—Evidence, if admissible—Conviction, legality of.

The effect of the statute is clearly to prescribe the mode in which confessions are to be dealt with by Magistrates when made during an investigation and to render inadmissible any attempt to deal with them in any other method. Consequently, an accused person should not be convicted mainly, if not entirely, on the strength of a confession said to have been made by him to a Magistrate of which evidence was given by the Magistrate but which was not recorded under S. 164 as the evidence of such confession is inadmissible where the Magistrate neither acts nor purports to act under S. 164 or S. 364. *Nazir Ahmad v. Emperor*.

37 Cr. L. J. 897 P. C. :
163 I. C. 881 :
38 Bom. L. R. 987 :
1936 O. W. N. 505 :
1936 M. W. N. 745 : 1936 A. L. J. 895 :
40 C. W. N. 1221 : 17 P. L. T. 594 :
1936 O. L. R. 437 (2) :
9 R. P. C. 57 : 71 M. L. J. 476 :
44 L. W. 583 : 19 N. L. J. 214 :
17 Lah. 629 : 64 C. L. J. 445 :
39 P. L. R. 43 :
38 P. L. R. 802 P. C. :
A. I. R. 1936 P. C. 253 (2).

———S. 164—Confession—Mode of recording.

In recording a confession under S. 164, the Magistrate has no right whatever to cross-examine the man who is making the statement. *Abdul Jalil Khan v. Emperor*.

32 Cr. L. J. 152 :
128 I. C. 593 : 1930 A. L. J. 1105 :
I. R. 1931 All. 65 :
L. R. 12 All. 1 Cr. :
A. I. R. 1930 All. 746.

———S. 164—Confession, on inducement—Effect of.

The accused, a Punjabi village boy of 16, made a confession to the *Zaildar* to whom he was taken by the Police. The *Zaildar* told him "you are a minor. You will be let off if you tell the truth before the Police just as you have done in our presence." The Magistrate who recorded the confession gave evidence that he told the accused that he was not to allow any inducement to operate upon his mind in making the confession; *Held*, that the assurance made by the *Zaildar* to the accused either itself would operate upon his mind when he made the confession or that the inducement would, in all probability, have been repeated before the confession

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was made and the confession must be excluded. *Faiz Ahmad v. Emperor*.

38 Cr. L. J. 27 :
165 I. C. 880 : 9 R. L. 313 :
A. I. R. 1936 Lah. 855.

———S. 164—Confession of co-accused—Corroboration, necessity of.

The confession of a co-accused cannot be made the basis of conviction unless it is corroborated in material particulars by independent evidence and confession of one co-accused cannot be said to be corroborated by the confession of another co-accused. *Rama Kriyappa Pichi v. Emperor*.

31 Cr. L. J. 97 :
120 I. C. 350 : 31 Bom. L. R. 565 :
A. I. R. 1929 Bom. 327.

———S. 164—Confession—Oral.

A Magistrate is not bound to record a confession under S. 164 and oral proof of unrecorded confession made to a Magistrate is not excluded by S. 91, Evidence Act. *Sidheshwar Nath v. Emperor*.

36 Cr. L. J. 45 :
152 I. C. 174 : 1934 A. L. J. 178 :
56 All. 730 : 7 R. A. 280 :
3 A. W. R. 459 :
A. I. R. 1934 All. 351.

———S. 164—Confession—Oral.

It is not at all fair to avoid the precaution laid down in Ss. 164, Cr. P. C., and endeavour to prove oral confessions made to Magistrates, some of whom had no power to record a confession at all. *Lal Singha v. Emperor*.

37 Cr. L. J. 940 :
164 I. C. 373 : 9 R. L. 111 :
38 P. L. R. 881 :
A. I. R. 1936 Lah. 707.

———S. 164—Confession—Presumption of genuineness.

Whenever the conditions specified in S. 80 are complied with, it must be presumed that the document is genuine, and that the confession was duly taken; but, nevertheless, the Court is bound to treat it as irrelevant if it should appear to the Court that it was procured by any inducement, threat or promise. *Emperor v. Dewan Kahar*.

24 Cr. L. J. 497 :
72 I. C. 961 : 4 P. L. J. 186 :
A. I. R. 1923 Pat. 13.

———S. 164—Confession—Questions, form of.

S. 164 does not prescribe that questions must be in a special form but there must be some questions designed to reveal whether the statement is being made voluntarily. To ask a question which can only test the accused's memory is not a compliance with the provisions of this section. *Emperor v. Kommoju Brahman*.

41 Cr. L. J. 533 :
188 I. C. 57 : 19 Pat. 301 :
6 B. R. 577 : 12 R. P. 674 :
A. I. R. 1940 Pat. 163.

———S. 164—Confession recorded in Native State.

A confession recorded in 'Gwalior' State under

Cr. P. CODE (1898), S. 164

S. 79, Cr. P. C., in force there, can be used in British India under the provision of S. 80, Evidence Act. *Lal Singa v. Emperor*.

40 Cr. L. J. 132 :
178 I. C. 694 : 1938 A. L. J. 943 :
I. L. R. 1938 All. 875 : 11 R. A. 327 :
1938 A. W. R. 642 : A. I. R. 1938 All. 625.

—S. 164—Confession, recording of.

The exact words of the warning under the provisions of S. 164 given to a person making confession, are not very material, provided Magistrate explains and the person making the statement clearly understands that he need not make a confession. *Bawa Singh v. Emperor*.

26 Cr. L. J. 1458 :
89 I. C. 1026 : 7 L. L. J. 250 :
A. I. R. 1925 Lah. 448.

—S. 164—Confession.

Recording of confession—Prisoner should be allowed to make any statement. *Shco Prasad v. Emperor*.

36 Cr. L. J. 927 :
156 I. C. 231 : 1955 O. W. N. 722 :
7 R. O. 667 : A. I. R. 1935 Oudh 416.

—S. 164—Confession, recording of—Duty of Magistrate.

Magistrate recording confession should avoid handing over document after completion to Police in charge of the prisoner. In absence of suggestion that it was tampered with and of prejudice, S. 164 will be deemed to have been complied with. *Hans Raj v. Emperor*.

37 Cr. L. J. 504 :
161 I. C. 900 : 37 P. L. R. 605 :
16 Lah. 345 : 8 R. L. 811 :
A. I. R. 1936 Lah. 341.

—S. 164—Confession—Retraction—Corroboration.

Where a hatchet was produced three days after a murder from a place which was accessible to others as well, and the confession was retracted: *Held*, that discovery was not sufficient corroboration and that the accused must get benefit of doubt. *Khair Mahomed v. Emperor*.

35 Cr. L. J. 17 :
146 I. C. 180 : 6 R. S. 57 :
A. I. R. 1933 Sind 313 (2).

—S. 164—Confession to Police Patel.

A confession made to a Police Patel is invalid. *Emperor v. Rama Dhan Powar*.

16 Cr. L. J. 740 :
31 I. C. 340 : 17 Bom. L. R. 898 :
A. I. R. 1915 Bom. 140.

—S. 164—Confession, unrecorded—Admissibility.

Per *Shah, J.*—A confession made to a Magistrate which is not reduced into writing is inadmissible in evidence and cannot, therefore, be proved by oral evidence. *Emperor v. Maruti Santu More*.

21 Cr. L. J. 65 :
54 I. C. 465 : 21 Bom. L. R. 1065 :
A. I. R. 1920 Bom. 322.

—S. 164—Confession—Voluntariness—Proof.

The truth or voluntariness may not unreasonably, though not necessarily, be inferred where

Cr. P. CODE (1898), S. 164

the truth of the confession is established. *Emperor v. Dewan Kahar*.

24 Cr. L. J. 497 :
72 I. C. 961 : 4 P. L. T. 186 :
A. I. R. 1923 Pat. 13.

—S. 164—Confession within sight of Police—Admissibility.

A confession made by accused, within sight and hearing of a Police Officer and not taken in accordance with S. 164, is not admissible in evidence. *Jiubodhan Bhuiyan v. Emperor*.

18 Cr. L. J. 623 :
39 I. C. 991 : 1 P. L. W. 388 : 1917 Pat. 149 :
A. I. R. 1917 Pat. 475.

—Ss. 164, 364—Construction—Construction of Ss. 164 and 364—Precautions to be observed.

Ss. 164 and 364, Cr. P. C., must be looked at and construed together. It is wrong to say that the only effect of S. 164 is to allow evidence to be put in a from in which it can prove itself under Ss. 74 and 80 of the Evidence Act, as if such a construction is adopted, all the precautions and safeguards laid down by Ss. 164 and 364 would be of such trifling value as to be almost idle. *Nazir Ahmad v. Emperor*.

37 Cr. L. J. 897 :
163 I. C. 881 : 38 Bom. L. R. 987 :
1936 O. W. N. 505 : 1936 M. W. N. 745 :
1936 A. L. J. 895 : 40 C. W. N. 1221 :
17 P. L. T. 594 : 1936 O. L. R. 437 (2) :
9 R. P. C. 57 : 71 M. L. J. 476 : 44 L. W. 583 :
19 N. L. J. 214 : 17 Lah. 629 : 64 C. L. J. 445 :
39 P. L. R. 43 : 38 P. L. R. 802 :
A. I. R. 1936 P. C. 253 (2).

—S. 164 (3)—Construction—Record, meaning of.

The word 'record' in S. 164, Cl. (3), must necessarily mean "making a part of a judicial record," and not merely writing out. *Emperor v. Kadar*.

5 Cr. L. J. 4 :
8 Bom. L. R. 950.

—S. 164—Defect in Procedure—Effect.

Where the Magistrate says in Court that he had asked questions but had forgotten to record them, then S. 533 would be applicable; and S. 91, Evidence Act, will cause no difficulty. But if Magistrate does not supply the defect in the written form with oral evidence, S. 533 cannot help. *Emperor v. Kommojee Brahman*.

41 Cr. L. J. 533 :
188 I. C. 57 : 19 Pat. 301 : 6 B. R. 577 :
12 R. P. 674 : A. I. R. 1940 Pat. 163.

—S. 164—Evidentiary value—Admission before Committing Magistrate that a certain statement was made under S. 164—Transfer of deposition to Sessions' record—Statement made under S. 164, whether evidence.

Where a witness is asked by the Committing Magistrate whether he made a certain statement under S. 164, and the witness admits having made such statement, and the deposition of the witness before the Committing Magistrate is subsequently transferred to the Sessions' record under S. 288, the statement under S. 164

Cr. P. CODE (1898), S. 164

cannot be treated as substantive evidence.
In re : Karuppana Pillai. 28 Cr. L. J. 279 :
 100 I. C. 359 : 7 A. I. Cr. R. 430.

———S. 164 (2)—*Evidentiary value—Confession not recorded in accordance with law—Conflict with prosecution evidence—Confession, value of.*

A confession not recorded in accordance with the procedure in S. 164 (2), read with S. 364, and the details of which conflict with the prosecution evidence and which is retracted on the first possible occasion, is of no value as evidence as against the person making it.
Harphul v. Emperor. 25 Cr. L. J. 58 :
 75 I. C. 762 : A. I. R. 1923 Lah. 429.

———S. 164—*Evidentiary value—Magistrate telling accused that they are Magistrates—Fact not recorded in memos—Confessions, value of.*

Where the Magistrates all state that they told the accused that they were Magistrates, but curiously enough, all forgot to record this fact in the memos prepared by them, such confessions are of little evidentiary value.
Lal Singh v. Emperor. 37 Cr. L. J. 940 :
 164 I. C. 373 : 9 R. L. 111 : 38 P. L. R. 881 :
 A. I. R. 1936 Lah. 707.

———S. 164—*Evidentiary value of statement or confession.*

What statements or confessions made under S. 164 are admissible at a trial, must depend upon the Law of Evidence. A statement or confession made under S. 164 is not, simply because it is made under S. 164, admissible at a trial for any or every purpose. *Ghulam Muhammad Khan v. Emperor.* 26 Cr. L. J. 878 :
 86 I. C. 814 : 4 Pat. 327 : 6 P. L. T. 598 :
 3 Pat. L. R. 175 Cr. : A. I. R. 1925 Pat. 536.

———S. 164—*Evidentiary value.*

Omission to follow Rules by Local Government for recording confession—No breach of S. 164—Confession is not *per se* bad. *Nibar v. Emperor.* 34 Cr. L. J. 838 :
 144 I. C. 769 : 10 O. W. N. 642 :
 6 R. Oudh 10 : A. I. R. 1933 Oudh 299.

———S. 164—*Evidentiary value—Statements of witnesses—Presumption.*

Where statements of witnesses are recorded under Ss. 164, 512, they are presumed as genuine and it is not necessary that the Magistrate who recorded them should be examined. *Emperor v. Lalji Rai.* 37 Cr. L. J. 235 :
 160 I. C. 181 : 16 P. L. T. 730 :
 2 B. Rang. 180 : 8 R. Pat. 180 :
 A. I. R. 1936 Pat. 11.

———S. 164—*Evidentiary value.*

Statements recorded by a Magistrate, in the course of a Police investigation under S. 164, are evidence in a stage of a judicial proceeding. *In re : Maromma.* 34 Cr. L. J. 92 :
 140 I. C. 756 : 1933 M. W. N. 100 :
 I. R. 1933 Mad. 43 : A. I. R. 1933 Mad. 125.

———S. 164—*Extra-judicial confession—Formalities—Proof.*

Extra-judicial confession cannot be proved if made to a Magistrate, unless the provisions

Cr. P. CODE (1898), S. 164

of S. 164 have been complied with.
Emperor v. Kommoju Brahman. 41 Cr. L. J. 533 :
 188 I. C. 57 : 19 Pat. 301 : 6 B. Rang. 577 :
 12 R. Pat. 674 : A. I. R. 1940 Pat. 163.

———S. 164—*Extra-judicial confession to doctor—Admissibility.*

Extra-judicial confession to a doctor cannot carry the same weight as a confession duly recorded under S. 164 but is admissible under S. 21, Evidence Act. *Emperor v. Kommoju Brahman.* 41 Cr. L. J. 533 :
 188 I. C. 57 : 19 Pat. 301 : 6 B. Rang. 577 :
 12 R. Pat. 674 : A. I. R. 1940 Pat. 163.

———Ss. 162, 164—*Granting copies—Accused's right to copies of statement in the course of investigation.*

Neither under the Cr. P. C. nor under English Law is accused under remand entitled before the commencement of the preliminary enquiry against him to copies of statements of persons recorded by a Magistrate under S. 164. *In re : Muthia Swamiyar.* 6 Cr. L. J. 346 :
 17 M. L. J. 471 : I. L. R. 30 Mad. 466.

———S. 164—*Granting copies of statements of witnesses.*

A Magistrate should not refuse to grant to the accused copies of the statements recorded under S. 164, Cr. P. C., of persons who are to appear as witnesses in the case. *Ghulam Nabi v. Emperor.* 30 Cr. L. J. 760 :
 117 I. C. 377 : I. R. 1929 Lah. 649 :
 A. I. R. 1929 Lah. 429.

———S. 164—*Granting copies—Statements under S. 164—Accused, if entitled to copies thereof.*

The statements recorded under S. 164 are public documents within the meaning of S. 74, Evidence Act. Therefore, the accused is entitled to copies of these documents, and where the Magistrate refuses to grant them to the accused, he is in error. *Bherumal Khanchand v. Emperor.* 39 Cr. L. J. 57 :
 171 I. C. 993 : 10 R. Sind 134 :
 A. I. R. 1937 Sind 303.

———S. 164 (2)—*Criminal Procedure Code, granting copies.*

Accused has right to take copies of statements recorded by Magistrate. *Hari Chand v. Emperor.* 32 Cr. L. J. 253 (2) :
 129 I. C. 193 : I. R. 1931 Lah. 129 :
 A. I. R. 1931 Lah. 59.

———S. 164—*Identification—Proof of—That maker of statement is person in Court, if can be proved by Police Officer.*

The fact that the person who made a statement under S. 164 is the person in Court, can be proved by the Police Officer who had the statement recorded and the trying Magistrate need not be examined. *Sadulla v. Emperor.* 39 Cr. L. J. 864 (b) :
 177 I. C. 32 : 40 P. L. R. 752 11 R. L. 276 :
 A. I. R. 1938 Lah. 477.

———S. 164—*Jurisdiction.*

A Magistrate recording a confession need not

Cr. P. CODE (1898), S. 164

be one having jurisdiction in the case. *Ghinua Uraon v. Emperor*. 19 Cr. L. J. 135 : 43 I. C. 423 : 4 P. L. W. 14 : 1918 Pat. 27 : 3 P. L. J. 291 : A. I. R. 1918 Pat. 179.

—S. 164—*Jurisdiction—Honorary Magistrate, power of, to record confession.*

An Honorary Magistrate of the Third Class not empowered to sit singly, has nevertheless power to record a confession. *Ghinua Uraon v. Emperor*. 19 Cr. L. J. 135 : 43 I. C. 423 : 4 P. L. W. 14 : 1918 Pat. 27 : 3 P. L. J. 291 : A. I. R. 1918 Pat. 179.

—S. 164—*Jurisdiction—Magistrate recording statements, is Court.*

A Magistrate recording statements under S. 164, is a Court within the meaning of S. 193. Consequently, when an offence under S. 193, Penal Code, is alleged to have been committed in respect of previous statements under S. 164, cognizance of the offence cannot be taken without a complaint of such Court or Court to which it is subordinate. *Har Narain v. Hoshiar Singh*. 36 Cr. L. J. 1505 : 158 I. C. 1118 : 1935 A. L. J. 228 : 1935 A. W. R. 131 : 57 All. 778 : 8 R. A. 372 : A. I. R. 1935 All. 341.

—S. 164—*Jurisdiction—Territorial, limits of—Confession, recording of, by Magistrate—Power, whether limited to District in which Magistrate appointed.*

In recording a confession under S. 164, a Magistrate does not perform an act but exercises a power with which he is invested, and as the jurisdiction and powers of a Magistrate are limited to the district in which he is appointed, this power can be exercised in such district only. *Nahar Singh v. Emperor*. 22 Cr. L. J. 567 : 62 I. C. 583 : 19 A. L. J. 355 : 3 U. P. L. R. All. 66. A. I. R. 1921 All. 61.

—S. 164—*Jurisdiction.*

Where no questions to ascertain whether the statement is voluntary or not are put, the Magistrate has no jurisdiction to record a confession. Such a confession is inadmissible. *Emperor v. Konnuj's Brahman*. 41 Cr. L. J. 533 : 188 I. C. 57 : 19 Pat. 301 : 6 B. R. 577 : 12 R. P. 674 : A. I. R. 1940 Pat. 163.

—S. 164—*Memorandum.*

If the memorandum contains the proper note at the foot of it, all necessary formalities purporting in the foot-note to have been performed shall be presumed to have in fact been performed. *Khemam v. Emperor*. 26 Cr. L. J. 1074 : 88 I. C. 18 : 6 Lah. 58 : A. I. R. 1925 Lah. 315.

—S. 164—*Miscellaneous.*

A confession made to a Magistrate in a Native State though not recorded according to S. 164, is admissible as an extra-judicial confession. *Muhammad Bux v. Emperor*. 35 Cr. L. J. 1328 : 151 I. C. 311 (b) : 7 R. S. 50 : A. I. R. 1934 Sind 103.

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—S. 164—*Miscellaneous—Confession made out of British India.*

A confession made outside British India cannot be rejected merely because the provisions of S. 164 were not complied with. All that has to be seen in such a case is that there is nothing against the substantive law or natural law to vitiate it. *Bhau Singh v. Emperor*. 33 Cr. L. J. 460 : 137 I. C. 196 : I. R. 1932 Lah. 323 : A. I. R. 1932 Lah. 367.

—S. 164—*Miscellaneous—Government's power to make rules for regulating confession.*

There is no section of the Cr. P. C. which gives the Executive Government power to make rules to supplement the Code, and whatever value may be attached to the para. 853 (d) in the Manual of Government Orders, it cannot have any legal effect as regards the admissibility or inadmissibility of the confession. *Lal Singh v. Emperor*. 40 Cr. L. J. 132 : 178 I. C. 694 : 1938 A. L. J. 943 : I. L. R. 1938 All. 875 : 11 R. A. 327 : 1938 A. W. R. 642 : A. I. R. 1938 All. 625.

—S. 164—*Miscellaneous—Return of statement to pleader, legality of.*

Under Sub-s. (2) of S. 164, statements or confessions recorded are to be forwarded to the Magistrate by whom the case is to be tried. Returning of statements recorded under S. 164 either to witnesses or to the Pleader is wholly illegal. *Mohammad Cassim v. Shaik Thumbay Sahib*. 41 Cr. L. J. 392 : 187 I. C. 77 : 12 R. Rang. 310 : A. I. R. 1940 Rang. 33.

—S. 164—*Mode of recording confession.*

A confession recorded in answer to the question—"After due warning do you want to say anything?" without any indication of what the due warning was, cannot be accepted as a confession recorded in accordance with law. *Madhu Majhi v. Emperor*. 22 Cr. L. J. 119 (a) : 59 I. C. 551 : 2 P. L. T. 129 : A. I. R. 1921 Pat. 306.

—S. 164 (3)—*Mode of recording confession—Duty of Magistrate.*

Under S. 164 (3) no Magistrate should record any confession unless upon questioning the person making it, he has reason to believe that it is made voluntarily and should refuse to proceed with the recording of the confession until he has had a satisfactory answer to his question. *Ragho Laya v. Emperor*. 18 Cr. L. J. 721 : 40 I. C. 721 : A. I. R. 1917 Pat. 322.

—S. 164—*Mode of recording confession—Madras Criminal Rules of Practice, R. 85—Omission of Magistrate to record reasons for believing confession to be voluntary and to inform accused that he is not going to be taken as an approver—Value of confession.*

Though the rule laid down by R. 85 of the

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Madras Criminal Rules of Practice, that a Magistrate shall not record any statement or confession until he has first recorded his reasons for believing that the accused is prepared to make the statement voluntarily and until he has explained to the accused that he is under no obligation to answer any question and that it is not intended to make him an approver is though a rule of practice its non-observance is a serious defect and must necessarily have a bearing on the question of the admissibility or, at any rate, the value of the confession and this is all the more so in cases where the case for the prosecution practically rests on the confession. *Govinda Subbaramayana v. Emperor*.

38 Cr. L. J. 753 :
169 I. C. 372 : 1937 M. W. N. 178 :
1937 1 M. L. J. 750 : 10 R. M. 19 :
A. I. R. 1937 Mad. 324.

—S. 164—Mode of recording confession.

Non-compliance with provisions of S. 164—Oral evidence by officer recording it can be given. *Mangal Singh v. Emperor*.

36 Cr. L. J. 287 :
153 I. C. 121 : 35 P. L. R. 349 :
7 P. L. 381.

—S. 164—Mode of recording—Confession, recording of, in Calcutta, of offence committed in mofussil.

Accused arrested in Calcutta by Police who were holding the investigation under Chap. XIV, Cr.P.C.—production of the accused before Magistrate at Calcutta for recording of confession is an act done during investigation that was being held and Magistrate is bound to comply with provisions of S. 164, in recording the confession. *Emperor v. Garib Hari*.

27 Cr. L. J. 621 :
94 I. C. 365 : 30 C. W. N. 454 :
A. I. R. 1926 Cal. 742.

—S. 164—Mode of recording Confession—Warning to accused—Recording reasons for believing statement as voluntary.

Magistrate recording the confession of an accused must give him a warning, and should also put questions to satisfy himself that the confession was voluntary, and the questions with its answer must be recorded. Because the Courts before whom the confession is used must have materials on which they can be satisfied that the confession was in fact voluntary. The Magistrate must, therefore, record a brief statement of his reason for believing that the statement was voluntarily made. *Emperor v. Ramsidh Rai*.

39 Cr. L. J. 725 :
176 I. C. 530 : 4 B. R. 724 : 11 R. P. 79 :
A. I. R. 1938 Pat. 352.

—S. 164—Mode of recording—Formalities not observed.

Where a Magistrate puts down the gist of the confession in the narrative form without recording the questions and answers though both the Magistrate and the accused are

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Bengalees, and does not remember the exact words used by the accused, and does not inform the accused that he is a Magistrate nor does he put to the accused questions to find out whether the reply which the accused is about to make is a voluntary one, there is no compliance with law or recording a confession. *Emperor v. Garib Hari*.

27 Cr. L. J. 621 :
94 I. C. 365 : 30 C. W. N. 454 :
A. I. R. 1926 Cal. 742.

—S. 164—Mode of recording.

In recording a confession, Magistrate should satisfy himself that it is voluntary and true and should not accept it as a matter of course. *Patey Sin v Emperor*.

32 Cr. L. J. 1052 :
133 I. C. 593 : 1931 A. L. J. 1000 :
L. R. 12 All. 117 Cr. : I. R. 1931 All. 705 :
A. I. R. 1931 All. 609.

—S. 164—Mode of recording.

It is the duty of a Magistrate to satisfy himself that the confession is made voluntarily and it is the imperative duty of the Magistrate to record those questions and answers which have satisfied him that the confession is in fact voluntary so that the Court of Sessions and High Court may Judge the voluntary nature of the confession. *Emperor v. Shambhu*.

135 I. C. 838 : 1932 A. L. J. 162 :
L. R. 13 All. 48 Cr. : I. R. 1932 All. 102 :
A. I. R. 1932 All. 228.

—S. 164—Mode of recording—Record of questions—Duty of Magistrate.

Under S. 164, a Magistrate recording a confession, is bound to record every question that he puts to person making the confession, otherwise it might be impossible to tell how far the deponent has deposed voluntarily to a matter and how far his statement was extracted from him by questioning in the nature of cross-examination. *Hasan Ali v. Emperor*.

26 Cr. L. J. 1209 :
88 I. C. 729 : 23 A. L. J. 719 :
L. R. 6 All. 137 Cr. :
A. I. R. 1926 All. 22.

—S. 164—Mode of recording statement.

To record the statement of an accused person under Ss. 164 before any sort of evidence for prosecution has been taken is contrary to law. *Chedan v. Emperor*.

1 Cr. L. J. 699 :
7 O. C. 191.

—S. 164—Nature of.

The provisions of S. 164 (3), Cr. P. C., are mandatory. *Emperor v. Kommoju Brahman*.

41 Cr. L. J. 533 :
188 I. C. 57 : 19 Pat. 301 : 6 B. R. 577 :
12 R. P. 674 :
A. I. R. 1940 Pat. 163.

—S. 164—Oral confession.

Confession intended to be admitted in evidence must be recorded according to S. 164—Oral

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confession when it is retracted, has very little weight. *Karam Singh v. Emperor*.

37 Cr. L. J. 231 :
160 I. C. 111 : 16 Lah. 454 :
37 P. L. R. 745 : 8 R. L. 492 :
A. I. R. 1936 Lah. 8.

—S. 164—Oral confession—Admissibility.

Oral confession to a Magistrate is admissible in evidence under S. 26, Evidence Act. *Itawari v. Emperor*.

35 Cr. L. J. 303 :
147 I. C. 113 : 10 O. W. N. 923 :
6 R. O. 226 :
A. I. R. 1933 Oudh 432.

—Ss. 164, 364—Confession—Admissibility—Oral evidence.

A Magistrate is not bound to record statements, whether in the nature of information by witnesses about a crime, or admissions by persons who have taken part in a crime, if made in the course of an investigation before the commencement of a trial or inquiry. Such statements are governed by S. 161 of the Cr. P. C. *In re : Tangedypallé Pedda Obigadu*.

23 Cr. L. J. 680 :
69 I. C. 264 : 14 L. W. 542 :
1921 M. W. N. 779 : 20 M. L. T. 107 :
42 M. L. J. 37 : 45 Mad. 230 :
A. I. R. 1922 Mad. 40.

—S. 164—Procedure.

Magistrate satisfied by questions that confession was voluntary—It was unnecessary to record questions and answers. *Rabir Singh v. Emperor*.

33 Cr. L. J. 242 :
136 I. C. 19 : 33 P. L. R. 241 :
I. R. 1932 Lah. 195 : A. I. R. 1932 Lah. 204.

—S. 164—Procedure.

Magistrate should record the accused's expression of willingness to be placed before the Magistrate, and his readiness to confess, etc. *Nazir v. Emperor*.

34 Cr. L. J. 489 :
143 I. C. 67 : 1932 A. L. J. 1125 :
L. R. 13 All. 157 Cr. : 55 All. 91 :
I. R. 1933 All. 170 : A. I. R. 1933 All. 31.

—S. 164—Recording of confession.

A Magistrate after recording confessions should not make them over to the Police Officers. *Indar Datt v. Emperor*.

32 Cr. L. J. 818 :
132 I. C. 185 : I. R. 1931 Lah. 537 :
A. I. R. 1931 Lah. 408.

—S. 164 (3)—Recording of confession—Absence of caution—Effect.

Where in recording a confession the Magistrate fails to convey the caution required by S. 164 (3), the failure invalidates the confession and makes it inadmissible in evidence against the accused. *Housabai Bala Shinde v. Emperor*.

34 Cr. L. J. 73 :
140 I. C. 740 : 34 Bom. L. R. 1240 :
56 Bom. 542 : I. R. 1933 Bom. 30 :
A. I. R. 1932 Bom. 553.

—S. 164—Irregularity—Recording of confession—Absence of necessary questions.

Omission to record all the questions and answers of the accused, is immaterial provided

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the Magistrate has in fact satisfied himself about the voluntary nature of confession and the High Court or Appellate Court is satisfied that he did so. *Abdul Ghani v. Emperor*.

32 Cr. L. J. 985 :
133 I. C. 55 : I. R. 1931 Lah. 727 :
A. I. R. 1931 Lah. 763.

—S. 164—Recording of confession—Accused produced before Magistrate for remand making statement admitting guilt—Magistrate recording statement without complying with provisions of Ss. 164 and 364—Magistrate examined as witness—Statement admitting guilt, if admissible.

Where the accused when produced before a Magistrate for remand, makes a statement admitting that he had committed the crime and the Magistrate is examined as a witness in the trial, the statement is inadmissible in evidence if the Magistrate who had recorded the statement had made no attempt to comply with the provisions of Ss. 164 and 364, Cr. P. C. *The King v. Saw Min*.

40 Cr. L. J. 691 :
182 I. C. 705 : 1939 Rang. 97 :
12 R. Rang. 25 : A. I. R. 1939 Rang. 219.

—S. 164—Recording of confession—Accused's signatures not taken—Admissibility.

The confession of an accused is not inadmissible in evidence merely because the signature of the accused had not been secured and can be admitted and acted upon after examining the Magistrate if the irregularity has not in any way prejudiced the accused. *Ba Yin v. Emperor*.

31 Cr. L. J. 297 :
121 I. C. 782 : 7 Rang. 759 :
A. I. R. 1930 Rang. 53.

—S. 164—Recording of confession—Certificate, absence of—Examination of Magistrates—Defect, curing of.

A confession of an accused was recorded by a Magistrate after giving him ten minutes' time to reflect. But no certificate as required by S. 164, was appended. The Magistrate himself was examined as a witness and had deposed that he had satisfied himself that the confession was made voluntarily and that he had warned the accused : *Held*, that this confession was admissible in evidence. *Kartar Singh v. Emperor*.

39 Cr. L. J. 769 :
176 I. C. 666 : 40 P. L. R. 854 : 11 R. L. 224 :
A. I. R. 1938 Lah. 556.

—S. 164—Recording of confession—Certificate defective—Statement of Magistrate recording confession, whether can cure defect.

Where the memorandum appended to a confession is defective, the defect may be cured by recording the statement of the Magistrate who recorded the confession and if such statement shows that the requirements of S. 164 were complied with, the confession will be admissible in evidence. *Kheman v. Emperor*.

26 Cr. L. J. 1074 :
88 I. C. 18 : 6 Lah. 58 :
A. I. R. 1925 Lah. 315.

—S. 164—Recording of confession—Condition precedent.

No statement should be recorded under this

Cr. P. CODE (1898), S. 164

section unless the person making it is a free agent and voluntarily agrees to have his statement taken down. *Hira Lal v. Emperor*.

19 Cr. L. J. 517 :
45 I. C. 277 : 18 P. W. R. 1918 Cr. :
16 P. R. 1918 Cr. : 63 P. L. R. 1918 Cr. :
A. I. R. 1918 Lah. 171.

———S. 164—Recording of confession—Condition precedent.

S. 164 lays down that no Magistrate shall record any confession unless he has reason to believe that it was made voluntarily. No hard and fast rule can be laid down on the subject of questioning accused as to voluntary nature of confession. *Emperor v. Dewan Kahar*.

24 Cr. L. J. 497 :
72 I. C. 961 : 4 P. L. T. 186.
A. I. R. 1923 Pat. 13.

———Ss. 164, 533—Recording of confession—Confession not recorded by Magistrate himself—Effect.

A confession not actually taken by a Magistrate himself can be proved by examining the Magistrate as a witness—Such an irregularity is curable under S. 533. *Badam Singh v. King-Emperor*.

9 Cr. L. J. 297 :
1 I. C. 444 : 2 P. R. 1909 Cr. :
7 P. W. R. 1909 Cr.

———S. 164—Recording of confession—Confession recorded in language not used by accused, —Prejudice.

Though a Magistrate should record confession in the language of the accused, omission to do so may be overlooked if it has not injured the accused in his defence. Where Magistrate though he recorded the statement in English, explained the various portions of the confession. There would be no prejudice to accused. *Nawab v. Emperor*.

28 Cr. L. J. 341 :
100 I. C. 821 : 7 A. I. Cr. R. 562 :
A. I. R. 1927 Lah. 285.

———S. 164—Recording of Confession—Defect, curing of.

A confession was recorded by a Magistrate, and at the foot of the confession, the Magistrate made the following note :—"The statement was written in my presence and hearing. It was read over to the accused and he admitted it to be correct. It contains a true and full account of the statement by him." There was a note at the head of the confession that the accused was cautioned. The Magistrate recording the confession was examined as a witness at the trial and stated that he had warned the accused : *Held*, that Magistrate did not comply with law but that the defect was cured. *Khemani v. Emperor*.

26 Cr. L. J. 1074 :
88 I. C. 18 : 6 Lah. 58 :
A. I. R. 1925 Lah. 315.

———S. 164—Recording of Confession—Defect, curing of.

Defects in recording confession by a Magistrate under S. 164 are cured under S. 533, provided that the accused has not been pre-

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judiced by them. *Kishan Chand Kewal Ram A. Emperor*.

39 Cr. L. J. 448 :
174 I. C. 449 : 10 R. Pesh. 64 :
A. I. R. 1938 Pesh. 5.

———S. 164—Recording of Confession—Defect, curing of.

Even if a statement be not recorded strictly in conformity with S. 164, so long as the Magistrate purports to have recorded it under that section, and even after the statement has been received in evidence, S. 533 can be resorted to. *Ba Yin v. Emperor*.

31 Cr. L. J. 297 :
121 I. C. 782 : 7 Rang. 759 :
A. I. R. 1930 Rang. 53.

———Ss. 164, 533—Recording of Confession—Effect, effect of.

Under S. 533 non-compliance with the provisions of S. 164 is curable only if the error has not injured the accused. *Daulat Ram v. Emperor*.

35 Cr. L. J. 10 :
146 I. C. 465 : 10 O. W. N. 466 :
8 Luck. 518 : 6 R. O. 129 :
A. I. R. 1933 Oudh 315.

———Ss. 164—Recording of Confession—Defect in—Effect.

Where it does not appear from the record of the confession or the statement of the Magistrate in Court that an inquiry as to voluntary nature of confession was made, the conditions set forth in S. 164 are not satisfied and the confession is inadmissible in evidence. *Khushi Muhammad v. Emperor*.

81 I. C. 627 :
6 L. L. J. 166 : A. I. R. 1924 Lah. 481.

———S. 164—Recording of Confession—Duty of Magistrate.

A Magistrate ought, by putting questions which occur to him, to make himself conscientiously satisfied that the man is a free agent, and the confession is voluntary and has not been procured by threats or inducements. *Kandhai v. Emperor*.

15 Cr. L. J. 633 :
25 I. C. 833 : 1 O. L. J. 407 :
A. I. R. 1914 Oudh 194.

———S. 164—Recording of Confession—Duty of Magistrate.

A Magistrate recording confession under S. 164 should inform the accused that he is a Magistrate, but there is no illegality in an omission to do so where the trying Court finds that the accused was not unaware of the fact. *Mohinder Singh v. Emperor*.

33 Cr. L. J. 97 :
135 I. C. 209 : I. R. 1932 Lah. 81 :
A. I. R. 1932 Lah. 103.

———S. 164—Recording of Confession—Duty of Magistrate.

Great care and circumspection are necessary in recording confession under S. 164, Cr. P. C. It is necessary to record the questions put to the accused to ascertain whether the confession was voluntary, to tell him that after his confession he will not have to go back to Police custody, to warn him of the consequence which will ensue if he falsely implicates himself in the hope of release and to ask him whether the Police or any other person

Cr. P. CODE (1898), S. 164

has subjected him to any ill-treatment. *Kandhai v. Emperor.*

15 Cr. L. J. 633 :
25 I. C. 833 : 1 O. L. J. 407 :
A. I. R. 1914 Oudh 194.

—S. 164—Recording of Confession—Duty of Magistrate.

In all cases in which a confession is recorded by a Magistrate, it is advisable that he should record a memorandum of enquiry showing what steps he has taken to fully satisfy himself that the accused person is confessing voluntarily. The mere absence of such a memorandum, however, would not render a confession, otherwise duly recorded inadmissible. *Umar Din v. Emperor.*

23 Cr. L. J. 388 :
67 I. C. 340 : 2 Pat. 129 : 3 L. L. J. 287.

—S. 164—Recording of Confession—Duty of Magistrate.

In recording a confession the Magistrate must satisfy himself that the confession is made voluntarily, and further the Magistrate must record those questions and answers which have satisfied him that the confession is in fact voluntary. *Prag v. Emperor.*

32 Cr. L. J. 97 :
128 I. C. 215 : 7 O. W. N. 909 :
I. R. 1931 Oudh 23 : 6 Luck. 335 :
A. I. R. 1930 Oudh 449.

—S. 164—Recording of Confession—Duty of Magistrate.

Magistrate recording a confession should put various questions to accused to decide whether the confession is a voluntary or not. The Magistrate can satisfy himself as to the voluntariness of a confession by putting single question to the accused. *Emperor v. Dewan Kahar.*

24 Cr. L. J. 497 :
72 I. C. 961 : 4 P. L. T. 186 :
A. I. R. 1923 Pat. 13.

—S. 164—Recording of Confession—Duty of Magistrate.

No form of questions is prescribed by S. 164 (3) from which a Magistrate recording a confession must satisfy himself that he believes the confession was made voluntarily. *Ghinua Uraon v. Emperor.*

19 Cr. L. J. 135 :
43 I. C. 423 : 4 P. L. W. 14 :
1918 Pat. 27 : 3 P. L. J. 291 :
A. I. R. 1918 Pat. 179.

—S. 164—Recording of Confession—Duty of Magistrate.

Per *Roe, J.*—Under S. 164 (3) a Magistrate is bound to question the accused as to his motives in making a confession, and if he fails to do so, he has no jurisdiction to say that he is satisfied that the confession is voluntarily made and no jurisdiction to record it as a Magistrate. *Jinbadhan Bhurian v. Emperor.*

18 Cr. L. J. 623 :
39 I. C. 991 : 1 P. L. W. 388 : 1917 Pat. 149 :
A. I. R. 1917 Pat. 475.

—S. 164—Recording of Confession—Duty of Magistrate.

Per *Scott-Smith, J.*—S. 164 lays down that no Magistrate shall record any confession unless

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upon questioning the person making it that it was made voluntarily, yet Magistrate need not record question he has put to the person. However, it is advisable that a Magistrate should record a memorandum to that effect. *Kheman v. Emperor.*

26 Cr. L. J. 1074 :
88 I. C. 18 : 6 Lah. 58 :
A. I. R. 1925 Lah. 315.

—S. 164—Recording of Confession—Duty of Magistrate.

The provisions of S. 164 (3), Cr. P. C., render it incumbent on a Magistrate who is called on to record a confession to explain to the person who is to make it that he is not bound to make a confession at all, and that if he does so, it may be used as evidence against him. Further, the Magistrate should only record the confession, if upon examination of the person making it he has reason to believe that it will be made voluntarily. *Partab Singh v. Emperor.*

27 Cr. L. J. 514 :
93 I. C. 978 : 2 Lah. Cas. 72 :
6 Lah. 415 : 7 L. L. J. 482 :
A. I. R. 1925 Lah. 605.

—S. 164—Recording of Confession—Failure to make enquiry, effect of.

The failure of a Magistrate to question the person making the confession as to whether he is making it voluntarily, is a fatal defect. *Lachhi Ram v. Emperor.*

24 Cr. L. J. 564 :
73 I. C. 260 : A. I. R. 1923 Lah. 330.

—S. 164—Recording of Confession—Failure to put necessary questions—Effect.

The Court must satisfy itself that the Magistrate recording the confession honestly believed that the confession was voluntary. If Court is so satisfied, then failure of Magistrate to put any particular question to accused would not involve the rejection of the confession. *Emperor v. Dewan Kahar.*

24 Cr. L. J. 497 :
72 I. C. 961 : 4 P. L. T. 186 :
A. I. R. 1923 Pat. 13.

—S. 164—Recording of Confession—Failure to put question.

Magistrate's failure to question the accused as to his making confession voluntarily is incurable under S. 533. *Ranbir Singh v. Emperor.*

33 Cr. L. J. 242 :
136 I. C. 19 : 33 P. L. R. 241 :
I. R. 1932 Lah. 195 : A. I. R. 1932 Lah. 204.

—S. 164—Recording of Confession—Failure to record questions, effect of.

The mere absence of questions put by the Magistrate to accused on record, if the prisoner is not prejudiced, does not make confession inadmissible. *Nawab v. Emperor.*

28 Cr. L. J. 341 :
100 I. C. 821 : 7 A. I. Cr. R. 652 :
A. I. R. 1927 Lah. 285.

—S. 164—Recording of Confession—Formalities, observance of.

When an accused person is placed before a Magistrate for the recording of a confession under S. 164, it is not sufficient to put one comprehensive question as to the nature of the confession or to make a note at the commencement of the record

Cr. P. CODE (1898), S. 164

of the confession that the accused has been warned not to confess through any fear or inducement, and that the Police of the *thana* have been removed from the Court room. *Kandhari v. Emperor*.

15 Cr. L. J. 633 :
25 I. C. 833 :
1 O. L. J. 407 :
A. I. R. 1914 Oudh 194.

———S. 164—Recording of Confession—Formalities, compliance with—Proof.

A warning given to a person who is about to make a confession that any statement he might make might be used against him does not comply with the requirements of S. 164. It must be explained to him that he is not bound to make a confession at all. Where it does not appear that such explanation was made to the person making a confession, the confession is not admissible in evidence. A mere statement by the Magistrate who recorded the confession that he took all the precautions prescribed by the Code is far too vague and general to enable the Court to hold that this important requirement was complied with. *Partap Singh v. Emperor*.

27 Cr. L. J. 514 :
93 I. C. 978 : 2 Lah. Cas. 72 :
6 Lah. 415 : 7 L. L. J. 482 :
A. I. R. 1925 Lah. 605.

———S. 164—Recording of Confession—Formalities, non-compliance with.

A confession cannot be excluded from evidence as irrelevant merely because all the provisions of S. 164 were not carefully complied with. *Khitoli v. Emperor*.

35 Cr. L. J. 192 :
146 I. C. 905 :
10 O. W. N 937 : 6 R. O. 190 :
A. I. R. 1933 Oudh 404.

———Ss. 164, 537—Recording of Confession—Formalities not observed—Confession not recorded in prescribed form—Magistrate not putting questions to elicit voluntary nature of confession—Admissibility.

A confession was not recorded on the prescribed form. It started straight away and was entirely in the form of a narrative. There was nothing on the record to show that the Magistrate put any questions to elicit the voluntary nature of the confession. It appeared that he merely told the accused that he need not confess, and that if he did so, it could be used against him. It was doubtful as to whether the accused was really questioned as prescribed by S. 164 before the statement was taken down: *Held*, that the nature of the questions must be such as to show that the Magistrate made a real endeavour to find out whether the confession was really voluntary and that the confession was vitiated. *Sardar Miya v. Emperor*.

38 Cr. L. J. 987 :
170 I. C. 868 : 900 N. L. J. 128 :
10 R. N. 83 :
I. L. R. 1937 Nag. 416 :
A. I. R. 1937 Nag. 257.

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———S. 164—Recording of Confession in English—Effect.

The Sessions Judge, who tried a dacoity case, admitted in evidence statements in the nature of confessions recorded in English by a Joint Magistrate under the provisions of S. 164: *Held*, that there was no justification for their being recorded in English and no presumption under S. 80 of the Evidence Act could be made in respect of the record made in English. *Bawar v. Emperor*.

6 Cr. L. J. 94 :
10 O. C. 112.

———S. 164—Recording of Confession—Confession genuine—Non-compliance with S. 164, effect of.

Where the circumstances under which a confession is made are not such as to create any suspicion in the mind of the Magistrate and he is satisfied from the demeanour of the person making the statement as well as the questions put and the manner in which the statement is made that it is voluntary, the statement cannot be objected to on the ground that the provisions of S. 164 of the Cr. P. C. were not complied with.

24 Cr. L. J. 649 :
73 I. C. 569 : 4 P. L. T. 279 :
2 P. L. R. 52 Cr. :
A. I. R. 1923 Pat. 356.

———S. 164—Recording of Confession—Irregularities, curing of.

Omission to question accused to ascertain whether confession was voluntary is not cured by Magistrate being satisfied it was voluntarily made nor by calling Magistrate as witness. *Ram Sarup v. Emperor*.

33 Cr. L. J. 847 :
139 I. C. 694 : 33 P. L. R. 917 :
I. R. 1932 Lah. 610.

———S. 164—Recording of Confession—Irregularities—Effect.

Recording confession in English and not in the language in which it was made, and non-signing by accused are irregularities curable on evidence of the Magistrate that it was made voluntarily and correctly recorded. *Nanak Chand v. Emperor*.

32 Cr. L. J. 1036 :
133 I. C. 545 : 32 P. L. R. 792 :
I. R. 1931 Lah. 785 :
A. I. R. 1932 Lah. 73.

———S. 164—Recording Confession—Irregularity.

Omission to ask accused how long he had been in custody does not cast any doubt on genuineness or voluntary nature of a confession. *Abdul Ghani v. Emperor*.

32 Cr. L. J. 985 :
133 I. C. 55 : I. R. 1931 Lah. 727 :
A. I. R. 1931 Lah. 763.

———S. 164—Recording of Confession.

It is not proper for a Magistrate to hand over the accused to the investigating officer and record his confession after he had been

Cr. P. CODE (1898), S. 164

with the Police Officer for some time.
Indar Datt v. Emperor.

32 Cr. L. J. 818 :
132 I. C. 185 : I. R. 1931 Lah. 537 :
A. I. R. 1931 Lah. 408.

—S. 164—Recording of Confession.

Manual of Government Orders, Vol. I, Department VI, para. 851-A—Omission to comply with in full—Confession, does not become invalid, as a piece of evidence. *Sahaj Ram v. Emperor.*

35 Cr. L. J. 7 :
146 I. C. 449 :
10 O. W. N. 461 : 6 R. O. 127 :
A. I. R. 1933 Oudh 413.

—S. 164—Recording of Confession, mode of.

The law does not anywhere state that a Magistrate who is about to record a confession must put a particular set of questions to satisfy himself in accordance with the directions in S. 164. *Majhi v. Emperor.*

28 Cr. L. J. 807 :
104 I. C. 247 : A. I. R. 1927 Lah. 682.

—S. 164—Recording of Confession, mode of.

The Magistrate should, where there is no evidence already recorded against him, allow the prisoner to make whatever statement he likes and not ask him a direct question whether he has committed a particular offence. *Pahlwan v. Emperor.*

31 Cr. L. J. 533 :
123 I. C. 540 :
A. I. R. 1930 Lah. 454.

—S. 164—Recording of Confession—Perusal by Magistrate of statement to Police.

It is highly irregular for a Magistrate to peruse the alleged statement of the accused made to and recorded by Police before recording the confession. *Emperor v. Dewan Kahar.*

24 Cr. L. J. 497 :
72 I. C. 961 : 4 P. L. T. 186 :
A. I. R. 1923 Pat. 13.

—S. 164—Recording of Confession—Precaution.

A confession recorded without complying with the precautions must be ruled out as inadmissible. *Sullah v. Emperor.*

29 Cr. L. J. 697 :
110 I. C. 329 :
10 L. L. J. 311 :
29 P. L. R. 388 :
A. I. R. 1928 Lah. 724.

—S. 164—Recording of Confession—Precaution.

Confessing accused are almost invariably unarmed beforehand of the necessary cautions, and are given to understand that if they do not reply satisfactorily to the questions that will be put to them, their statements will not be accepted; but this is not proper. *Mahadeo v. Emperor.*

10 O. L. J. 280 :
A. I. R. 1924 Oudh 65.

Cr. P. CODE (1898), S. 164**—S. 164—Recording of Confession—Precautions, nature.**

The precautions embodied in S. 164 for recording the confession of an accused are mandatory and cannot be evaded by tricks. *Sullah v. Emperor.*

29 Cr. L. J. 697 :
110 I. C. 329 : 29 P. L. R. 388
10 L. L. J. 311 : A. I. R. 1928 Lah. 724.

—S. 164—Recording of Confession—Precaution.

Unless the Magistrate has made a real and substantial enquiry as to the voluntary nature of a confession, the confession recorded by him is inadmissible in evidence. *Theln Maung v. Emperor.*

4 Cr. L. J. 198 :
3 L. B. R. 173.

—S. 164—Recording of Confession—Precautions.

Where the preliminary questioning was this : "Do you know who I am?—Yes. Any statement you make will be of your own free will. You are under no compulsion.—I understand, what do you wish to say : Held, that there was no compliance either with the letter or the spirit of the law on this vital point. *Jogjiban Ghose v. Emperor.*

10 Cr. L. J. 125 :
9 C. L. J. 663 : 13 C. W. N. 851 :
2 I. C. 681 : 10 Cr. L. J. 125.

—S. 164—Recording of Confession—Provisions must be complied with.

A confession must be recorded in the manner prescribed for recording confession. Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. *Karu v. Emperor.*

38 Cr. L. J. 648 :
168 I. C. 976 : 20 N. L. J. 103 :
9 R. N. 285 : I. L. R. 1937 Nag. 524 :
A. I. R. 1937 Nag. 524.

—S. 164—Recording of confession—Questioning.

When confession is recorded without questioning accused of its voluntary nature, defect is not curable by S. 533 and record of confession is inadmissible under S. 80, Evidence Act. *Balshshan v. Emperor.*

37 Cr. L. J. 432 :
161 I. C. 339 : 16 Lah. 912 :
37 P. L. R. 869 : 8 R. L. 721 :
A. I. R. 1936 Lah. 247.

—S. 164—Recording of confession—Time and place.

Magistrate can record a confession on a Sunday or any other holiday and at a place other than Court. *Khanun v. Emperor.*

31 Cr. L. J. 759 :
125 I. C. 49 : 11 L. L. J. 461 :
A. I. R. 1930 Lah. 171.

—S. 164—Recording of confession—Warning to accused, necessity of.

A Magistrate recording a confession under S. 164, must warn the accused that he need not make a confession, and that if he does so, the

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confession might be used against him. Failure to give this warning to the accused would render the confession inadmissible in evidence against the accused. *Bahawala v. Emperor*.

26 Cr. L. J. 1238 :
88 I. C. 854 : 6 Lah. 183 :
A. I. R. 1925 Lah. 432.

———Ss. 164, 533—*Recording of confession—Memorandum, absence of—Warning to accused that he was not bound to make confession—Admissibility.*

Where the record of a confession does not contain a memorandum required by S. 164, but the Magistrate is examined and proves that he told the person making the confession that he was not bound to make it, the confession is admissible in evidence having regard to the provisions of S. 533. *Bawa Singh v. Emperor*.

26 Cr. L. J. 1458 :
89 I. C. 1026 : 7 L. L. J. 250 :
A. I. R. 1925 Lah. 448.

———Ss. 164, 533—*Recording of Confession—Precautions—Curing of, defect.*

Omission to warn the accused that he was making a confession before a Magistrate and so record the steps taken by the Magistrate to see that the confession was made voluntarily is a substantial defect not curable by S. 533, Cr. P. C. *Prag v. Emperor*.

32 Cr. L. J. 97 :
128 I. C. 215 : 7 O. W. N. 909 :
I. R. 1931 Oudh 23 : 6 Luck. 335 :
A. I. R. 1930 Oudh 449.

———Ss. 164, 533—*Recording of Confession—Precautions—Defect, effect of.*

If, as a matter of fact, the confession was duly recorded, that is to say, after the required warning had been given to the accused, but the Magistrate has failed to embody that fact in the memorandum, such a defect would be curable. If the warning had not in fact been given, the statement could not be held to have been "duly made" and S. 533 would not be inapplicable. *Partab Singh v. Emperor*.

27 Cr. L. J. 514 :
93 I. C. 978 : 2 L. C. 72 : 6 Lah. 415 :
7 L. L. J. 482 : A. I. R. 1925 Lah. 605.

———S. 164—*Recording of Confession—Procedure.*

A Magistrate must see that the statement made by the person is voluntary. Simple method of securing this, is to see that the person is left alone and is given half an hour or so to collect his mind before his statement is taken down. *Jahangiri Lal v. Emperor*.

35 Cr. L. J. 1180 :
150 I. C. 1056 : 7 R. L. 58.

———S. 164—*Recording of Confession—Procedure.*

Magistrate before recording confession should warn the accused that he is not bound to make confession. This warning to be recorded with memorandum at the foot of the record. *Emperor v. Tukaram Khandu Koli*.

34 Cr. L. J. 555 :
143 I. C. 280 : 33 B. L. R. 234 : 57 Bom. 336 :
I. R. 1933 Bom. 261 : A. I. R. 1933 Bom. 145.

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———S. 164—*Recording of Confession—Procedure—Memorandum, contents of.*

The Magistrate who records the confession shall, before doing so, explain to the person that he is not bound to make any confession and that if he does so, it may be used as evidence against him. And no Magistrate shall record any confession unless upon questioning the person, he has reason to believe that he will make it voluntarily. The statement when duly reduced to writing, must contain at the foot of it a memorandum that the Magistrate has cautioned the accused, that the confession has been voluntarily made, that it was taken in his presence and hearing, was read to the person making it, and admitted by such person to be correct. *Khemani v. Emperor*.

26 Cr. L. J. 1074 :
88 I. C. 18 : 6 Lah. 58.
A. I. R. 1925 Lah. 315.

———S. 164—*Recording of Confession—Procedure.*

S. 164 makes it imperative for a Magistrate before recording a confession made to him in the course of a Police investigation to question the person making it as to whether he is making it voluntarily otherwise confession is not admissible in evidence. *Neki v. Emperor*.

25 Cr. L. J. 116 :
76 I. C. 180 : A. I. R. 1924 Lah. 624.

———S. 164—*Recording of confession—Procedure.*

The procedure of recording a confession by putting a series of questions and getting answers to them is ordinarily to be deprecated. The confessing person should be left to narrate his story as a whole without any unnecessary interference and allowed to give all the details that he remembers and wishes to describe. *Gehna v. Emperor*.

33 Cr. L. J. 414 :
137 I. C. 95 : 33 P. L. R. 16 :
I. R. 1932 Lah. 294 : A. I. R. 1932 Lah. 180.

———S. 164—*Recording of Confession—Procedure.*

The Magistrate must ask the accused questions to satisfy himself whether the confession is being made voluntarily or not. *Emperor v. Kommoju Brahman*.

41 Cr. L. J. 533 :
188 I. C. 57 : 19 Pat. 301 : 6 B. R. 577 :
12 R. P. 674 : A. I. R. 1940 Pat. 163.

———Ss. 164, 533—*Recording of Confession in English—Defect, curing of.*

Where the confession is not recorded in the language of the accused but in English, the defect is curable under S. 533. *Emperor v. Kommoju Brahman*.

41 Cr. L. J. 533 :
188 I. C. 57 : 19 Pat. 301 : 6 B. R. 577 :
12 R. P. 674 : A. I. R. 1940 Pat. 163.

———S. 164 (3)—*Recording of Confession—Certificate of voluntariness, absence of—Enquiry, failure to make, effect of.*

The failure of a Magistrate recording a confession to append the certificate prescribed by S. 164 (3) to the statement recorded by him can be cured by the evidence of the Magistrate, but his failure to make an enquiry as to the

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state of mind of the confessor at the time the confession was recorded is fatal and renders the confession inadmissible in evidence. *Jehana v. Emperor*.

24 Cr. L. J. 618 :
73 I. C. 506 : A. I. R. 1923 Lah. 345.

—S. 164 (3)—*Recording confession certifying to be not voluntary—Admissibility—Duty of Magistrate—Prosecution, whether can supply deficiencies by calling Magistrate—Confession to be read as whole.*

Where an accused charged with murder made a confession before a Second Class Magistrate, who, in place of the certificate required by Ss. 164 (3), remarked that the confession was not voluntary, and where the prosecution sought to remove this defect by calling the Magistrate and examining him as to the precise points which, in his opinion, were involuntarily made; *Held*, (1) that the confessional statement was inadmissible in evidence, being made under circumstances diametrically opposed to those which the law requires as a condition precedent to the admissibility of a confession; (2) that the only course which the Magistrate could properly follow when he came to the conclusion that the accused was not speaking voluntarily before him was to refuse to continue to record the examination any further; (3) that it was not competent for the prosecution to supply by calling the Magistrate the deficiencies which existed in the confession from the time it was recorded. A confession must be read as a whole. *Emperor v. Rama Dhan Pawar*.

16 Cr. L. J. 740 :
31 I. C. 340 : 17 Bom. L. R. 898 :
A. I. R. 1915 Bom. 140.

—S. 164 (3)—*Recording of Confession—Magistrate, duty of, to put questions.*

All that S. 164 (3) requires is that a Magistrate recording a confession on questioning the person making the confession must have reason to believe that it is being made voluntarily. No express form of questions is prescribed, and the extent to which the Magistrate should question the person making the confession must largely depend upon the particular facts of each case, whilst it is clearly desirable that he should always put such questions as may be necessary to enable him to determine whether the confession is voluntary, no particular form of questioning can be laid down as necessary.

24 Cr. L. J. 649 :
73 I. C. 569 : 4 P. L. T. 279 :
2 P. L. R. 52 Cr. : 1923 A. I. R. Pat. 356.

—S. 164 (3)—*Procedure—Recording of Confession—Precautions.*

It is the imperative duty of the Magistrate, before recording a confession, to carefully examine the accused person and, to the best of his ability, ascertain that he is not wishing to speak owing to any inducement, threat, or promise, but that this confession is purely voluntary; that this is specially necessary in a country, where the police are so prone to induce prisoners to confess, and where

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evidence is so frequently manufactured, and sometimes in a skillful and not a clumsy manner, so that detection of the manufacturer is difficult; and that the omission of the Magistrate to question the accused person before recording the confession as to the voluntary nature of it is a fatal defect, and a defect that renders it inadmissible. *Nga Shwe Sin v. Emperor*.

4 Cr. L. J. 385 :
12 Bur. L. R. 237.

—S. 164 (3)—*Recording of Confession—Procedure.*

Once the memorandum is made according to S. 164 (3), the fact that it was attached to the English memorandum of the original vernacular confession, is a sufficient compliance with law. *Emperor v. Tukaram Khandu Koli*.

34 Cr. L. J. 555 :
143 I. C. 280 : 33 Bom. L. R. 234 :
57 Bom. 336 : I. R. 1933 Bom. 261 :
A. I. R. 1933 Bom. 145.

—S. 164—*Recording of Magistrate—Procedure.*

S. 164 makes it imperative for the Magistrate, before recording a confession made to him in the course of a Police investigation, to question the person making it as to whether it is made voluntarily. Telling an accused person that he should make his statement voluntarily and questioning him as to whether he is making it voluntarily are two very different things. *Farid v. Emperor*.

23 Cr. L. J. 149 :
65 I. C. 613 : 4 U. P. L. R. Lah. 33 :
2 Lah. 325 : 5 P. W. R. 1922 Cr :
A. I. R. 1922 Lah. 237.

—S. 164—*Statements—Recording statements—Procedure.*

There is no irregularity in the recording of a witness's statement under S. 164, without calling the accused, but an accused's statement to the police corresponding to that statement is ordinarily inadmissible as being a very criminal circumstance equivalent to a confession, and S. 27, I. E. A., cannot come into operation where there is not the required guarantee of the truth of his statement in the discovery of the identical property. *In re : Maretha Balu Dolatram*.

7 Cr. L. J. 166 :
17 K. L. R. 346.

—S. 164—*Retracted confession—Basis for conviction.*

If a retracted confession is believed by the Court to be true and voluntarily made, it is sufficient to justify conviction if there is no independent evidence to corroborate it. *Majhi v. Emperor*.

28 Cr. L. J. 807 :
104 I. C. 247 : A. I. R. 1927 Lah. 682.

—S. 164—*Retracted confession—Corroboration by approver.*

In absence of other reliable evidence, in corroboration, the evidence of an approver, coupled with the retracted confession of a co-accused is not sufficient for conviction. *Nazir v. Emperor*.

34 Cr. L. J. 489 :
143 I. C. 67 : 1932 A. L. J. 1125 :
L. R. 13 All. 157 Cr. : 55 All. 91 :
I. R. 1933 All. 170 : A. I. R. 1933 All. 31.

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———S. 164—*Retracted confession—Corroboration, necessity of.*

A court may convict an accused person on his own uncorroborated confession which has been subsequently retracted, provided, that the Court is satisfied that the confession was made voluntarily and was true in fact. *Khair-mahomed v. Emperor.*

35 Cr. L. J. 17 :
146 I. C. 180 : 6 R. S. 57 :
A. I. R. 1933 Sind 313 (2).

———S. 164—*Retracted confession—Corroboration.*

Retracted confession of accused is sufficient for conviction of the accused even if there is no corroboration. But it does not alone justify conviction of accused. When it is unrebutted and is corroborated sufficiently by material evidence against co-accused, the evidence is strong against co-accused. *Musaheli Ali v. Emperor.*

33 Cr. L. J. 502 :
137 I. C. 665 : 9 O. W. N. 327 :
I. R. 1932 Oudh 253 (2).

———S. 164—*Retracted confession—Duty of Court.*

It is the duty of a Court when considering a confession recorded during Police investigation and which is subsequently retracted to conclude that it is voluntarily made before it is admitted in evidence. If the Court has any doubt on the point, it should give the benefit of the doubt to the accused person. *Neki v. Emperor.*

25 Cr. L. J. 116 :
76 I. C. 180 : A. I. R. 1924 Lah. 624.

———S. 164—*Retracted confession—Retraction before appending of certificate—Admissibility.*

The Magistrate having the statement of the accused read out to her had her thumb mark affixed on it. He was proceeding to append the certificate necessary when she stated that she had made the confessional statement at the instance of the Police: *Held*, the confessional statement of the accused was not admissible. *Arjan Singh v. Emperor.*

30 Cr. L. J. 1046 :
119 I. C. 325 : I. R. 1929 Lah. 869 :
30 P. L. R. 646 : A. I. R. 1930 Lah. 257.

———S. 164—*Retracted confession—Time for consideration.*

Where a confession is retracted, the time for taking into consideration such confession is after the Court is in possession of the entire prosecution evidence. *Sukhia v. Emperor.*

24 Cr. L. J. 609 :
73 I. C. 497 : 20 A. L. J. 669 :
A. I. R. 1922 All. 266.

———S. 164—*Retracted confession, value of.*

A voluntary confession, though retracted, is admissible in evidence not only against accused but also as evidence against his whole case. *Guja Majhi v. Emperor.*

18 Cr. L. J. 445 :
38 I. C. 1005 : 2 P. L. J. 80 :
A. I. R. 1917 Pat. 247.

———S. 164—*Retracted confession, value of—Duty of Magistrate recording confession.*

It is the Magistrate's duty to satisfy himself while recording a confession by asking neces-

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sary questions, that the confession is not the result of any undue influence. Where he fails to put the questions and the confession is retracted before the Committing Magistrate as having been tutored, the Court cannot rely on such confession. *Ram Babu Jadav v. Emperor.*

39 Cr. L. J. 302 :
173 I. C. 418 : 18 P. L. T. 964 :
4 B. R. 266 : 10 R. P. 402 :
A. I. R. 1938 Pat. 60.

———S. 164—*Retracted confession, value of.*

The Courts in India have consistently declined to act on a retracted confession, unless, after consideration of the whole evidence in the case, the Court is in the position to come to the unhesitating conclusion that the confession is true. *Emperor v. Devan Kahar.*

24 Cr. L. J. 497 :
72 I. C. 961 : 4 P. L. T. 186 :
A. I. R. 1923 Pat. 13.

———S. 164—*Retracted confession—Want of cautioning—Effect—Statements in confession inconsistent with medical evidence.*

Where in a murder case cautioning was not done by the Magistrate recording confessions and they were retracted on trial and the statements in the confessions as to the manner in which the murder was committed were inconsistent with medical evidence, the accused were acquitted. *Kandhai v. Emperor.*

15 Cr. L. J. 633 :
25 I. C. 833 : 1 O. L. J. 407 :
A. I. R. 1914 Oudh 194.

———S. 164—*Retracted statement of—Approver—Corroboration, necessity of.*

The statement of an approver which is retracted by him at the trial, being in the nature of a retracted confession must be corroborated in material particulars before it can be safely relied upon as furnishing a basis for the approver's conviction. *Ram Nath v. Emperor.*

29 Cr. L. J. 413 :
108 I. C. 514 : 29 P. L. R. 165 :
9 Lah. 608 :
A. I. R. 1928 Lah. 320.

———S. 164—*Scope—Confession of murder made by accused to Magistrate not investigating case—If falls under S. 164.*

Statement by accused that he had killed the deceased to the Magistrate when he was not investigating the case does not fall under S. 164. *In re : Nainamuthu Kannappan.*

41 Cr. L. J. 322 :
186 I. C. 479 : 1939 M. W. N. 1132 :
50 L. W. 784 : I. L. R. 1940 Mad. 428 :
1940 2 M. L. J. 89 : 12 R. M. 661 :
A. I. R. 1940 Mad. 138.

———S. 164—*Scope—Confession—Option of Magistrate to record.*

S. 164 does not in terms require a Magistrate, to whom a confession is made, to record it at all. So long as the English language has its present meaning, "may" cannot mean, "must". So S. 164 clearly leaves it optional to the Magistrate whether he records a confession or not. If he does record it, then the section makes it compulsory that he shall record it

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in a certain way. *Nga Thein Maung v. Emperor.*

37 Cr. L. J. 920 :
164 I. C. 162 : 9 R. Rang. 64 :
A. I. R. 1936 Rang. 350.

———S. 164—Scope—Confession recorded by Magistrate conducting enquiry.

A confession recorded by a Magistrate who afterwards conducts the enquiry, is not outside the provisions of S. 164. *Barindra Kumar v. Emperor.*

11 Cr. L. J. 453 :
7 I. C. 359 : 37 Cal. 467.

———S. 164—Scope—Confession, recording of, by Presidency Magistrate.

S. 164, as amended in 1923, empowers a Presidency Magistrate to record confession in Calcutta during Police investigation. *Nilmadhab Chowdhry v. Emperor.*

27 Cr. L. J. 957 :
96 I. C. 509 : 5 Pat. 171 :
A. I. R. 1926 Pat. 279.

———S. 164—Scope—Incomplete chalan—Statement of accused, record of, by Magistrate—Section applicable.

If an incomplete *chalan* is sent up and the evidence available is recorded by a Magistrate, the statement made by the accused is not a statement made under S. 164 but a statement recorded under S. 364. *Bhai Khan v. Emperor.*

23 Cr. L. J. 617 :
68 I. C. 841 : 4 L. J. 225 :
A. I. R. 1922 Lah. 189.

———S. 164—Scope—Magistrate's power to administer oath.

A Magistrate when taking down statements under S. 164 is acting in discharge of a duty imposed on him by law and is consequently authorised under Ss. 4 and 5 of the Oaths Act (X of 1873) to administer an oath to the person examined by him. *Suppa Tevan v. Emperor.*

3 Cr. L. J. 370 :
I. L. R. 29 Mad. 89.

———S. 164—Scope—Magistrate's power to record statement of witnesses under S. 164.

Statements recorded by a Magistrate in a preliminary inquiry at the instance of the Criminal Investigation Officer do not fall within the purview of S. 164 of the Code. *Jahangir Ardeshir Cama v. Emperor.*

28 Cr. L. J. 1012 :
106 I. C. 100 : 29 Bom. L. R. 996 :
A. I. R. 1927 Bom. 501.

———S. 164—Scope.

Provisions are mandatory. *Mohammad Ali v. Emperor.*

35 Cr. L. J. 385 :
147 I. C. 390 : 1933 A. L. J. 1551 :
6 R. A. 467 : L. R. 15 All. 39 Cr. :
A. I. R. 1934 All. 81.

———S. 164—Scope—Statement of witness and confession of accused—Distinction.

S. 164, Cr. P. C. distinguishes sharply between statements of witnesses and confessions of accused persons. *In re : Madala Ramamujamma.*

17 Cr. L. J. 195 :
34 I. C. 307 : 20 M. L. T. 21 :
A. I. R. 1917 Mad. 316.

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———S. 164—Scope—Statement recorded in presence of Police Officer, value of.

A statement cannot be said to be properly recorded under S. 164 if a Police Officer is present and is allowed to put questions to the witness. *Inder Sain v. Emperor.*

21 Cr. L. J. 418 :
56 I. C. 210 : A. I. R. 1920 Lah. 144.

———S. 164—Scope—Evidence—Admissibility of evidence—Whether overrides S. 29, Evidence Act.

S. 164 does not pretend to override S. 29, Evidence Act. Though S. 164 makes it imperative that the accused person should be cautioned, S. 29, Evidence Act, says that his statement is not inadmissible in evidence merely because the prescribed caution has not been administered. On a question of the admissibility of a particular piece of evidence, it is the Evidence Act that has to be looked to. *In re : Vellamooji Goundan.*

33 Cr. L. J. 526 :
137 I. C. 863 : 62 M. L. J. 559 :
35 L. W. 542 : 1932 M. W. N. 449 :
55 Mad. 711 : I. R. 1932 Mad. 459 :
A. I. R. 1932 Mad. 431.

———S. 164, 342, 364 (1)—Scope.

Ss. 164, 342 and 364 (1), Cr. P. C. are not exhaustive and do not limit the generality of S. 21, Evidence Act, as to the relevancy of admissions. *Nga Thein v. Emperor.*

37 Cr. L. J. 920 :
164 I. C. 162 : 9 R. Rang. 64.
A. I. R. 1936 Rang. 350.

———S. 164—Scope and object—Confession not admissible under S. 164—Whether can be admitted under Ss. 21, 29.

A confession is not admissible under Ss. 21 or 29, Evidence Act, where the procedure under S. 164, Cr. P. C., has not been complied with. *Sardar Miya v. Emperor.*

38 Cr. L. J. 987 :
170 I. C. 868 : 20 N. L. J. 128 :
10 R. N. 83 : I. L. R. 1937 Nag. 416 :
A. I. R. 1937 Nag. 257.

———S. 164—Scope and object—Confession, recording of—Recording Magistrate, position of.

A Magistrate recording a statement or a confession under S. 164 is only a recording Magistrate. There is no justification for such a Magistrate to extract by questions put to the deponent facts which the deponent has not spoken to before such Magistrate. Everything must, however, depend on the nature of the question and the object of it and the mere fact that an answer was elicited by a question does not make the proceeding improper or the statement inadmissible in evidence as a confession. *Hasan Ali v. Emperor.*

26 Cr. L. J. 1209 :
88 I. C. 729 : 23 A. L. J. 719 :
L. R. 6 All. 137 Cr. : A. I. R. 1926 All. 62.

———S. 164—Scope and object.

The section being an exception to the well-established rule of law and applicable to criminal proceedings, its provisions must

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also be complied within the strictest possible manner. *Khemam v. Emperor*.

26 Cr. L. J. 1074 :
88 I. C. 18 : 6 Lah. 58 :
A. I. R. 1925 Lah. 315.

—————**S. 164—Scope and object.**

The section was not intended to enable the Police to obtain a statement from some person and as it were to put a seal on that statement by sending in that person to a Magistrate practically under custody, to be examined before the judicial enquiry or trial. *Emperor v. Manu Chik*.

39 Cr. L. J. 635 :
175 I. C. 716 : 4 B. R. 626 :
11 R. Pat. 11 : A. I. R. 1938 Pat. 290.

—————**S. 164—Statements.**

Accused is entitled to inspect statements of prosecution witnesses recorded under S. 164 by prosecution for corroborating them. Defence can use them to contradict witnesses. *Bashir-ud-Din v. Emperor*.

33 Cr. L. J. 752 :
139 I. C. 330 : L. R. 13 All. 100 Cr. :
I. R. 1932 All. 554 : A. I. R. 1932 All. 327.

—————**S. 164—Statements—Admission of incriminating facts—Admissibility.**

An admission of incriminating facts made by an accused person to a Magistrate under S. 164, or a statement made to the Court during the course of the trial is admissible in evidence for what it is worth against the person who makes it under Ss. 18 to 21, Evidence Act. 162 I. C. 6 (2), relied on. *Allahwarayo Darya Khan v. Emperor*.

41 Cr. L. J. 477 :
187 I. C. 576 : 1939 Kar. 800 :
12 R. Sind 250 : A. I. R. 1940 Sind 53.

—————**S. 164—Statements—Admissibility.**

In the course of an investigation of an offence under S. 372, Penal Code, against an accused person for purchasing a minor girl for purposes of prostitution, a Magistrate recorded, under S. 164, a statement made to him by the mother of the minor girl (which, in effect implicated her also). She was, however, all along treated as *complainant and a witness* and never as an accused person : Held, in a prosecution for perjury against her, that the statement was not treated as 'confession' and that it was unnecessary to follow the procedure prescribed by S. 364, Cr. P. C. while recording it, and the statement was admissible in evidence against the accused. *In re : Madala Ramaniyamma*.

17 Cr. L. J. 195 :
34 I. C. 307 : 20 M. L. T. 21 :
A. I. R. 1917 Mad. 316.

—————**S. 164—Statements by accused—Admissibility.**

Statements taken under the provisions of S. 164, Cr. P. C. and not covered by those of S. 288, Cr. P. C., are inadmissible in evidence against the accused, but admissible, under the provisions of Ss. 145 and 155, Evidence Act, only for the purpose of con-

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tradicting the statements subsequently made in Court by the persons making those former statements. *Putlu v. Emperor*.

16 Cr. L. J. 132 :
27 I. C. 196 : 1 O. L. J. 753 :
17 O. C. 363 : A. I. R. 1914 Oudh 388.

—————**S. 164—Statement by accused—Oral evidence, if admissible.**

Under S. 164, no distinction can be drawn between a statement made by an accused person and a confession made by him, and any statement made by him should be recorded by the Magistrate as provided by the section, and if it is not recorded, the Magistrate's evidence regarding that statement is inadmissible. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Lalit Mohan Singh Roy*.

22 Cr. L. J. 562 :
62 I. C. 578 : 25 C. W. N. 788 :
A. I. R. 1921 Cal. 111.

—————**S. 164—Statement by accused—Verification proceedings—Supplementary statement by accused during verification proceedings, admissibility of.**

Verification proceedings undertaken by a Magistrate in the presence of the accused, are not wholly illegal; but the verifying Magistrate cannot be permitted to depose to statements said to have been made to him by the accused therein where such statements are not recorded by him in the manner provided by S. 164; the supplemental statements made by the confessing accused in the course of the verification proceedings are not voluntary even where they are recorded by the Magistrate in the manner provided in S. 164. *Aniruddin v. Emperor*.

19 Cr. L. J. 305 :
44 I. C. 321 : 22 C. W. N. 213 :
27 C. L. J. 148 : 45 Cal. 557 :
A. I. R. 1918 Cal. 88.

—————**S. 164—Statement by approver—Admissibility.**

A statement by approver to a Magistrate is not governed by S. 164 and fact that provisions of that section were not complied with, does not render the statement inadmissible in evidence. Nor is it necessarily excluded from evidence by the provisions of S. 24, Evidence Act. *Ram Nath v. Emperor*.

29 Cr. L. J. 413 :
108 I. C. 514 : 29 P. L. R. 165 : 9 Lah. 608 :
A. I. R. 1928 Lah. 320.

—————**S. 164—Statement by approver—Procedure to be followed in recording.**

The proper procedure to be followed by a Magistrate is to record the statement of the approver immediately after, and not before, tendering pardon. 142 Ind. Cas. 776 (10) relied on. *Hori Lal v. Emperor*.

41 Cr. L. J. 433 :
187 I. C. 203 : 1940 N. L. J. 286 :
12 R. N. 283 : A. I. R. 1940 Nag. 218.

—————**S. 164—Statement by co-accused, whether admissible against other accused.**

A statement by one of several accused persons which is not in the nature of a

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confession and is not recorded with the formalities prescribed in S. 164 is not admissible in evidence as against the other accused in the case. *Balan Singh v. Emperor*.

26 Cr. L. J. 731 :
86 I. C. 219 : 7 L. L. J. 39 :
A. I. R. 1925 Lah. 334.

—S. 164—Statement—Corroborative evidence.

A statement by a witness recorded by Magistrate under S. 164 is admissible in evidence to corroborate the statement made by that witness before the Committing Magistrate from which statement the witness resiled in the Sessions Court. *Commissioner of Income-tax, Madras v. Nachal Achi*. (F. B.)

147 I. C. 1023 :
66 M. L. J. 17 : 1934 M. W. N. 62 :
57 Mad. 357 : 39 L. W. 119 :
6 R. M. 402 : A. I. R. 1934 Mad. 63.

—S. 164—Statements during enquiry—Admissibility.

Where during the enquiry under Regulation 737, Magistrate administers oath, the statements made by the suspects must be deemed to have been recorded under S. 164. Such statements cannot be used against the accused unless they had been formally recorded as confessions under S. 161 read with S. 364. *Dina Nath v. Emperor*

41 Cr. L. J. 757 :
189 I. C. 591 : I. L. R. 1940 Nag. 232 :
1940 N. L. J. 662 : 13 R. N. 58 :
A. I. R. 1940 Nag. 186.

—S. 164—Statements—Inculpatory in nature—Admissibility.

Inculpatory statements made under S. 161, Cr. P. C., by a person who was not treated as an accused, nor subsequently tried for any offence based on such statements, are admissible in a prosecution against him for perjury. Such statements are not 'confessions' and the Magistrate's failure to record them in the manner laid down in S. 364 does not preclude their being used in evidence. *In re: Madala Ramaniyamma*.

17 Cr. L. J. 195 :
34 I. C. 307 : 20 M. L. T. 21 :
A. I. R. 1917 Mad. 316.

—S. 164—Statements made to verifying Magistrate in course of proceedings—Admissibility.

Statements made by the accused to the verifying Magistrate in the course of the proceedings, if they are not recorded in the manner provided in S. 164, Cr. P. C., are inadmissible. *Jitendra Nath Gupta v. Emperor*. (S. B.)

38 Cr. L. J. 818 :
169 I. C. 977 : 10 R. C. 69 :
A. I. R. 1937 Cal. 99.

—S. 164—Statement, meaning of.

A statement under S. 164 is one made in relation to a case which is subsequently tried on that matter even though the court which tried the case did not record the statement. *In re: A. T. Krishnamachari*.

35 Cr. L. J. 503 :
147 I. C. 794 : 1933 M. W. N. 902 :
38 L. W. 564 : 65 M. L. J. 534 : 6 R. M. 392 :
A. I. R. 1933 Mad. 767.

Cr. P. CODE (1898). S. 164**—S. 164—Statement, meaning of.**

The word "statement" in S. 164 is not limited to a statement by a witness but includes a statement made by accused which does not amount to a confession. *Abdul Rahmina v. Emperor*.

26 Cr. L. J. 1279 :
88 I. C. 1055 : 41 C. L. J. 474 :
A. I. R. 1925 Cal. 926.

—S. 164—Statements—Necessary presumption.

A statement of a witness obtained under S. 164, always raises a suspicion that it has not been voluntarily made. *Emperor v. Manu Chik*.

39 Cr. L. J. 635 :
175 I. C. 716 : 4 B. R. 626 : 11 R. P. 11 :
A. I. R. 1938 Pat. 290.

—S. 164—Statement not amounting to confession, admissibility of.

A statement made before a Magistrate under S. 164, by an accused person, in custody, such statement not being a confession but merely an admission of a relevant fact, can be utilized by the prosecution in evidence to prove that relevant fact; and if that relevant fact can be coupled with the other evidence for the prosecution, it can be used as against the accused making statement. *Ghulam Muhammad Khan v. Emperor*.

26 Cr. L. J. 878 :
85 I. C. 814 : 4 Pat. 327 : 6 P. L. T. 598 :
3 Pat. L. R. 175 Cr. : A. I. R. 1925 Pat. 536.

—Ss. 164, 258—Statements—Previous statement as corroborative evidence.

Per *James, J.*—A previous statement recorded under S. 164, can be treated as corroboration under S. 157, Evidence Act, of testimony admitted in evidence under S. 288, Cr. P. C. *Mathura Tewary v. Emperor*.

30 Cr. L. J. 1136 :
120 I. C. 37 : 8 Pat. 625 : 10 P. L. T. 177 :
I. R. 1929 Pat. 677 : A. I. R. 1929 Pat. 343.

—S. 164—Statements—Previous statements as corroborative evidence.

Per *Jwala Prasad, J.*—Though previous statements recorded under S. 164 can be admitted in evidence to corroborate the evidence taken under S. 288, when the earlier statements are retracted in the Sessions Court, the value of corroboration is weakened. *Mathura Tewary v. Emperor*.

30 Cr. L. J. 1136 :
120 I. C. 37 : 8 Pat. 625 : 10 P. L. T. 177 :
I. R. 1929 Pat. 677 : A. I. R. 1929 Pat. 343.

—S. 164—Statement—Previous statement of witness recorded under S. 164, proper use of.

A previous statement of a witness recorded under S. 164, can be admitted in evidence only for certain limited purposes. *Mahommed Khan v. Emperor*.

32 Cr. L. J. 172 :
128 I. C. 673 : I. R. 1931 Sind 1 :
A. I. R. 1930 Sind 308.

—S. 164—Statement, recording of—Oath, administration of.

In recording a statement under S. 164, a Magistrate is empowered to administer to the deponent an oath or solemn affirmation and the statement so recorded can form the subject of

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an alternative charge under the perjury sections of the Penal Code. *Emperor v. Parma Nand*.

34 Cr. L. J. 469 :
142 I. C. 776 : 34 P. L. R. 421 :
I. R. 1933 Lah. 303 : A. I. R. 1933 Lah. 321.

———S. 164—*Statement—Statements by accused before trial, record of—Magistrate, power of.*

There is nothing in S. 164 which forbids a Magistrate from recording a statement if accused makes one before he is placed on his trial. Such a statement, if proved to be voluntary, is admissible and must be relevant to the probability or improbability of his guilt. *Madan Guru v. Emperor*. 24 Cr. L. J. 723 : 73 I. C. 963 : 4 P. L. T. 381.

———S. 164—*Statements—Statements made in absence of accused, admissibility of.*

A statement under S. 164, behind the back of the accused, cannot be properly used as evidence against him. *Manni v. Emperor*.

32 Cr. L. J. 48 :
127 I. C. 878 : 7 O. W. N. 736 :
I. R. 1930 Oudh 494 : 6 Luck. 210 :
A. I. R. 1930 Oudh 406.

———S. 164—*Statements—Statement made under S. 164, use of.*

A statement by a witness under S. 164 can be used by the prosecution only to contradict the witness and to show that he is unreliable. *In re : Karuppana Pillai*. 28 Cr. L. J. 279 : 100 I. C. 359 : 7 A. I. Cr. R. 430.

———S. 164—*Statement of witness recorded by Magistrate during Police investigation.*

The Sub-Deputy Magistrate can, under the provisions of S. 164, Sub-s. (1) record a statement of a witness made before him in the course of the Police investigation. Consequently the statement is admissible as a statement made in the course of an investigation. *Harendra Nath v. Emperor*. 26 Cr. L. J. 307 : 84 I. C. 451 : 40 C. L. J. 313 : A. I. R. 1925 Cal. 161.

———S. 164—*Statement under, admissibility of—No confession.*

A dead body of a boy was found buried beneath a well of the house of *Mst. Choti*. *Sri Ram*, being suspected of murder, absconded. *Choti* was examined as a witness under S. 164, and deposed that *Sri Ram* had committed the murder. *Choti* and *Sri Ram* were subsequently tried for the murder of the boy whose body was found buried. *Choti* withdrew her statement, saying that she was coerced into making it: *Held*, that the statement of *Choti* was not admissible in evidence against *Sri Ram*: *Held*, further, that the said statement was not a confession of guilt by *Mst. Choti* and her conviction for murder was bad. *Sri Ram v. Emperor*. 2 Cr. L. J. 59 : 2 A. L. J. 100.

———S. 164—*Statement—Use of part only.*

Part of a statement made under S. 164, cannot be used to corroborate evidence which includes that statement itself, and which is

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obviously in much need of corroboration. *Karu v. Emperor*. 38 Cr. L. J. 648 :

168 I. C. 976 : 20 N. L. J. 103 :
9 R. N. 285 : I. L. R. 1937 Nag. 524 :
A. I. R. 1937 Nag. 254.

———S. 164—*“Statement” whether includes statement by accused—Use of such statement against accused.*

The word ‘statement’ in S. 164 is not limited to a statement by a witness but includes that made by an accused and not amounting to a confession. Where the statement of the accused is validly recorded as such, there is no impediment in strict law to its use against him in the capacity of an accused. At the same time the procedure of taking a statement on oath as from a witness and then using it at a later stage against an accused, would be a reason for rejecting the statement on its merits. *Karu v. Emperor*. 38 Cr. L. J. 648 :

168 I. C. 976 : 20 N. L. J. 103 :
9 R. N. 285 : I. L. R. 1937 Nag. 524 :
A. I. R. 1937 Nag. 254.

———Ss. 164, 202—*Statement by accused under S. 202—Admissibility of.*

A statement of the person complained against recorded during an enquiry under S. 202, Cr. P. C. cannot be regarded as having been recorded under S. 164, and as such, cannot be admitted in evidence as proving itself against him. *Sal Narain Tewari v. Emperor*.

3 Cr. L. J. 138 :
10 C. W. N. 51 : I. L. R. 32 Cal. 1085.

———S. 164 (2)—*Statement recorded by Magistrate—Absence of solemn affirmation, effect of.*

A statement recorded by a Magistrate under S. 164, Cl. (2) is admissible in evidence, whether taken on solemn affirmation or not. *Bahadur v. Emperor*. 26 Cr. L. J. 1063 : 88 I. C. 7 : A. I. R. 1925 Sind 289.

———S. 164—*Use of.*

The indiscriminate use of the provisions of S. 164 of Cr. P. C. is to be deprecated. *Hira Lal v. Emperor*. 19 Cr. L. J. 517 :

45 I. C. 277 : 18 P. W. R. 1918 Cr. :
16 P. R. 1918 Cr. : 63 P. L. R. 1918 :
A. I. R. 1918 Lah. 171.

———S. 165.

See Cr. P. C., 1898, S. 156.

———Ss. 165, 166—*Police Officer conscientiously acting in discharge of his duties—Non-compliance with procedure—Effect.*

Where the Court is satisfied that the Police Officer was conscientiously acting in the discharge of his duties according to his own lights, the Court cannot draw the inference of dishonesty, from the fact that he did not comply with certain procedural portions of Ss. 165 and 166. *Mangu Bhogal v. Emperor*. 11 O. W. N. 485 : A. I. R. 1935 Oudh 270.

———S. 165—*Scope—General search.*

S. 165 does not authorise a general search

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on the chance that something may be found.
Emperor v. Brikhbhan Singh.

16 Cr. L. J. 819 :
31 I. C. 995 : 13 A. L. J. 979 :
38 All. 14 : A. I. R. 1915 All. 430.

———S. 165—*Granting copies—Order refusing to grant copy—Revision.*

An order of a Magistrate under S. 165 (5) refusing to grant a copy of a record made by a Police Officer is not an extra-judicial or an executive order but an order falling within the purview of S. 455 of the Code and can be revised by the High Court. *Churamani Chaturvedi v. Emperor.*

29 Cr. L. J. 663 :
110 I. C. 215 : L. R. 9 All. 84 Cr. :
26 A. L. J. 703 : A. I. R. 1928 All. 402.

———S. 165, Cl. (5)—*Object—Provisions, whether mandatory.*

The provisions of Cl. 5 of S. 165 are intended to be an extra safeguard against general or roving searches and must be complied with by a Police Officer. *Lal Mea v. Emperor.*

27 Cr. L. J. 542 :
93 I. C. 1038 : 43 C. L. J. 184 :
A. I. R. 1926 Cal. 663.

———S. 165, Cl. 3—*Scope—Authority by Police Officer to make search—Writing.*

Where a Police Officer authorizes another to make a search without a warrant from a Magistrate, he should give the authority in writing specifying the thing or things which are to be searched for. *Emperor v. Brikhbhan Singh.*

16 Cr. L. J. 819 :
31 I. C. 995 : 13 A. L. J. 979 : 38 All. 14 :
A. I. R. 1915 All. 430.

———S. 165—*Scope—Search by Police Officer—General search and search for specific articles, legality of—‘Specific articles,’ what are.*

S. 165 does not authorise a general search for stolen property but only a search for specific articles. Where a definite list of articles stolen has been given to a Police Officer and he searches a house for those articles, he is making a search for specific articles and his action is perfectly legal. A general search means a search not in respect of specific documents or things which the officer considered were necessary or desirable for the purpose of the investigation in hand but a roving inquiry for the purpose of discovering documents or things which might involve persons in criminal liability. *Paresh Chandra Sen Gupta v. Jogendra Nath Chowdhury.*

27 Cr. L. J. 1195 :
97 I. C. 955 : A. I. R. 1927 Cal. 93.

———S. 165—*Scope—Search for property, not believed to be stolen, legality of.*

S. 165 does not authorize a Police Officer to make a search only for what is stolen or believed to be stolen property, but permits him to search for anything necessary for the purposes of an investigation into any offence. *Emperor v. Pran Sukh.*

27 Cr. L. J. 11 :
91 I. C. 43 : L. R. 6 All. 173 Cr. :
23 A. L. J. 1037 : A. I. R. 1926 All. 147.

———S. 165—*Scope—Seizure of books, etc.*
Police can investigate and seize all books if

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suspicion is that the Association carries lottery or swindling business. *General Relief Association, Lahore v. Emperor.*

33 Cr. L. J. 678 :
138 I. C. 751 : 33 P. L. R. 824 :
I. R. 1932 Lah. 534 : A. I. R. 1932 Lah. 581.

———S. 165 (4)—*Scope.*

Provisions of S. 165 (4) apply to provisions of Ss. 102 and 103 to a search made by police only “So far as may be”—Police in search under S. 165 (4) taking two independent witnesses—Search is not illegal. *Shiam Lal v. Emperor.*

28 Cr. L. J. 652 :
103 I. C. 108 : L. R. 8 All. 92 Cr. :
A. I. R. 1927 All. 516.

———S. 165—*Scope—Search for stolen property, when can be allowed.*

S. 165 does not authorize a general search for stolen property. A search for specific stolen property is, however, allowed by the section. *Divakar Singh v. Ramamurthi Naidu.*

19 Cr. L. J. 901 :
47 I. C. 273 : 35 M. L. J. 127.
A. I. R. 1918 Mad. 751.

———S. 165—*Search of Accused’s house.*

A Police Officer is entitled to search the house of a person for specific articles even though the latter is the person accused of the crime. *Paresh Chandra Sen Gupta v. Jogendra Nath Roy Chowdhury.*

27 Cr. L. J. 1195 :
97 I. C. 955 : A. I. R. 1927 Cal. 93.

———S. 165—*Search—Failure to give grounds—Irregularity.*

Non-recording of reasons for suspecting presence of articles offending against Excise Law, before search, does not vitiate the proceedings, though it is an irregularity. *Ujagar Singh v. Emperor.*

33 Cr. L. J. 492 :
137 I. C. 621 : 9 O. W. N. 313 :
I. R. 1922 Oudh 242 :
A. I. R. 1932 Oudh 249 (2).

———S. 165—*Search for stolen property without warrant, if legal.*

S. 165 does not authorize a search for stolen property in the house of an absconding offender. And if there is no search warrant under S. 98, the search is not a legal search and the occupiers of the house have a right of private defence in resisting it. *Rajrangi Gope v. Emperor.*

12 Cr. L. J. 8 :
9 I. C. 64.

———S. 165—*Search, grounds for—Necessity of search, record of.*

Before making a search, a Police Officer is bound to record in writing the grounds for his belief as to the necessity of searching the place and it is imperative that the persons of the search witnesses and of the Police party must be searched before they are allowed to enter the house. *Sohan Lal v. Emperor.*

34 Cr. L. J. 568 :
143 I. C. 467 : 10 O. W. N. 678 :
I. R. 1933 Oudh 174 :
A. I. R. 1933 Oudh 305.

———S. 165—*Search, grounds for.*

Where a Police Officer decides to make a

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search, the reasons in writing referred to in S. 165 can be recorded at any time or in any place prior to the actual search. *Asandas Hashmatrai v. Khan Chand.*

148 I. C. 178 : 6 R. S. 189 :
A. I. R. 1933 Sind 240.

—S. 165—Search, illegal—Consequences.

Where S. 165 is relied on by the Sub-Inspector making the search but it is found that he has not complied with the procedure, S. 165 cannot justify the action and he is liable to pay damages for trespass. *Hiralal v. Ramdulare.*

160 I. C. 306 : 31 N. L. R. 66 Sup. :
8 R. N. 183 : A. I. R. 1935 Nag. 237.

—S. 165—Search, illegal—Resistance.

An accused offering resistance to the Police making an illegal search is not guilty of an offence under S. 332, Penal Code. *Emperor v. Brikhbhan Singh.*

16 Cr. L. J. 819 :
31 I. C. 995 : 13 A. L. J. 979 :
A. I. R. 1915 All. 430.

—S. 165—Search—Powers of Police Officers.

An officer-in-charge of a Police station has no power to make searches in places outside the limits of his station except in the mode provided by S. 166, Cr. P. C. *Krishna Ayyar v. Emperor.*

20 Cr. L. J. 145 (b) :
49 I. C. 337 : 24 M. L. T. 96 :
1918 M. W. N. 526 : 8 L. W. 225 :
A. I. R. 1919 Mad. 353.

—S. 165 (1)—Search, illegal—Resistance—Offence.

Sub-Inspector of Police proceeding to search house of person accused of having stolen bicycle—S. 165 (1) not complied with—Pushing and preventing by accused is not an offence under S. 352, Penal Code. *Gopi Mahta v. Emperor.*

33 Cr. L. J. 233 :
136 I. C. 60 : 13 P. L. T. 62 : 10 Pat. 821 :
I. R. 1932 Pat. 60 : A. I. R. 1932 Pat. 66.

—S. 165, Cl. 1—Search ‘in person,’ what is—Search by Constable without list of articles—Resistance—Offence.

An officer who sits outside a house and orders a constable to make a search is not conducting the search “in person” within the meaning of S. 165, Cl. 1, Cr. P. C. A Police Inspector seating himself outside the house of the accused directed a constable to conduct a search in the house without giving him any written order specifying the articles to be searched for. The accused asked the constable for a list of the articles he had come to search for, and when none was produced, objected to the search being carried out by the constable and pushed him out : *Held*, that the conviction of the accused under S. 353, I. P. C., was bad. *Venkatappa Naidu v. Emperor.*

6 Cr. L. J. 105 :
17 M. L. J. 323.

—S. 165 (2)—Search—“Conduct the search in person,” meaning of.

The meaning of S. 165 (2) is, that the officer should be present on the spot and exercise a general supervision over the search, in contradistinction to the cases where he is unable to

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go to the spot, and deposes a subordinate by a written order to conduct the search in his place. *Satagopala Charlu v. Satrugna Bhara.*

13 Cr. L. J. 763 :
17 I. C. 25 : 23 M. L. J. 445 :
1912 M. W. N. 1111.

—S. 165.

See also Cr. P. C., S. 103.

—S. 167

See also (i) Cr. P. C., S. 107.
(ii) Criminal Trial.

—S. 167—Application of.

S. 167 applies to proceedings under Chap. XIV Cr. P. C. and not to those under S. 110. *In re : Sabbaraya Chatti.*

18 Cr. L. J. 403 :
38 I. C. 963 : 39 Mad. 928 :
A. I. R. 1918 Mad. 1186.

—S. 167—Bail.

Where the maximum period of remand allowed has expired, no further remand can be granted. If need be, it is open to the Police to adopt the procedure under S. 344, for judicial lock-up of the accused. If no such proceedings are taken up, the accused becomes entitled to be released on bail. *Bal Krishna v. Emperor.*

33 Cr. L. J. 180 :
135 I. C. 602 : 32 P. L. R. 1 :
12 Lah. 435 : I. R. 1932 Lah. 138 :
A. I. R. 1931 Lah. 99.

—S. 167—Custody—Magisterial and Police custody simultaneously.

An accused cannot be in Magisterial and Police custody at one and the same time, that is to say, he cannot be before a Magistrate in magisterial custody in one case under S. 344, and before a Magistrate in Police custody in another case under S. 167. *Dhaman Hiranand v. Emperor.*

39 Cr. L. J. 10 :
171 I. C. 737 : 31 S. L. R. 494 :
10 R. S. 124 : A. I. R. 1937 Sind 251.

—S. 167—Detention in custody—Magistrate's duty to record reasons, object of—Duration of custody.

S. 167 (3) by requiring a Magistrate to record his reasons for authorising detention in Police custody, contemplates that the Magistrate shall consider whether on the facts placed before him there are good grounds for allowing such detention. There should at least be something to satisfy the Magistrate that the presence of the person arrested while the Police investigation was being held would assist in some discovery of evidence and that his presence was indispensable for this purpose. In ordering further detention in Police custody, when there are good reasons for such an order, a Magistrate should invariably limit the term as much as possible to what may be necessary for the object in view. *Emperor v. Kampu Kuki.*

6 Cr. L. J. 86 :
11 C. W. N. 554.

—S. 167—Detention and Police custody—Legal advice.

While the accused is in Police custody, it is not open to the Police to deny his Counsel an interview with him on the ground that he had

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already an interview with his relations. *Bal Krishna v. Emperor*. 33 Cr. L. J. 180 : 135 I. C. 602 : 32 P. L. R. 1 : 12 Lah. 435 : I. R. 1932 Lah. 138 : A. I. R. 1931 Lah. 99.

—S. 167 (3)—*Detention in Police custody, limits of.*

Detention in police custody should be allowed only in special cases and for such limited periods as the necessities of the case might require. *Jai Singh v. Emperor*.

33 Cr. L. J. 287 : 136 I. C. 321 : 8 O. W. N. 1240 : I. R. 1932 Oudh 113 : A. I. R. 1932 Oudh 11.

—S. 167 (3)—*Detention of accused by Police during investigation—Order when to be made—Duration of detention—Reasons for order to be stated.*

S. 167 (3) by requiring a Magistrate to record his reason for authorising detention in Police custody, contemplates that the Magistrate shall consider whether on the facts placed before him there are good grounds for allowing such detention. There should at least be something to satisfy the Magistrate that the presence of the person arrested while the Police investigation is being held would assist in some discovery of evidence and that his presence is indispensable for this purpose. In ordering further detention in Police custody when there are good reasons for such an order, a Magistrate should invariably limit the term as much as possible to what may be necessary for the object in view. *Emperor v. Kampu Kuki*. 6 Cr. L. J. 86 : 11 C. W. N. 554.

—S. 167—*Custody, duration of.*

Under S. 167 (2) a Magistrate may authorize the detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding fifteen days as a whole. What is to be regarded is the period of detention under S. 167 (2) and not the nature of the custody. *Dhman Hiranand v. Emperor*.

39 Cr. L. J. 10 : 171 I. C. 737 : 31 S. L. R. 494 : 10 R. S. 124 : A. I. R. 1937 Sind 251.

—S. 167—*Police custody—Rights of accused.*

Accused is entitled to have access to legal advice even while in police custody during the course of investigation. But refusal by Police to allow such access is not by itself sufficient ground for holding that his custody was improper and for setting him at liberty. *Sunder Singh v. Emperor*. 32 Cr. L. J. 339 : 129 I. C. 481 : 31 P. L. R. 780 : 12 Lah. 16 : I. R. 1931 Lah. 193 : A. I. R. 1930 Lah. 945.

—S. 167—*Police custody—Rights of accused.*

Accused in Police custody is entitled to get legal advice and supply of food and clothing from relatives. An accused person is entitled to have access to legal advice under reasonable restrictions, even when he is in Police custody

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during the course of an investigation. *Amolak Ram v. Emperor*. 32 Cr. L. J. 1022 :

133 I. C. 288 : 12 Lah. 211 : I. R. 1931 Lah. 768 : 32 P. L. R. 935 : 1932 Cr. C. 23 : A. I. R. 1932 Lah. 13.

—S. 167—*Procedure—Magistrate's power to keep suspected offender in custody pending investigation by Subordinate Magistrate—Procedure.*

A Magistrate has no authority to keep an accused person in custody like a Police Officer, pending an investigation by a Subordinate Magistrate. Custody can follow only when a definite charge has been made and the complainant has been examined. He has no power to arrest the offender and keep him in custody and direct a Subordinate Magistrate to make an enquiry. *Anand Behari Lal v. Emperor*. 31 Cr. L. J. 998 :

126 I. C. 256 : 1930 A. L. J. 635 : A. I. R. 1930 All. 259.

—S. 167—*Remand—Application by whom to be made.*

An application for remand to Police custody must be made personally by the Chief Police Officer present or to the Chief Magisterial Officer present unless this is impossible owing to the absence of one of the officer concerned or through some other exceptional cause. *Peary Mohan Das v. Weston*. 13 Cr. L. J. 65 : 13 I. C. 721 : 16 C. W. N. 145.

—S. 167—*Remand—Magistrate who should be approached.*

The practice of obtaining remands from any Magistrate at the choice of the Police is objectionable. When there are no difficulties, it is desirable that the Magistrate in charge of the *Ilaka* should be approached for the purpose. *Bal Krishna v. Emperor*. 33 Cr. L. J. 180 : 135 I. C. 602 : 32 P. L. R. 1 : I. R. 1932 Lah. 138 : A. I. R. 1931 Lah. 99.

—S. 167—*Remand, legality of.*

Remand to Police custody is not illegal when Magistrate has made the order after duly considering whether accused should be remanded to Police custody or sent to judicial lock-up. *Amolak Ram v. Emperor*. 32 Cr. L. J. 1022 :

133 I. C. 288 : 12 Lah. 211 : 32 P. L. R. 935 : I. R. 1931 Lah. 768 : A. I. R. 1932 Lah. 13.

—S. 167—*Remand—Production of accused before Court.*

S. 167 requires that before a Magistrate remands an accused to Police custody, the accused must be produced before him and he shall record his reason for doing so. *Peary Mohan Das v. Weston*. 13 Cr. L. J. 65 : 13 I. C. 721 : 16 C. W. N. 145.

—S. 167—*Remand—Reasons to be recorded.*

S. 167 requires a Magistrate remanding an accused to Police custody to state his reasons in writing. The Magistrate must satisfy himself as to its necessity and the period

Cr. P. CODE (1898), S. 167

also should be restricted to the necessities of the case. *Bal Krishna v. Emperor*.

33 Cr. L. J. 180 :
135 I. C. 602 : 32 P. L. R. 1 :
12 Lah. 435 : I. R. 1932 Lah. 138.
A. I. R. 1931 Lah. 99.

————S. 167 (2)—*Remand—Accused arrested in Bombay and sent to Karachi—Remand by Karachi Magistrate under S. 167 (2)—Legality.*

When a Presidency Magistrate sends an accused arrested in Bombay to a Magistrate in Karachi having jurisdiction, there can be no question but that he acts under the second part of S. 167 (2), and a subsequent remand, if any, granted by the Karachi Magistrate must be a remand granted not under S. 167 (2) but a remand under S. 344, and where he grants the remand under S. 167 (2), it is illegal. *Dhaman Hiranand v. Emperor*.

39 Cr. L. J. 10.
171 I. C. 737 : 31 S. L. R. 494 :
10 R. S. 124 : A. I. R. 1937 Sind 251.

————S. 167 (3)—*Remand, when justified—Reasons—Duration.*

Remands to Police custody ought not to be granted except in cases of real necessity, and even then the period should be fixed with due regard to the reasonable requirements of the case. When a remand to Police custody is granted under S. 167, reasons must clearly be stated in the order as required by Sub-s. 3 of that section. *Dhruv Dev v. Emperor*.

32 Cr. L. J. 464 :
129 I. C. 767 (1) : 31 P. L. R. 693 :
I. R. 1931 Lah. 239 :
A. I. R. 1931 Lah. 200.

————S. 167—*Proceedings under—Legal Advice.*

An accused is entitled to be represented by counsel in proceedings before a Magistrate under S. 167. *Bal Krishna v. Emperor*.

33 Cr. L. J. 180 :
135 I. C. 602 : 32 P. L. R. 1 :
12 Lah. 435 : I. R. 1932 Lah. 138 :
A. I. R. 1931 Lah. 99.

————S. 167—*Scope—Magistrate exercising powers under S. 167 (2), first part—Action under second part—Power under first part, if can be revived by Magistrate to whom the accused is sent.*

If a Magistrate, having ordered the accused to be detained for a period of less than fifteen days, thinks no further detention is necessary and sends him to a Magistrate having jurisdiction under the second part of S. 167 (2), then the latter Magistrate cannot himself exercise the powers already exercised by the Magistrate under the first part of S. 167 (2), even to the extent of ordering a remand to the Police custody for such time as will bring the period of detention in Police custody to fifteen days. *Dhaman Hiranand v. Emperor*.

39 Cr. L. J. 10 :
171 I. C. 737 : 31 S. L. R. 494 :
10 R. S. 124 : A. I. R. 1937 Sind 251.

————S. 167—*Scope.*

Once powers conferred by the first part of

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S. 167 (2) have been exercised by a Magistrate and he has taken action under the second part of S. 167 (2), then the powers under the first part of S. 167 (2), have been exhausted, and cannot be revived and continued by the Magistrate having jurisdiction to whom the accused is sent under the second part of S. 167 (2). *Dhaman Hiranand v. Emperor*.

39 Cr. L. J. 10 :
171 I. C. 737 : 31 S. L. R. 494 :
10 R. S. 124 : A. I. R. 1937 Sind 251.

————S. 168.

See Penal Code, S. 168.

————S. 169.

See Cr. P. C., S. 157.

————S. 169.

Launching of prosecution against witness in another case on his own evidence—Practice condemned. *Madho Surendra Sahai v. Gobardhan Lal*.

34 Cr. L. J. 785 :
144 I. C. 566 : 10 O. W. N. 239 :
8 Luck. 381 : I. R. 1938 Oudh 263 :
A. I. R. 1933 Oudh 215.

————S. 169—*Discharge—Substantive offence not proved—Discharge—Proceedings under S. 110—Evidence of commission of substantive offence, admissibility of.*

Accused was arrested on suspicion of being concerned in a dacoity, but was discharged under S. 169, for want of sufficient evidence. He was re-arrested under S. 155 of that Code, and proceedings were started against him under S. 110 of the same Code wherein the Police put in evidence of his participation in the dacoity: *Held*, that the evidence was inadmissible, and that the conviction based on it must be set aside inasmuch as if the evidence was sufficient to prove the participation of the accused in the dacoity, he should have been brought to trial for that offence, and if it was not, the Court had no right to allow it to be brought in to prejudice its mind against the accused in his trial for bad livelihood. *Bhagat Prasad v. Emperor*.

23 Cr. L. J. 119 :
65 I. C. 551 : 24 O. C. 317 : 9 O. L. J. 57 :
A. I. R. 1932 Oudh 26.

————S. 169—*Remand—Legal advice.*

Remand does not necessarily imply exclusion of legal assistance. *In re : Llewelyn Evans*.

27 Cr. L. J. 1169 :
97 I. C. 801 : 28 Bom. L. R. 1043 :
50 Bom. 741 : A. I. R. 1926 Bom. 551.

————S. 169—*Remand, what is—Legal advice.*

A remand is, in essence, time granted to the Police to complete their investigation and to decide either to release the accused under S. 169 or under S. 170 to send him up with a charge-sheet, before the Court begins its inquiry. A remand does not necessarily imply exclusion of legal assistance. *In re : Llewelyn Evans*.

27 Cr. L. J. 1169 :
97 I. C. 801 : 28 Bom. L. R. 1043 :
50 Bom. 741 : A. I. R. 1926 Bom. 551.

Cr. P. CODE (1898), S. 170

———S. 170.

See Cr. P. C., S. 157.

———S. 170—*Accused forwarded—Whether a competent witness.*

When the Police refrain from prosecuting a person against whom there is adequate evidence to justify his production for enquiry and trial before a Magistrate under S. 170 he can be a competent witness, even where he is not tendered a conditional pardon under S. 337, Cr.P.C. But this method of obtaining evidence is contrary to the spirit of the Code and is strongly to be deprecated. It is not, however, illegal, but the evidence of such a witness must ordinarily be of less value than that of a person who has been granted a valid pardon and is no longer under fear of a prosecution. *Amdul Miyan v. Emperor* (F. B.)

38 Cr. L. J. 237 :
166 I. C. 582 : I. L. R. 1937 Nag. 315 :
9 R. N. 126 : A. I. R. 1937 Nag. 17.

———S. 170—*Accused when to be sent for trial.*

Where the investigating officer not being satisfied with the evidence against some of the accused feels that they are falsely implicated, he is justified in not sending them for trial. *Jaimal Singh v. Emperor*.

41 Cr. L. J. 146 :
185 I. C. 266 : 41 P. L. R. 763 :
I. L. R. 1939 Lah. 307 : 12 R. L. 275 :
A. I. R. 1939 Lah. 523.

———S. 170—*Investigation, what is.*

The expression 'an investigation, under this Chapter' in S. 170 includes an investigation held under S. 155 (3) under the orders of a Magistrate. *Raghubar Dayal Misra v. Emperor*.

32 Cr. L. J. 465 :
130 I. C. 193 : L. R. 12 All. 44 and 71 Cr. :
I. R. 1931 All. 241 :
A. I. R. 1931 All. 263.

———S. 170—*Sending accused for trial—Duty of investigating officers.*

Where definite allegations are made by aggrieved persons which they are prepared to support by positive evidence, apparently free from taint, it is generally not the function of the Police to play the role of Judges and to pronounce their verdict on the truth or falsehood of those allegations. In such cases, they are bound to send up the accused for trial and not to discuss the probabilities or the improbabilities of the case and come to a final decision of their own. But where there is a tendency to implicate innocent persons along with the guilty, not only Courts but the investigating officers must proceed cautiously when they are faced with that situation. *Jaimal Singh v. Emperor*.

41 Cr. L. J. 146 :
185 I. C. 266 : 41 P. L. R. 763 :
I. L. R. 1939 Lah. 307 : 12 R. L. 275 :
A. I. R. 1939 Lah. 523.

———S. 170—*Sending of accused for trial—Procedure.*

When accused is forwarded under S. 170,

Cr. P. CODE (1898), S. 172

the report under S. 174 need not be forwarded at the same time. *Emperor v. Sooba*.

32 Cr. L. J. 1045 (2) :
133 I. C. 617 : L. R. 12 All. 137 Cr. :
53 All. 729 : 1931 A. L. J. 617 :
I. R. 1931 All. 729 :
A. I. R. 1931 All. 617.

———S. 172.

———Admissibility.
———Applicability.
———Changes.
———Contradicting Witness.
———Diary.
———Granting of Copies of Statement of Witness.
———Object of.
———Scope.
———S. 172.

See also (i) Calcutta Police Act, 1866, S. 78-A.

(ii) Cr. P. C., 1898, Ss. 161, 162.

(iii) Penal Code, 1860, S. 411.

———S. 172—*Admissibility as evidence—Statements made to Police Officer.*

In deciding an appeal against a death sentence and in confirming that sentence, a High Court cannot test the credibility of the witness called at the trial by reference to their statements to the Police entered in the Police diary and treat them as evidence for that purpose. *Dal Singh v. Emperor*.

18 Cr. L. J. 471 :
39 I. C. 311 : 15 A. L. J. 475 :
1 P. L. W. 661 : 19 Bom. L. R. 510 :
21 C. W. N. 818 : 26 C. L. J. 13 :
6 L. W. 71 : 22 M. L. T. 31 :
1917 M. W. N. 522 : 86 L. J. P. C. 140 :
33 M. L. J. 555 : 44 Cal. 876 :
A. I. R. 1917 P. C. 25.

———S. 172—*Admissibility of stolen property supplied during investigation.*

A list of stolen property handed to a Police Officer during investigation is not admissible in evidence. The admission of such a list, however, would not of itself vitiate the trial unless it is shown that the accused have been prejudiced by such admission. *Kalia v. Emperor*.

26 Cr. L. J. 579 :
85 I. C. 723 : A. I. R. 1925 Cal. 959.

———S. 172—*Admissibility—List of suspects of offence supplied by third person to Police.*

Where names of certain persons are sent to Police as suspected of being concerned with an offence, and the evidence of the person who supplied these names to the Police is challenged in Court, the list of names supplied by him is admissible in evidence to corroborate the statement of the witness in answer to the challenge. *Kalia v. Emperor*.

26 Cr. L. J. 579 :
85 I. C. 723 : A. I. R. 1925 Cal. 959.

———S. 172—*Applicability.*

The provisions of S. 172, apply to all Police Officers making an investigation. *Jhangiri Lal v. Emperor*.

35 Cr. L. J. 1180 :
150 I. C. 1056 : 7 R. L. 58.

Cr. P. CODE (1898), S. 172

———S. 172—*Applicability, to Calcutta Police Act.*

Ss. 172 and 162 do not apply to Calcutta Police Act. *Panchanan Mukherjee v. Emperor.*

30 Cr. L. J. 577 :

116 I. C. 160 : I. R. 1929 Cal. 448 :

33 C. W. N. 203 : A. I. R. 1929 Cal. 275.

———S. 172—*Applicability to Calcutta Suburban Police Act—Calcutta Suburban Police Act, S. 47-A—Evidence Act, S. 145—Police diary of case in suburban area whether privileged—Right of accused to inspect diary.*

In the suburban area covered by the Calcutta Suburban Police Act, the Investigating Police Officer keeps his diary under S. 47-A of that Act and not under S. 172 of the Cr. P. C. and no privilege attaches to such diary and the accused is entitled to see the statement of the witnesses recorded by the Investigating Police Officer who have been examined in Court and to use them to contradict such statements under S. 145 of Evidence Act. *Suresh Chandra Ghose v. Emperor.*

24 Cr. L. J. 757 :

74 I. C. 261.

———S. 172—*Changes.*

Alteration introduced into S. 162 in 1923 has not made any material change in S. 172. *Emperor v. Hari.*

36 Cr. L. J. 1161 (2) :

157 I. C. 697 : 28 S. L. R. 397 :

A. I. R. 1935 Sind 145.

———S. 172—*Contradicting witness—Proper procedure for.*

The proper procedure in a case where witness is sought to be discredited by the defence by contradicting him by his previous statement before the Police is to read out that particular portion of it which is in direct contravention with what he has deposed in Court and then to ask him whether he sticks to his former statement or the one made on oath in Court, and only that portion of his statement as recorded by the Police which has been read to the witness should be exhibited in the trial of the case. *Emperor v. Salik.*

38 Cr. L. J. 165 :

[166 I. C. 259 : 1936 O. L. R. 734 : 9 R. O. 295 :

1937 O. W. N. 63 : A. I. R. 1937 Oudh 201.

———S. 172—*Diary, contents of—Map prepared by Police Officer—Statement made by third person, entry of.*

A map prepared by a Police Officer during the investigation of a case should not, on the face of it, contain statements made to the Police Officer by some other person. *Kalia v. Emperor.*

26 Cr. L. J. 579 :

85 I. C. 723 : A. I. R. 1925 Cal. 959.

———S. 172—*Diary, contents of.*

Statements attached to Police diaries and the number of their pages should also be noted and signed by the Superintendent of Police. *Jahangiri Lal v. Emperor.*

35 Cr. L. J. 1180 :

150 I. C. 1056 : 7 R. L. 58.

———S. 172—*Diary, contents of—Statement of witnesses.*

The word "statement" must not be treated as including statements of a witness to the Police, which since S. 162 was amended in

Cr. P. CODE (1898), S. 172

1923, are governed by that section, and the Police Officers ought not to include such statements in the Police diaries. *Emperor v. Nga Lun Thauing.* (F. B.)

36 Cr. L. J. 1487 :

158 I. C. 784 : 13 Rang. 570 : 8 R. Rang. 202 :

A. I. R. 1935 Rang. 370.

———S. 172—*Diary—Diary not used to refresh memory,—Improper admission—Effect.*

A Magistrate should not refer to an entry in a diary, not used by a prosecution witness to refresh his memory as corroborative of his evidence but an error of the kind is not sufficient ground for interference, when the Magistrate has found the accused guilty after considering the other evidence in the case. *In re : Kuttialikutti Marakar.*

15 Cr. L. J. 256 :

23 I. C. 208 : 1 L. W. 229 :

A. I. R. 1915 Mad. 637.

———S. 172—*Diary, improper use of—Revision, interference.*

Where, apart from the evidence afforded by the Diary, there is ample evidence on the record to corroborate the prosecution, the fact that the Diary was improperly used, is not of itself a ground justifying interference by the High Court in revision. *Achhaibat Singh v. Emperor.*

22 Cr. L. J. 374 :

61 I. C. 230 : 2 P. L. T. 223 :

A. I. R. 1921 Pat. 331.

———S. 172—*Diary—Incorporation of oral statements of witnesses.*

The practice of the Police Officers in the *mofussil* to incorporate oral statements of witnesses in the "special diary" under S. 172 should be put an end to. *Dadan Gazi v. Emperor.*

4 Cr. L. J. 79 :

10 C. W. N. 890 : I. L. R. 33 Cal. 1023.

———S. 172—*Diary, necessity of keeping.*

A Police Officer, who investigates a non-cognizable case under the orders of a Magistrate, is to keep the diary and the omission to keep such diary deprives the Court of the very valuable assistance which such diaries can give. *Hira Lal v. Emperor.*

19 Cr. L. J. 517 :

45 I. C. 277 : 18 P. W. R. 1918 Cr. :

16 P. R. 1918 Cr. : 63 P. L. R. 1918 :

A. I. R. 1918 Lah. 171.

———S. 172—*Diary, omissions in—Effect.*

Omission to enter in special diary prescribed by S. 172, the various steps taken in Police inquiry does not vitiate trial. *Hafiz Muhammad Sani v. Emperor.*

32 Cr. L. J. 638 :

131 I. C. 17 : 12 P. L. T. 393 :

A. I. R. 1931 Pat. 150.

———S. 172—*Diary—Omission to record in case diary on same day on which examination is made—Effect.*

Where a Sub-Inspector omitted to record in his case diary on the same day of examination without any explanation for such delay and the fact that the examination was conducted on the previous day was concealed, the circumstance must be regarded as a very suspicious one. *Govt. v. Mst. Gaji.*

17 N. L. J. 189 :

A. I. R. 1935 Nag. 69.

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—S. 172—*Diary—Personal diary of Police Officer, admissibility of.*

Entries made in a personal diary kept by a Police Officer, having no concern whatsoever with the investigation of a case, do not fall within the purview of S. 172, and are not, therefore, inadmissible in evidence by virtue of the provisions of that section. *Kalia v. Emperor.*

26 Cr. L. J. 579 :
85 I. C. 723 : A. I. R. 1925 Cal. 959.

—S. 172—*Diary, persons entitled to use.*

It is the Court which is entitled to use the special diary. Neither the accused nor his agent is entitled under S. 172, to see the special diary for any purpose unless it has been used by the Court for enabling the Police Officer who made it to refresh his memory or for the purpose of contradicting him. *Emperor v. Nga Lun Thauang.*

36 Cr. L. J. 1487.
158 I. C. 784 : 13 Rang. 570 : 8 R. Rang. 202 :
A. I. R. 1935 Rang. 370.

—S. 172—*Diary—Special diaries, object of.*

The object of the special diaries under S. 172 is to enable the Court to have the means of ascertaining what was the information which was obtained from day to day by the Police Officer investigating the case and what were the lines of investigation upon which the Police Officer acted. *Peary Mohan Das v. Weston.*

13 Cr. L. J. 65 :
13 I. C. 721 : 16 C. W. N. 145.

—S. 172—*Diary—Statements recorded on loose pieces of paper—Irrregularity.*

The paper upon which the statement of a person examined by a Police Officer during investigation is written, should be attached to the Police diary proper, which should contain a narrative of events. The practice of noting down the statements of witnesses examined by the Police on loose pieces of paper and afterwards entering these statements in the diary is objectionable. *Laxman v. Emperor.*

25 Cr. L. J. 141 :
76 I. C. 237 : A. I. R. 1924 Nag. 33.

—S. 172—*Diary—Use in Court.*

Entries in diary made by an investigating Police Officer, under S. 172 may be used to assist the Court which tries the case by suggesting means of further elucidating points which need clearing up, and which are material for doing justice between the Crown and the accused, but not as containing entries which can by themselves be taken to be evidence of any date, fact or statement contained in the diary. The Police Officer who made the diary may be confronted with it, but not any other witness. *Dal Singh v. Emperor.*

18 Cr. L. J. 471 :
39 I. C. 311 : 15 A. L. J. 475 :
1 P. L. W. 661 : 19 Bom. L. R. 510 :
21 C. W. N. 818 : 26 C. L. J. 13 :
6 L. W. 71 : 22 M. L. T. 31 :
1917 M. W. N. 522 : 86 L. J. P. C. 140 :
33 M. L. J. 555 : 44 Cal. 876 :
A. I. R. 1917 P. C. 25.

—S. 172—*Diary, use of.*

Cr. P. CODE (1898), S. 172

A Judge has power to refer to Police diaries even after the Jury have returned their verdict. Judge is to determine whether there is any evidence corroborating approver's story so far as the individual accused are concerned. *Rebati Mohan Chakrabarti v. Emperor.*

30 Cr. L. J. 435 :
115 I. C. 258 : 32 C. W. N. 945 :
I. R. 1929 Cal. 338 : 56 Cal. 150 :
A. I. R. 1929 Cal. 57.

—S. 172—*Diary, use of.*

The Court is entitled, however, to discover out of such Police diaries matter of importance bearing upon the case and then call for the necessary evidence to have that matter legally proved. *Syed Abdul Rahim v. Salhu Kherwar.*

3 Cr. L. J. 408 :
10 C. W. N. 600.

—S. 172—*Diary, use of.*

The Police Diary maintained under S. 172 of the Cr.P.C. cannot be used by Court as evidence, but only for assisting the Court in the appreciation of the evidence, and to clear up doubtful points arising during the trial of the case. It cannot be used to corroborate the evidence of the Police Officer who recorded entries in it, although it may be used to contradict him. *Achhaibat Singh v. Emperor.*

22 Cr. L. J. 374 :
61 I. C. 230 : 2 P. L. T. 223 :
A. I. R. 1921 Pat. 331.

—S. 172—*Diary, use of.*

Facts and statements written in the Police diaries cannot be used as materials to help the Court in a criminal trial to come to a finding on the evidence in the case. *Syed Abdul Rahim v. Emperor.*

3 Cr. L. J. 408 :
10 C. W. N. 600.

—S. 172—*Diary, use of.*

Facts found in Police diary are not to be used unless or until they are properly brought on the record through the evidence of a witness. *Deo Lal Mahlon v. Emperor.*

34 Cr. L. J. 948 (2) :
145 I. C. 426 (2) : 74 P. L. T. 396 :
6 R. P. 178 : A. I. R. 1933 Pat. 440.

—S. 172—*Diary, use of—Police Officer recording joint statements—Use against any particular witness.*

Where the Police Officer recorded in his Police diary the statements of some persons jointly at one place, they cannot be legally used as statements of any particular prosecution witness for contradicting him, for it is not known how much of any particular joint statement belonged to any particular prosecution witness. *Emperor v. Salik.*

38 Cr. L. J. 165 :
166 I. C. 259 : 1936 O. L. R. 734 :
9 R. O. 295 : 1937 O. W. N. 63 :
A. I. R. 1937 Oudh 201.

—S. 172—*Diary, use of—Previous statement by witness—Use of, for contradicting him—His attention must be called to parts which are to be used—Statements cannot be used without giving opportunity to witnesses of either denying or admitting them.*

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Under S. 145, Evidence Act, a witness may be cross-examined as to his previous written and relevant statements without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it to be used, for contradicting him. Where the Judge has asked the investigating Police Officer to verify the copies of the statements recorded in his Police diary and has used them for contradicting the statements made on oath by the prosecution witnesses without first giving each prosecution witness an opportunity of admitting or denying the correctness of the statement recorded in the special Police diary of the case, the procedure is illegal and all these true copies of statements recorded by the Police Officer in his diary and exhibited in this case are inadmissible in evidence. *Emperor v. Salik*.

38 Cr. L. J. 165 :
166 I. C. 259 : 1936 O. L. R. 734 :
9 R. O. 295 : 1937 O. W. N. 63 :
A. I. R. 1937 Oudh 201.

—S. 172—Diary, use of—Statements in Police diaries.

Statements embodied in Police diaries can be used in favour of an accused person but not against him. *Rajindra Singh v. Emperor*.

25 Cr. L. J. 409 :
77 I. C. 489 : A. I. R. 1923 Lah. 516.

—S. 172—Diaries, use of.

To disbelieve defence story on the ground that it is nowhere mentioned in the Police *zinnis* amounts to using the *zinnis* in such a way as to strengthen the case for prosecution and it is against the provisions of the Cr. P. C. *Dini v. Emperor*.

27 Cr. L. J. 572 :
94 I. C. 140 : A. I. R. 1926 Lah. 485.

—S. 172—Diary, use of.

Under S. 172 any Criminal Court may use the diary to aid it in the trial. *Abinash Chandra v. Emperor*.

37 Cr. L. J. 414 :
161 I. C. 14 : 8 R. Rang. 449 :
A. I. R. 1936 Rang. 75.

—S. 172—Diary, use of.

Under S. 172, Police Diaries may be used by the Court to assist in the enquiry or trial by suggesting means of further elucidating points which need clearing up and which are material for the purpose of doing justice between the Crown and the accused; but entries in the special diary cannot by themselves be taken as evidence of any date, fact or statement therein contained. *Devi Das v. Emperor*.

31 Cr. L. J. 343 :
122 I. C. 93 : 10 Lah. 794 :
31 P. L. R. 742 : A. I. R. 1930 Lah. 318.

—S. 172 (2)—Diary, use of.

A Court cannot use Police diaries as evidence in the case, but as an aid in the inquiry or trial. Such aid is usually confined to utilising the information given therein as a foundation for questions to be put to the witness, and in using the diary, the Court should always be careful. *Raja Ram v. Emperor*.

28 Cr. L. J. 134 :
99 I. C. 342 : 3 O. W. N. 1001 :
7 A. I. Cr. R. 52 : A. I. R. 1927 Oudh 64.

Cr. P. CODE (1898), S. 172**—S. 172 (2)—Diary, use of.**

The Court may also use the diaries during the trial for clearing up obscurities in the evidence or bringing out relevant facts material in the interests of a fair trial. If the statements in question, however, have not been made evidence in accordance with these statutory provisions, no Court has the right to refer to them subsequently for the purpose of coming to a judicial decision upon the case which is under trial. *Mohammad v. Emperor*.

26 Cr. L. J. 1308 :
89 I. C. 252 : 1 L. C. 193 :
A. I. R. 1926 Lah. 54.

—S. 172 (2)—Diary, use of.

Under S. 172, Sub-s. (2) of the Cr. P. C. any Criminal Court may send for the Police diaries of a case under inquiry or trial in such Court, and may use them, to aid it in such inquiry or trial but it is not open to a Court to use the *zinnis* as evidence in the case for corroborating the statements of witnesses made before it. *Sundar Singh v. Emperor*.

23 Cr. L. J. 251 :
66 I. C. 187.

—S. 172—Granting of copies of statements of witnesses.

Section in nowise prevents copies of statements of the witnesses being given whether in *extenso* or in the form of compressed memoranda. *Hamidkhan v. Emperor*.

34 Cr. L. J. 127 :
140 I. C. 825 : 28 N. L. R. 291 :
I. R. 1933 Nag. 15 : A. I. R. 1933 Nag. 4.

—S. 172 (2)—Object of.

The object of Sub-s. (2) of S. 172 is to enable the Court to direct the Police Officer giving his evidence, to refresh his memory, or to question him as to contradictions which may appear between statements so recorded and the evidence he is giving in Court. If used for the latter purpose, the provisions of Ss. 145 and 161 of the Evidence Act shall apply. *Mohammad v. Emperor*.

26 Cr. L. J. 1308 :
89 I. C. 252 : 1 L. C. 193 :
A. I. R. 1926 Lah. 54.

—S. 172—Scope—Statement of witness—Recording of.

S. 172, Cr. P. C., does not provide for the recording of the statements of witnesses. *Sadhu Shaikh v. Emperor*.

29 Cr. L. J. 531 :
109 I. C. 355 : 32 C. W. N. 280 :
A. I. R. 1928 Cal. 260.

—S. 172—Scope.

S. 172 of the Cr. P. C., does not deal with the recording of any statement by witnesses; what is intended to be recorded under the section is only what the Police Officer did. *Mafizaddi v. Emperor*.

28 Cr. L. J. 805 :
104 I. C. 245 : 45 C. L. J. 561 :
31 C. W. N. 940 :
A. I. R. 1927 Cal. 644.

—S. 172, 161—Scope—Record of statement heard by Police Officer in exercise of power under S. 161 and recorded in diary, whether evidence—Such record, if a public document.

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S. 172, Cr. P. C., does not forbid a recorded statement to be used at a trial for an offence not under investigation when it was made. The record of a statement heard by a Police Officer in exercise of the power conferred by S. 161 of the Cr. P. C., and recorded either in the diary or separately in the course of investigation proceedings is an unpublished official record relating to an affair of State evidence derived from, which cannot be produced in a case to which the first proviso to S. 162 is not applicable except with the permission of the Officer at the head of the Police Department (S. 123, Evidence Act). The record of the statement cannot be termed a deposition or an evidence. It is not a public document, a copy of which must be given on demand under S. 76, Evidence Act. But the fact or allegation that the statement has been reduced to writing will not preclude evidence of its having been made (subject, of course, to the provisions of the Evidence Act), for S. 91, Evidence Act, does not apply. To prove that the statement was made, it would be necessary to call the Police Officer who heard it. If the accused has succeeded in having the original record of the statement produced, notwithstanding objections raised under Ss. 123, 124 or 125, Evidence Act, and the Police Officer has referred to it to refresh his memory under S. 159, the provisions of S. 145 of that Act will apply. *Baij Nath Bhatnagar v. Muhammad Din*.

38 Cr. L. J. 246 :
166 I. C. 501 : 17 Lah. 472 :
38 P. L. R. 1040 : 9 R. L. 389 :
A. I. R. 1936 Lah. 359.

—S. 173.

See also (i) Cr. P. C., 1898, Ss. 156, 157, 190 (1), (a) and (b).
(ii) Railways Act, 1860, S. 84.

—S. 173—Charge-sheet—Requirements of.

S. 173, Cr. P. C., does not require that a charge-sheet should contain an abstract of the evidence to be given by each of the witnesses mentioned in the charge-sheet. The form of charge-sheet prescribed by G. O. No. 3487, Law (General) dated the 16th October 1928, and published in the *Fort Saint George Gazette*, dated the 23rd October, 1928, is not illegal. *Balasundaram v. Emperor*.

31 Cr. L. J. 387 :
122 I. C. 341 : 1929 M. W. N. 504 :
A. I. R. 1930 Mad. 191.

—S. 173—Effect on S. 190 (1) (b)—Police report.

The use of the words 'Police report' in S. 173, Cr. P. C., does not restrict S. 190 (1) (b) merely to non-cognizable offences. *Bholanath Das v. Emperor*.

26 Cr. L. J. 68 :
83 I. C. 628 : 28 C. W. N. 490 :
A. I. R. 1924 Cal. 614.

—S. 173—Granting of copies—Order on Police report that case be struck off—Accused, if entitled to copy of such order.

An order of a Magistrate on a Police report

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under S. 173 that a case be struck off is an administrative order and not a judicial order and the accused is not entitled to a copy of such an order. *Brahm Dev v. Emperor*.

39 Cr. L. J. 646 :
175 I. C. 850 : 40 P. L. R. 239 :
11 R. L. 1 (1) :
A. I. R. 1938 Lah. 469.

—S. 173—Investigation—Police report.

Under S. 173 as soon as the investigation is completed, the investigating officer is to send a report to the Magistrate. A Sub-Inspector is not justified in delaying his final report. *Rahat Husain v. Emperor*.

35 Cr. L. J. 208 :
146 I. C. 897 : L. R. 14 All. 225 Cr. :
6 R. A. 370 : A. I. R. 1933 All. 582 :

—S. 173—Jurisdiction—Police report, absence of—Cognizance of offence.

Three persons were sent up by the Police for trial under Ss. 386 and 457, I. P. C. A remark was added to the Police report that it has been elicited that one A. had instigated the commission of the theft and that the Court is at liberty to take action against A. on legal evidence being tendered. At the conclusion of the trial against the three persons, the Magistrate ordered that a non-bailable warrant be issued against A. and he be tried under Ss. 380, 457/190, I. P. C. : *Held*, that the Magistrate, who was not empowered to act under S. 198 (1), (c), Cr. P. C., had no jurisdiction to issue the warrant, because there being no Police report against A. under S. 173, the Magistrate could not proceed under S. 190 (1) (b), nor could he proceed under S. 351 as A. was not in attendance in his Court. *Ahmed Khan v. Emperor*.

12 Cr. L. J. 92 :
9 I. C. 492.

—S. 173—Police Report—Case not disposed of by order of Magistrate—Prosecution by Police under S. 211, illegal.

The appellant informed Police of a non-cognizable offence. The Police obtained the authority of a Magistrate under S. 155 of the Cr. P. C. to investigate the case. The Magistrate directed that the Police should report to him. No report was made. Meantime, however, the Police instituted proceedings against the appellant under S. 211 of the Penal Code and obtained his conviction : *Held*, that the conviction was bad and must be set aside. Even if the Magistrate had not directed a report to be made, S. 173, Cr. P. C. requires that it should be made. The case was one that could not be disposed of without the order of the Magistrate in some form or another. *Appa Ragho Bhogle v. Emperor*.

16 Cr. L. J. 161 :
27 I. C. 545 : 17 Bom. L. R. 69 :
A. I. R. 1915 Bom. 80.

—S. 173—Police report, contents of—Defective report.

A Police report under S. 173 should set forth the nature of the information ; and

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where it is defective in that particular, the Magistrate should not take cognizance of the case. *Lee v. Adhikary*.

11 Cr. L. J. 145 (b) :
5 I. C. 553 : 14 C. W. N. 304 :
37 Cal. 49.

—————**S. 173—Police report, meaning of.**

The Police report mentioned in S. 190 (1) (b) of the Cr. P. C., is a Police report within the meaning of S. 173 of the Code, i. e., a report during investigation of a cognizable offence. *Ram Lal v. Emperor*.

21 Cr. L. J. 269 :
55 I. C. 285 : 1 P. L. T. 73 :
A. I. R. 1920 Pat. 614.

—————**S. 173, 190 (b)—Police report—What is.**

The words "a Police report" in S. 190 (b) of the Cr. P. C., do not mean a Police report as laid down in S. 173 of the Code. They include a Police report of any description authorised by the Code. *Mehrab v. Emperor*.

26 Cr. L. J. 181 :
83 I. C. 885 : 17 S. L. R. 150 :
A. I. R. 1924 Sind 71.

—————**S. 173, 190 (1) (b)—Police report.**

The report referred to in S. 190 (1) (b), Cr. P. C., is the report described in S. 173, i. e., a report by the Police after the investigation and the facts ascertained and the conclusion arrived at that there are sufficient grounds to justify the person reported being forwarded to the Magistrate. *Ahmed Khan v. Emperor*.

12 Cr. L. J. 92 :
9 I. C. 492.

—————**Ss. 173, 190 (1) (b)—Power of District Magistrate—Final report of Police laid before Magistrate and disposed of—Power of District Magistrate to direct Police to submit charge-sheet.**

A District Magistrate has no power to direct the Police to submit a charge-sheet after a final report recommending that proceedings need not be taken against the accused has been put up before a Magistrate having jurisdiction to take cognizance of the offence, and has been disposed of by him. *Sukhadeva Sahay v. Hamid Mian*.

29 Cr. L. J. 942 :
111 I. C. 862 : 7 Pat. 564 : 10 P. L. T. 14 :
A. I. R. 1928 Pat. 585.

—————**S. 173—Power of Magistrate to re-open case.**

An order passed by a Magistrate directing a case reported to him by the Police under S. 173, to be struck off, is not a judicial order and it is open to the Magistrate to re-open the case by calling for a charge-sheet. *Uma Singh v. Emperor*.

34 Cr. L. J. 1198 :
146 I. C. 70 : 14 P. L. T. 162 : 12 Pat. 234 :
6 R. P. 237 : A. I. R. 1933 Pat. 242.

—————**Ss. 173, 190, Cl. (c), 200—Power of Magistrate—Information of theft case to Police—Report that case true but no evidence—Making over of case to Honorary Magistrate who reported that alleged stolen property belonged to accused—Issue of summons by Magistrate, whether proper—Proceedings before Honorary Magistrate, whether legal.**

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A report of a theft of bullock by the accused was made to the Police who submitted a report to the Magistrate that the case against the accused might be true but that the evidence to prove it was not forthcoming. Thereupon the Magistrate made over the case to an Honorary Magistrate for inquiry and report. The Honorary Magistrate examined witnesses on both sides and reported that it was proved that the bullock was purchased by the accused and that no trial of the accused could be recommended. On receipt of this report, the Magistrate ordered the issue of summons against the accused with the remark that the purchase of the animal by the accused should be proved in court: *Held*, that (1) upon the report of the Police under S. 173 of the Cr. P. C., the Magistrate could take cognizance of the case under S. 190, Cl. (b), but instead of doing so, he made over the case for inquiry and report as though he was dealing with the matter on a complaint under S. 200; the proceedings before the Honorary Magistrate were not in consonance with the provisions of the law; and (2) after the report of the Police and the Honorary Magistrate, the Magistrate ought not to have summoned the accused; and (3) the proceedings should not be allowed to go on. *Abdullah Mandal v. Emperor*.

14 Cr. L. J. 297 :
19 I. C. 953 : 17 C. W. N. 1004 :
40 Cal. 854.

—————**S. 173—Right of accused—Right to insist on production of documents by prosecution before case starts.**

Neither S. 173, Cr. P. C., nor the form prescribed by the Local Government, provide that the prosecution should produce along with the *chalan* all the documents to be relied on, in the trial or which have to be produced by the witnesses to be tendered for the prosecution. An accused is consequently not entitled to insist upon the production of any such document before the case starts. He does not run the risk of being hampered in the defence, as the law clearly entitles him to cross-examine the witnesses even after the charge. *K. L. Gauba v. Emperor*.

38 Cr. L. J. 955 :
170 I. C. 586 : 1 I. L. R. 1937 Lah. 114 :
39 P. L. R. 643 : 10 R. L. 135 :
A. I. R. 1937 Lah. 411.

—————**S. 174.**

See Cr. P. C., 1888, Ss. 162, 174, 175.

—————**S. 174—Granting of copies—Accused's right to post mortem certificate and inquest report.**

Statements made to Police during investigation under S. 174, Cr. P. C., even though it is conducted in the presence of two or more respectable men are none-the-less statements under S. 162, Cr. P. C., and the accused is, therefore, not entitled to copies thereof. *In re : Maruthamuthu Kudumban*.

28 Cr. L. J. 463 :
101 I. C. 495 : 25 L. W. 599 : 52 M. L. J. 601 :
1927 M. W. N. 392 : 38 M. L. T. 314 :
50 Mad. 750 :
A. I. R. 1927 Mad. 512.

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—S. 174—*Granting copies—Accused's right to copies, post mortem certificate and inquest report.*

When a Medical Officer is not examined at the beginning of a *post mortem* enquiry, a copy of *post mortem* certificate ought to be given to accused for enabling him to conduct his defence; similarly, he should be given a copy of the inquest report (excluding statements made therein) when the investigating Police Officer is not examined at the beginning of the enquiry. *In re : Marutha muthu Kudumban.*

28 Cr. L. J. 463 :
101 I. C. 495 : 25 L. W. 599 : 52 M. L. J. 601 :
1927 M. W. N. 392 : 38 M. L. T. 314 :
50 Mad. 750 :
A. I. R. 1927 Mad. 512.

—S. 174—*Object of.*

The procedure under S. 174, Cr. P. C., is for the purpose of discovering the cause of death. *Chaman Lal v. Emperor.*

41 Cr. L. J. 639 :
188 I. C. 440 : I. L. R. 1940 Lah. 521 :
13 R. L. 41 : A. I. R. 1940 Lah. 210.

—S. 174—*Scope.*

Report of occurrence by *chaukidar* who is directed to make report after completion of *Panchayatnama*—Procedure being correct under Ss. 34 and 35 framed under S. 75, U. P. Village Panchayat Act, cannot be objected as not being in accordance with S. 174 (4). *Sheo Dina v. Emperor.*

35 Cr. L. J. 464 :
147 I. C. 676 (2) : L. R. 14 All. 179 Cr. :
6 R. A. 532 (2) : A. I. R. 1933 All. 939.

—S. 175.

See Cr. P. C., S. 161.

—S. 175—*Perjury.*

Para. 2 of S. 175, Cr. P. C., refers only to witnesses examined at the actual inquest, and not to witnesses who might be examined long afterwards and the accused, therefore, is not bound to tell the truth before Police : Even if accused has been examined under S. 175, Cr. P. C., and been bound to speak the truth, still he cannot be convicted in the alternative under S. 193, I. P. C. *Rabari Bhura v. Dewait.*

2 Cr. L. J. 590 :
15 K. L. R. 148.

—S. 176.

See Cr. P. C., 1898, S. 4 (1) (k) (m).

—S. 176—*Enquiry—Collector's power to stop inquiry.*

A Collector and District Magistrate has no power either as a Collector or as a District Magistrate to interfere with an inquiry under S. 176 by a Second Class Magistrate, though he may be the superior of the Second Class Magistrate with reference to the Second Class Magistrate's position as a *Mahalkari*. *In re : Laxmi Narayan Timmanna Karki.*

29 Cr. L. J. 1063 :
112 I. C. 567 : 30 Bom. L. R. 1050 :
A. I. R. 1928 Bom. 390.

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—S. 176—*Investigation—Fresh investigation after submission of report, legality of.*

The Police, after submitting a report of an investigation, have power to make any number of further investigations on receipt of further information. *Divakar Singh v. Ramamurthi Naidu.*

19 Cr. L. J. 901 :
47 I. C. 273 : 35 M. L. J. 127 :
A. I. R. 1918 Mad. 751.

—S. 176—*Jurisdiction—Offence committed by British subject in British ship during voyage from Penang to Negapatam—Sessions Court of Negapatam, jurisdiction of, to try charge.*

An offence of murder committed by a British subject while on a British ship on his journey from Penang to Negapatam can be tried by the Sessions Court at Negapatam in view of the provisions of S. 1 of 12 & 13 Vic. Chap. 96, which has been made applicable to India by S. 1 of 23 & 24 Vic. Chap. 88 as well as by S. 686 of the Merchant Shipping Act. *Sengedai Vannan v. Emperor.*

28 Cr. L. J. 543 :
102 I. C. 351 : 1927 M. W. N. 276 :
53 M. L. J. 101 :
38 M. L. T. 361 :
A. I. R. 1927 Mad. 688.

—S. 167—*Proceeding under, if judicial—Revision.*

Proceedings under S. 176 are judicial proceedings and are subject to the revisional powers of the High Court under S. 435 and 439. *In re : Laxminarayan Timmanna Varki.*

29 Cr. L. J. 1063 :
112 I. C. 567 : 30 Bom. L. R. 1050 :
A. I. R. 1928 Bom. 390.

—S. 176—*Scope.*

An inquest under S. 176, Cr. P. C., by another Magistrate not under the orders of the Magistrate before whom the complaint is filed, cannot take the place of an inquiry contemplated by S. 202, Cr. P. C. and it is illegal for a Magistrate to reject a complaint on the basis of a report made in such an inquest. *Surendra Nath v. Police Sergeant.*

33 Cr. L. J. 218 (2) :
135 I. C. 878 : 35 C. W. N. 1032 :
I. R. 1932 Cal. 174 : A. I. R. 1932 Cal. 121.

—S. 177.

—Applicability.
—Application of.
—Construction.
—Jurisdiction.
—Place.
—Place of trial.
—Scope.

—S. 177.

See also (i) Cr. P. C., 1898, S. 556.
(ii) Penal Code, Ss. 177, 179.

—S. 177 (2)—*Applicability.*

S. 177 of Cr. P. C. is applicable to a case of criminal breach of trust which lays down the general law and which again has been repeated in and made a part of the special provisions

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contained in S. 181, Sub-s. (2) of the Code. *Gunananda Dhone v. Sant Prakash Nandy*.

26 Cr. L. J. 725 :
86 I. C. 213 : 41 C. L. J. 80 :
29 C. W. N. 432 : A. I. R. 1925 Cal. 613.

—S. 177—Application of.

Section has no application to proceedings under S. 107. The use of the word "ordinarily" in that section excludes trial of cases specifically provided for in S. 107. *In re : Nagireddy Kondareddy*.

18 Cr. L. J. 878 :
41 I. C. 990 : 31 Mad. 244 :
A. I. R. 1918 Mad. 555.

—S. 177 — Construction — ' Ordinarily ' meaning of.

The word 'ordinarily' in S. 177 of the Cr.P.C. means except in the cases provided herein-after to the contrary. *Emperor v. Goverdhan Riddhwan*.

29 Cr. L. J. 533 :
109 I. C. 357 : 30 Bom. L. R. 38 :
A. I. R. 1928 Bom. 140.

—S. 177—Jurisdiction—Accused charged with conspiracy to abduct formed in U. P.—Allegation of further conspiracy to cheat, at Sukkur—Accused not charged of this—Two conspiracies not alleged to be parts of one transaction—Court at Sukkur, cannot try offence of conspiracy formed outside its jurisdiction.

Five persons were tried by the Sessions Judge of Sukkur of offences under S. 120-B, conspiracy, under S. 366, kidnapping, and S. 420, cheating. It was not alleged in the charge that the conspiracy to abduct and the abduction was made in Sukkur where all the five accused live. The criminal conspiracy was formed, *i. e.* the offence was committed outside the Province of Sind and outside the jurisdiction of the Sukkur court somewhere in the United Provinces. It was also alleged that there was a further conspiracy of cheating entered into at Sukkur but the accused were not charged with this second or further conspiracy at all. It was not the case of the prosecution that the two conspiracies were part of one transaction : *Held*, that upon the facts of the case and the charges as framed S. 177, Cr. P. C., applied and the Court at Sukkur had no jurisdiction to try the offence of conspiracy committed outside its jurisdiction. *Emperor v. Pursumal Gerimal*.

39 Cr. L. J. 630 (b) :
175 I. C. 620 : 10 R. S. 298 :
A. I. R. 1938 Sind 108.

—S. 177—Jurisdiction—Attempt to cheat by despatch of bogus telegrams—Place of trial.

The accused was charged with an offence under Ss. 468/109 and 420/511 of the Penal Code on the allegation that at Coonoor he induced one K to write bogus telegrams and caused those telegrams to be despatched at Tanjore in order to cheat one P. : *Held*, that the actual transaction constituting attempt to cheat did not begin until the telegrams were despatched from Tanjore and that the writing of the telegrams was a mere act of preparation not amounting to an "attempt" and that, therefore, the

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Tanjore Courts had jurisdiction to try the accused. *In re : Raman Chettiar*.

28 Cr. L. J. 95 :
99 I. C. 127 : 51 M. L. J. 635 :
A. I. R. 1927 Mad. 77.

—S. 177—Jurisdiction—Bigamy, offence of—Place of trial.

The offences of bigamy and abetment of bigamy are triable only in the district in which the second marriage or the abetment takes place. *Amir Chand v. Emperor*.

26 Cr. L. J. 525 :
85 I. C. 365 : 6 L. L. J. 422 :
A. I. R. 1924 Lah. 732.

—S. 177—Jurisdiction—Bigamy, where triable.

An offence of bigamy is only triable in a Court which has territorial jurisdiction over the place where the offence was committed. *Bhagwatta v. Emperor*.

26 Cr. L. J. 49 :
83 I. C. 577 : 3 Pat. 417 :
A. I. R. 1925 Pat. 187.

—S. 177 — Jurisdiction — Penal Code S. 417 — Cheating by cheque — Cheque delivered at one place—Letter received at another place—Jurisdiction to try offence—High Court, power, of, to direct, where trial should take place.

Accused, residing and carrying on business at Gaya, gave a cheque to the complainant which was dishonoured by the Bank in Calcutta on presentation. Correspondence then took place between the parties, and the crucial letter which indicated that the complainant had been cheated was received by him at Buxar. He filed a complaint against the accused for cheating at Buxar : *Held*, (1) that the Buxar Courts had jurisdiction to inquire into and try the offence : (2) that the High Court, however, had power to direct that the trial should take place at Buxar or Gaya : (3) that the expedient course was to direct that the accused should be tried at Gaya, where he resided and where the prosecution could have been initiated because trial at Buxar might cause lot of inconvenience to the accused. *Metcalf v. Watson*.

25 Cr. L. J. 81 :
76 I. C. 17 : A. I. R. 1924 Pat. 708.

—S. 177 — Jurisdiction — Complaint—Verification—Duty of Magistrates stated.

When Magistrates verify complaints, they should inquire so far as they can, as to the scene of the offence so as to find out as soon as possible whether the complaint is or not within their jurisdiction and thus save their own time and the time of the District Magistrate and the time of the High Court. *Ismail Abdul Karim v. Emperor*.

38 Cr. L. J. 291 (a) :
166 I. C. 622 : 9 R. S. 148 (1) :
A. I. R. 1937 Sind 31.

—S. 177—Jurisdiction.

Conspiracy entered into at B—Subsequent act of cheating at P—Magistrate at P, has no jurisdiction to try charge of conspiracy. *In re : Dani*.

39 Cr. L. J. 634 (1) :
162 I. C. 504 (a) : 1935 M. W. N. 1163 :
8 R. M. 999 : A. I. R. 1936 Mad. 317.

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———S. 177—*Jurisdiction—Fraudulent removal of property from one District to another—Decree-holder prevented from executing decree in another District—Place of trial.*

The petitioner was accused of fraudulent removal of property in order to defeat the claims of a decree-holder. The offence was committed in Tharrawady District: while as a consequence of the offence, the decree-holder was unable to execute a decree obtained in another District: *Held*, that under S. 177 of Cr. P. C., the offence could only be tried in the Tharrawady District. *Shree Myat v. Subramanian Chetty*.

10 Cr. L. J. 86 :
2 I. C. 546 : 5 L. B. R. 57.

———S. 177—*Jurisdiction.*

In a case of criminal breach of trust if the property which forms the subject-matter of the offence or any part of it was received by the accused at a particular place, the Court having local jurisdiction over the place will have jurisdiction to deal with the offence: so also as to the place where the property or any part of it was retained by the accused. The Court within whose territorial jurisdiction the offence was committed will also have jurisdiction to try it. *Gunananda Dhone v. Sant Parkash Nandy*.

26 Cr. L. J. 725 :
86 I. C. 213 : 41 C. L. J. 80 :
29 C. W. N. 432 : A. I. R. 1925 Cal. 613.

———S. 177—*Jurisdiction—Infringement of copyright.*

The accused were charged with the infringement of copyright, in a book of which the complainant was the author, by printing it for sale at Lahore without his permission: *Held*, that the Lahore Court alone had jurisdiction under S. 177, Cr. P. C., to enquire into and try the offence. *Kali Das v. Karam Chand*.

18 Cr. L. J. 353 :
38 I. C. 737 : 28 P. R. 1916 Cr. :
A. I. R. 1917 Lah. 335.

———S. 177—*Jurisdiction.*

Offence committed within jurisdiction of Howrah Sessions, should be committed to Howrah Sessions and not to the High Court. *Lakhe Sahu v. Emperor*.

33 Cr. L. J. 645 :
138 I. C. 626 : 59 Cal. 856 : 36 C. W. N. 164 :
I. R. 1932 Cal. 479 : A. I. R. 1932 Cal. 487.

———S. 177—*Jurisdiction—Offence committed in British India—Subsequent transfer to Independent State—Place of trial.*

A committed offence within local limits of the Sessions Court at Mirzapur. Subsequently the place where the offence had been committed, was transferred to Native State of Benares. A was British-Indian subject and never ceased to be so. Since the commission of the crime, he resided in British territory: *Held*, that Sessions Court of Mirzapur had jurisdiction to try the offence. The judicial power of every Independent State extends to punishment of all offences against Municipal laws of the State by whomsoever committed within the territory, also to the punishment of all such offences by its subjects wheresoever committed. The

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jurisdiction of mofussil Courts depends upon the offence having been committed within their local limits. *Emperor v. Ganga*.

13 Cr. L. J. 575 :
15 I. C. 991 : 9 A. L. J. 696 : 34 All. 451.

———S. 177—*Jurisdiction—S. 239, whether controlled by S. 177—Abetment outside territorial jurisdiction—Jurisdiction of Magistrate trying principal offence to try abettor.*

Jurisdiction is the foundation of a charge and must be imported or understood as present in all the procedure set out in the Code. Unless a matter comes within the territorial jurisdiction of a Magistrate in the first instance, he cannot avail himself of S. 239, Cr. P. C., and try a person for abetment, with the principal offender, when the abetment took place outside his jurisdiction. *Sachidunadam v. Sommaya Gapala Aiyangar*.

30 Cr. L. J. 116 :
120 I. C. 75 : 57 M. L. J. 518 :
30 L. W. 501 : 1929 M. W. N. 578 :
I. R. 1929 Mad. 1035 : 52 Mad. 991 :
A. I. R. 1929 Mad. 839.

———S. 177—*Jurisdiction—Trial of offences committed outside jurisdiction.*

A Magistrate has no jurisdiction to try charges for offences committed out of his jurisdiction. *Emperor v. Goverdhan Ridhran*.

29 Cr. L. J. 533 :
109 I. C. 357 : 30 Bom. L. R. 38 :
A. I. R. 1928 Bom. 140.

———S. 177—*Jurisdiction—Value-payable parcel sent from Madras to Hyderabad—Payment of money and delivery of parcel at Hyderabad—Parcel not containing goods—Cheating offence, where committed—Delivery, whether complete at Hyderabad.*

The accused sent from Madras a value-payable parcel to the complainant at Hyderabad on complainant's order for tea. The complainant paid amount, took delivery of parcel which was found to contain only saw-dust. In a trial on a charge of cheating preferred by the complainant against the accused in Madras: *Held*, that the deceit and the delivery of the parcel in consequence of the deceit were complete when the money was handed over to the Post Office at Hyderabad, and the subsequent delivery by the Post Office to the accused at Madras was not a necessary ingredient of the offence, and the offence having been committed wholly at Hyderabad, the Madras Court had no jurisdiction to try the offence. *Kaleek v. Emperor*.

28 Cr. L. J. 452 (b) :
101 I. C. 484 : 1927 M. W. N. 221 :
52 M. L. J. 511 :
A. I. R. 1927 Mad. 544.

———Ss. 177, 179—*Jurisdiction—Offence committed at one place, discovery of, at another—Trial—Jurisdiction—Penal Code (Act XLV of 1860), Ss. 420, 265.*

The complainant was induced to part with his money at Meerut on false representation that a certain barrel contained a certain amount of spirit. At Agra it was discovered that the barrel did not contain the amount of spirit: *Held*, that the Magistrate at Agra had no jurisdiction to try the accused under

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Ss. 420 and 265 of the Penal Code, inasmuch as the discovery of the alleged fraud at Agra after the goods were delivered, could not be said to be a consequence which has ensued, within the meaning of S. 179, Cr. P. C. *Prag Das Bhargava v. Daulat Ram*.

16 Cr. L. J. 825 :
31 I. C. 1001 : 13 A. L. J. 1067 :
A. I. R. 1915 All. 428.

———Ss. 177, 213—*Jurisdiction—Magistrate taking cognizance of offence committed within his jurisdiction and committing accused—Locality of offence subsequently transferred to other District—Commitment, if rendered invalid.*

Where a Magistrate takes cognizance of an offence committed within his territorial jurisdiction and commits the accused to Sessions after enquiry, the fact that the locality in which the offence was committed is subsequently transferred to another district, does not oust the jurisdiction of the Magistrate, and render the commitment invalid and the Sessions Judge also is not deprived of the jurisdiction to dispose of the case. *Emperor v. Sayiruddin Pramanik*.

40 Cr. L. J. 270 :
179 I. C. 805 : I. L. R. 1938 2 Cal. 357 :
11 R. C. 618 : A. I. R. 1939 Cal. 159.

———S. 177—*Place—Offence of criminal breach of trust.*

The place where the offence of criminal breach of trust is committed is where there has been misappropriation or conversion or user or disposal of the property or where the accused wilfully suffers any other person to use or dispose of the property. *Gunananda Dhona v. Sant Prakash Nandy*.

26 Cr. L. J. 725 :
86 I. C. 213 : 41 C. L. J. 80 :
29 C. W. N. 432 : A. I. R. 1925 Cal. 613.

———S. 177—*Attempt to cheat.*

Accused were charged with attempting to cheat the Currency Officer of Bombay by claiming payment of halves of certain Currency Notes : the declaration in support of the claim was signed and posted in Calcutta, and the question was as to the Court in which the accused should be tried : *Held*, that the offence was committed at Calcutta where the trial should take place. *In re: Amulya Charan Dutt*.

25 Cr. L. J. 184 :
76 I. C. 424 : A. I. R. 1923 Cal. 401.

———S. 177—*Place of trial, error regarding.*

Where an offence is inquired into and tried by a Court within whose local jurisdiction it has not been committed, the error is only an irregularity curable under S. 537, Cr. P. C., unless it has occasioned a failure of justice. *Mohamad Hayat Mulla v. Emperor*.

30 Cr. L. J. 1166 :
120 I. C. 225 : 7 Rang. 370 :
I. R. 1930 Rang. 17 : A. I. R. 1930 Rang. 77.

———S. 177—*Place of trial—Kidnapping at one place—Abetment of rape at another place—Trial on both charges at former place, legality of.*

The accused was charged with having kidnapped a girl at Bombay and with having

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abetted the committing of rape on her at Ahmedabad and was committed for trial on both the charges to the Bombay High Court : *Held*, that the accused could not be tried for the second charge at Bombay. *Emperor v. Mohanlal Aditram*.

30 Cr. L. J. 191 :
113 I. C. 617 : 30 Bom. L. R. 1253 :
I. R. 1929 Bom. 185 : A. I. R. 1928 Bom. 475.

———S. 177—*Place of trial—Offence of criminal misappropriation.*

An offence under S. 406, I. P. C. can be tried only at the place where the money was received and misappropriated by the accused. *Maitra v. Kamini Mohan Bose*.

25 Cr. L. J. 377 :
77 I. C. 425 : A. I. R. 1925 Cal. 107.

———S. 177—*Scope—Trial in wrong Court—Conviction, when can be set aside.*

S. 177, Cr. P. C. only provides for the ordinary place of inquiry and trial and may be read along with S. 531, the result being that a conviction cannot be set aside merely because the trial has taken place in a wrong district but the party aggrieved is entitled to have the conviction set aside if he shows that "such error has in fact occasioned a failure to justice." *Acharaja Singh v. Emperor*.

163 I. C. 518 :
2 B. R. 629 : 9 R. P. 22 :
15 Pat. 418 : 17 P. L. T. 543 :
A. I. R. 1936 Pat. 410.

———S. 179.

———Any consequence which has ensued, meaning of.

———Applicability.

———'Consequence', meaning of.

———Criterion or Residence.

———Jurisdiction.

———Scope.

———S. 179.

See also (i) Cr. P. C., 1898, S. 177.
(ii) Penal Code, 1860, Ss. 290, 406, 409.

———S. 179—*'Any consequence which has ensued', meaning of.*

The words "any consequence which has ensued," in S. 179, Cr. P. C. means a consequence which must be one of the facts to be proved to establish the offence. They do not include remote consequence arising from, and following on, the offence having been previously committed, and not forming an integral part of the offence. *Shwe Myat v. Subramania Chetty*.

10 Cr. L. J. 86 :
2 I. C. 546 : 5 L. B. R. 57.

———S. 179—*Applicability.*

According to the ordinary canons of construction, a special provision should ordinarily receive effect unqualified by the general. S. 179 of the Cr. P. C. can only be applied where the consequence necessary to constitute the offence ensues in some place other than that in which the accused's act is done. *Krishnamachary v. Shaw Wallace & Co.*

16 Cr. L. J. 491 :
29 I. C. 331 : 18 M. L. T. 25 :
1915 M. W. N. 419 : 29 M. L. J. 178.
A. I. R. 1916 Mad. 438.

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—S. 179—Applicability.

Before S. 179 can be invoked, it is necessary to show that "the consequence which has ensued" is an essential ingredient of the offence. *Gokaldas Amarsee v. Emperor*.

35 Cr. L. J. 585 :
148 I. C. 135 (2) : 27 S. L. R. 392 :
6 R. S. 180 : A. I. R. 1933 Sind 333.

—S. 179—Applicability.

Criminal breach of trust does not imply as its ingredient, the consequential loss. The act itself amounts to the offence. S. 179 of the Cr. P. C. has no application to a case of criminal breach of trust. *Gunananda Dhona v. Sant Prakash Nandy*.

26 Cr. L. J. 725 :
86 I. C. 213 : 41 C. L. J. 80 :
29 C. W. N. 432 : A. I. R. 1925 Cal. 613.

—S. 179—Applicability—Criminal breach of trust—Jurisdiction of Court where property was handed over—S. 179, applicability of.

A motor lorry belonging to the accused's company which had its office at Delhi was delivered to the complainant at Meerut and the complainant handed over a cheque to the accused's servant for a sum to cover the price of the chassis and insurance of chassis as well as the body. The cheque was drawn on the Dehra Dun Branch of the Imperial Bank and was cashed at Delhi. The lorry happened to be burned and it was discovered that the accused had not insured the body. The complainant sued the accused under S. 408, Penal Code at Meerut : *Held*, that both under S. 179 and S. 181 (2) of the Cr. P. C., the Court at Meerut had jurisdiction to take cognizance of the offence. The provisions of S. 179, Cr. P. C. are not inapplicable to a case of criminal breach of trust merely because there are certain other provisions in S. 181 (2) which would apply to such offences. *Rich v. Emperor*. (S. F.)

31 Cr. L. J. 865 :
125 I. C. 589 : 1930 A. L. J. 849 :
A. I. R. 1930 All. 449.

—S. 179—Applicability—Criminal Breach of Trust, offence of.

S. 179, Cr. P. C. has no application to the offence of criminal breach of trust. *S. Huda v. Ali Hussain M. Iqbal*.

41 Cr. L. J. 812 :
189 I. C. 876 : 13 R. C. 128 :
A. I. R. 1940 Cal. 367.

—S. 179—Applicability—Offence committed outside British India—Certificate from the Political Agent—Grievous hurt.

The accused assaulted and broke the complainant's leg within the Baroda territory. He was brought into a hospital within the British territory where he was detained for 57 days, during which period, he was unable to follow his ordinary pursuits. He filed a complaint for grievous hurt in a British Court. The Magistrate sought to obtain the certificate from the Political Agent at Baroda, as required by S. 188 of the Cr. P. C. On his failing to obtain it, he ordered the papers in the case to be filed under S. 203 of the Cr. P. C. The complainant thereupon applied to the High Court contending that the Magistrate ought to have proceeded with the

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trial under S. 179 of the Code : *Held*, that the S. 179 of the Cr. P. C. did not apply, since the injury that was done, viz., the fracture of the leg, was complete within the Baroda territory. *Sirdar Meru v. Jethabhai*.

4 Cr. L. J. 54 :
8 Bom. L. R. 513.

—S. 179—Applicability of—Offences contemplated.

Offences contemplated in S. 179, Cr. P. C. are those which are not complete till a specified consequence has ensued. The consequence must be an essential ingredient of the offence and it must arise within the jurisdiction of the Court trying the offence. *Draan Singh Mastoon v. Emperor*.

37 Cr. L. J. 474 (2) :
161 I. C. 635 : 8 R. N. 219 :
A. I. R. 1936 Nag. 55.

—S. 179—Applicability—Offence of fraudulent removal of property—Place of trial.

Petitioner was accused of fraudulent removal of property in order to defeat the claims of a decree-holder. The offence was committed in Tharrawady District, while as a consequence of the offence, the decree-holder was unable to execute a decree obtained in another District : *Held*, that S. 179, Cr. P. C., was inapplicable to the case. *Shwe Myat v. Subramanian Chetty*.

10 Cr. L. J. 86 :
12 I. C. 546 : 5 L. Bur. R. 57.

—S. 179—Applicability.

S. 179 applies not only where the offence is completed by reason of a consequence ensuing within the local limits of another jurisdiction but also where the fact of a consequence ensuing in another jurisdiction is the cause of the offender's charge. *Ishar Das v. Emperor*.

8 Cr. L. J. 75 :
3 P. W. R. Cr. 37.

—S. 179—Applicability.

S. 179, Cr. P. C., applies only to a case where a person is charged with an offence not only by reason of some act committed by him, but also by reason of some consequence which has ensued from the act. In the absence of any one of these two ingredients, the section would be wholly inapplicable. If the consequence is such that even if it had not taken place, the offence would have been complete, S. 179 would have no application. *Mohammad Abdul Latif v. Ahmad Abdul Halim*.

40 Cr. L. J. 128 :
178 I. C. 713 : 1938 A. L. J. 969 :
11 R. A. 325 : 1938 A. W. R. 686 :
A. I. R. 1938 All. 632.

—S. 179—Applicability.

S. 179, Cr. P. C. does not apply to a trial for criminal misappropriation as the offence does not depend on an act done and the consequences ensuing therefrom but only on the act which has been done. *Simachalam v. Rati Kanta Laha*.

18 Cr. L. J. 762 :
41 I. C. 138 : 21 C. W. N. 573 :
25 C. L. J. 456 : 44 Cal. 912 :
A. I. R. 1917 Cal. 381.

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S. 179 of the Cr. P. C. does not apply to questions of the jurisdiction of Courts to try offences of criminal breach of trust. *Dina Nath v. Tulsi Ram.*

26 Cr. L. J. 136 :
83 I. C. 696 : 6 L. L. J. 471 :
A. I. R. 1925 Lah. 171.

———S. 179—*Applicability.*

S. 179 has no application to offences committed under S. 408, Penal Code. *Ali Mohammad Kassim v. Emperor.*

32 Cr. L. J. 1120 :
134 I. C. 209 : 9 Rang. 338 :
I. R. 1931 Rang. 273 :
A. I. R. 1931 Rang. 164.

———S. 179—*Applicability.*

The consequence must be a necessary ingredient of the offence in order that S. 179 may apply. *Kashi Ram v. Emperor.* (F. B.)

35 Cr. L. J. 982 :
149 I. C. 420 : 1934 A. L. J. 308 :
L. R. 15 All. 68 (Cr.) : 6 R. A. 902 :
3 A. W. R. 506 : A. I. R. 1934 All. 499.

———S. 179—*Applicability.*

The jurisdiction of a Court to try an offence of criminal misappropriation or criminal breach of trust is governed by S. 181 (2) and not by S. 179, Cr. P. C. *Mahatab Din v. Emperor.*

25 Cr. L. J. 410 :
77 I. C. 490 : A. I. R. 1924 Lah. 663.

———S. 179—‘*Consequence*,’ meaning of.

Semble :—The word “consequence” in S. 179, Cr. P. C. means a consequence which forms a part and parcel of the offence and not a consequence which is not a direct result of offender’s act as to form part of that offence. *Nadar v. Emperor.*

24 Cr. L. J. 579 :
73 I. C. 323 : A. I. R. 1923 Lah. 487.

———S. 179—‘*Consequence*,’ meaning of.

The word ‘consequence’ in S. 179, Cr. P. C., must be given its ordinary grammatical meaning, so that if any consequence ensues which is not a necessary ingredient of an offence, the Court, in the jurisdiction of which that consequence ensues, has jurisdiction. The ordinary grammatical meaning of the word “consequence,” construing S. 179, Cr. P. C., as a whole, is a consequence which is a necessary ingredient of an offence. *Mukhi Tirathdas v. Jethanand Matvalomal.* (F. B.)

38 Cr. L. J. 512 :
168 I. C. 89 : 9 R. Sind 222 :
31 S. L. R. 123 : A. I. R. 1937 Sind 68.

———S. 179—‘*Consequence*,’ meaning of.

The word ‘consequence’ in S. 179 of the Cr. P. C., bears its ordinary grammatical meaning and is not to be restricted to a consequence which is a necessary ingredient of the offence. *Emperor v. Gafur Karimbux Pathan.*

31 Cr. L. J. 1155 :
127 I. C. 177 : 32 Bom. L. R. 785 :
A. I. R. 1930 Bom. 358.

———S. 179—“*Consequence*,” meaning of.

The word “consequence” in S. 179 of the

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Cr. P. C. means a consequence which forms a part and parcel of the offence. It does not mean a consequence which is not such a direct result of the act of the offenders as to form no part of that offence. *Ganesh Lal v. Nand Kishore.*

13 Cr. L. J. 479 :
15 I. C. 319 : 10 A. L. J. 45 : 34 All. 487.

———S. 179—“*Consequence*”, meaning of.

The word “consequence” which has ensued” in S. 179 of the Cr. P. C. must be given their wide grammatical meaning ; they are not restricted in their meaning to a consequence which is essential of the offence. *Gobind Singh v. Emperor.*

30 Cr. L. J. 249 :
114 I. C. 99 : I. R. 1929 Sind 51 :
22 S. L. R. 404 : A. I. R. 1929 Sind 30.

———S. 179—*Criterion of residence.*

The criterion of the residence of the person who suffers wrongful loss is not a correct criterion. *Jagannath v. Emperor.*

35 Cr. L. J. 934 :
149 I. C. 402 : 6 R. A. 901 :
3 A. W. R. 494 : A. I. R. 1934 All. 127.

———S. 179—*Jurisdiction.*

Accused giving bogus cheque to complainant at M on a Bank at C—Complainant presenting for payment to Bank at F—Cheque dishonoured—Court at F can inquire into offence. *Madho Surendra Sahai v. Gobardhan Lal.*

34 Cr. L. J. 785 :
144 I. C. 566 : 1933 Oudh 216 :
10 O. W. N. 239 : 8 Luck. 881 :
I. R. 1933 Oudh 263.

———S. 179—*Jurisdiction—Bigamy, offence of—Jurisdiction of Court where husband resides.*

Where the husband of a woman who remarries resides at one place while the offence of bigamy and adultery is committed at another, the Court at the place where the husband resides has jurisdiction to try the case. *Munir v. Emperor.*

27 Cr. L. J. 101 :
91 I. C. 533 : L. R. 6 All. 209 Cr. :
A. L. J. 155 : A. I. R. 1926 All. 189.

———S. 179—*Jurisdiction—Bigamy, where triable.*

An offence of bigamy is only triable in a Court which has territorial jurisdiction over the place where the offence was committed. *Bhagwatia v. Emperor.*

26 Cr. L. J. 49 :
83 I. C. 577 : 3 Pat. 417 :
A. I. R. 1925 Pat. 187.

———S. 179—*Jurisdiction—Cheating by sending fraudulent value-payable article, through Post Office—Place of trial.*

The accused posted fraudulent value-payable articles at Panvel to persons residing in Poona, Sialkot and Hissar. The addressee in each case paid the amount to the Post Office, and in two cases, the amounts were in due course paid by the Post Office to the accused at Panvel. The accused was charged before the Magistrate of Panvel with cheating under S. 420, Penal Code. Held, that under S. 179, the Magistrate of

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Panvel had jurisdiction to try all the cases. *Emperor v. Gafur Karimbux*.

31 Cr. L. J. 1155 :
127 I. C. 177 : 32 Bom. L. R. 785 :
A. I. R. 1930 Bom. 358.

—S. 179—Jurisdiction—Cheating—Deceit—Court within whose jurisdiction complainant deceived.

A trader of Salem in the Madras Presidency, deceived a trader in Dhulia in Bombay Presidency by leading him to believe that he was buying clean ground-nut oil when, in reality, he was buying a mixture of ground-nut oil with rock oil. The Dhulia trader was induced by the deceit to pay the price agreed upon : *Held*, that the complainant was deceived in Dhulia and the Courts at Dhulia had jurisdiction to hear the case. *Jamna Das Vasanji v. Emperor*.

16 Cr. L. J. 433 :
29 I. C. 65 : 17 Bom. L. R. 389 :
A. I. R. 1915 Bom. 46.

—S. 179—Jurisdiction—Cheating—Place of trial.

Cheating by sending insured cover without money—Court where the cover was received has jurisdiction to entertain complaint. *Narain Das v. Prem Chand*.

32 Cr. L. J. 996 :
132 I. C. 864 : 32 P. L. R. 6 :
I. R. 1931 Lah. 704.

—S. 179—Jurisdiction—Complaint for cheating in Court at A—Accused arrested at B, on issue of summons—Complaint dismissed and accused acquitted—Accused lodging complaint for defamation in Court at B—Court at B, if can try it.

A complaint was filed against a person for cheating in a Court at A. On an issue of summons for arrest, the accused was arrested at B. On the dismissal of the complaint and his acquittal, the accused lodged a complaint for defamation against his complainant in Court at B : *Held*, that the Court at B had no jurisdiction to try the offence of defamation it being complete as soon as the complaint of cheating was lodged in Court at A. The arrest at B was not such a consequence as is contemplated by S. 179, Cr. P. C. *Mohammad Abdul Latif v. Ahmad Abdul Halim*.

40 Cr. L. J. 128 :
178 I. C. 713 : 1938 A. L. J. 969 :
11 R. A. 325 : 1938 A. W. N. 686 :
A. I. R. 1938 All. 632.

—S. 179—Jurisdiction.

Contract between accused and partner of firm at one place—Firm situated in another place—Offence of cheating ensuing—Court where firm is situated, can entertain complaint *Emperor v. Atma Ram*.

36 Cr. L. J. 490 :
154 I. C. 315 : 7 R. A. 734 :
A. I. R. 1934 All. 846.

—S. 179—Jurisdiction—Criminal breach of trust by agent—Trial where principal resides and agent has to render account, legality of.

A charge of criminal breach of trust against an agent can be tried by the Court within

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whose jurisdiction the principal resides and the agent has to render account. It is not necessary to have the accused tried by the Court within whose jurisdiction the property misappropriated was actually received or retained by the agent. *Gobind Singh v. Emperor*.

30 Cr. L. J. 249 :
114 I. C. 99 : I. R. 1929 Sind 51 :
22 S. L. R. 404 :
A. I. R. 1929 Sind 30.

—S. 179—Jurisdiction—Criminal breach of trust—Cheating—Place of trial.

The complainant ordered and received a consignment of matches from a firm at Calcutta and found the consignment so seriously damaged as not to be marketable. But he had already sent in advance currency notes by registered cover from the Moradabad Post Office. The complainant filed a complaint at Moradabad, charging the accused with criminal breach of trust and cheating : *Held*, that the criminal breach of trust, if committed at all, was committed in Calcutta but the entire offence of cheating, if committed at all, was completed at Moradabad. *Yusuf Ali v. Wahajuddin*.

15 Cr. L. J. 719 :
26 I. C. 167 : 12 A. L. J. 1022 :
A. I. R. 1914 All. 373.

—S. 179—Jurisdiction—Criminal breach of trust committed at the Branch Office of a firm—Court at the Head Office of the firm—Jurisdiction of.

If an offence under S. 408, Penal Code, is committed in a branch of a firm, the Court at the Head Office of the firm has no jurisdiction to try it. *Ganesh Lal v. Nand Kishore*.

13 Cr. L. J. 479 :
15 I. C. 319 : 10 A. L. J. 45 :
34 All. 487.

—S. 179—Jurisdiction—Criminal breach of trust—Place of trial.

Accused, carrying on business at Calcutta, indented for certain goods through complainant, a commission agent carrying on business at Delhi. The goods were to be delivered at Calcutta but payment was to be made at Delhi. When the goods arrived, accused was allowed to take delivery of them on condition that he would hold them in trust till they were paid for. He disposed of the goods before paying for them. Complainant, thereupon, filed a complaint against the accused under S. 406, I. P. C. at Delhi : *Held*, that the alleged offence, whether criminal breach of trust or cheating, being committed at Calcutta, the Delhi Courts had no jurisdiction to entertain the complaint. *Abdul Haq v. Emperor*.

23 Cr. L. J. 735 :
69 I. C. 631.

—S. 179—Jurisdiction—Criminal breach of trust—Place of trial.

The loss resulting from criminal breach of trust is a consequence which completes the offence. The Court within whose jurisdic-

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tion such loss accrues, can try the offence.
George Langridge v. Grace Atkins.

13 Cr. L. J. 856 :
17 I. C. 792 : 35 All. 29 :
10 A. L. J. 431.

———S. 179—*Jurisdiction—Criminal misappropriation—Offence committed in Native State—Loss occasioned in British India—Place of trial.*

Where, an offence under S. 406 of the Penal Code is committed in a Native State but as a consequence of the offence money is taken out of the pocket of a British subject in British territory, the offence must be said to have been committed both in the Native State and in British India where the loss is occasioned and can be tried at either place. *Mohammad Rashid Khan Arzoo v. Emperor.*

27 Cr. L. J. 992 :
96 I. C. 656 : L. R. 7 All. 114 Cr. :
A. I. R. 1926 All. 466.

———S. 179—*Jurisdiction—Defamatory letter—Place of trial.*

Where a defamatory letter is posted at one place in order that it may be read at another, the offence of defamation is triable under Ss. 179 and 182 of the Cr. P. C., either at the place where it was posted or where it was intended to be read. *Kishnamurthy Aiyar v. Parsurama.*

24 Cr. L. J. 309 :
72 I. C. 69 : 32 M. L. T. 164 :
44 M. L. J. 648 :
A. I. R. 1923 Mad. 666.

———S. 179—*Jurisdiction.*

Drafts induced by accused to be issued by false pretences at S—Drafts negotiated—money received by accused—Drafts honoured in due course at K—Court at K held not to have jurisdiction to try the case. *Gobindram Dowlatram v. Emperor.*

32 Cr. L. J. 924 :
132 I. C. 477 : I. R. 1931 Sind 93 :
A. I. R. 1931 Sind 94.

———S. 179 — *Jurisdiction — Fabrication of accounts—Breach of trust and misappropriation—Place of trial.*

An offence under S. 477-A can be tried otherwise than at the place where the accounts were fabricated. *Swaminathan Chettiar v. Annamalai Chettiar.*

9 Cr. L. J. 92 :
1 I. C. 796 : 4 M. L. T. 481.

———S. 179—*Jurisdiction.*

False verification in income-tax return, complaint of—*Forum*, proper. See Income Tax Act, 1918, S. 40.

———S. 179—*Jurisdiction—Fraudulent realization of money on hundis.*

Where a complaint was made before a Magistrate at Aligarh, stating that the accused had dishonestly and fraudulently, two days after had become an insolvent, realized at Calcutta the moneys due in respect of certain hundis purchased by complainant: Held, on an application under S. 185, Cr. P. C. that the offence alleged

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should be inquired into at Calcutta and not at Aligarh. *Babu Lal v. Ghansham Das.*

7 Cr. L. J. 394 :
28 A. W. N. 115 : 5 A. L. J. 333.

———S. 179—*Jurisdiction—Hundis sent for encashment to Bombay from Dharapuram in Erode—Receipt of hundi and misappropriation of proceeds in Bombay—Petitioner, resident of Bombay—Place of trial.*

Where the petitioners who were brokers residing and carrying on business in the Bombay Presidency, were charged with having committed criminal breach of trust before the Sub-Divisional Magistrate of Erode in respect of the proceeds of certain hundis entrusted to them for encashment by the complainants, merchants of Dharapuram in Erode, and the Hundis were received and cashed by the petitioners in Bombay and the sale-proceeds retained and misappropriated there: Held, that the Sub-Divisional Magistrate of Erode had no jurisdiction to try the case and S. 179 o. the Cr. P. C. did not give him jurisdiction. *In re : Rambilas.*

15 Cr. L. J. 688 :
26 I. C. 136 : 15 M. L. T. 505 :
1914 M. W. N. 894 :
A. I. R. 1915 Mad. 600.

———S. 179—*Jurisdiction—Jurisdiction of Criminal Court—Misappropriation by servant—Money collected in one district—Shop in another district—Place of trial.*

M. owned a cloth shop at Mirzapur. S. was employed as a servant of the shop and his duty was to collect money due to his master and deposit it in the shop at Mirzapur; he was sent to two villages in the Allahabad District to collect money, which he did collect, but misappropriated, M. instituted proceedings against S. at Mirzapur, and the question was whether the Court at Mirzapur had jurisdiction to entertain the complaint: Held, that as S. had to account to his master at Mirzapur, the Courts there had jurisdiction. *Sheo Shankar v. Mohan Sarup.*

22 Cr. L. J. 308 :
60 I. C. 996 : 19 A. L. J. 69 :
A. I. R. 1921 All. 12.

———S. 179—*Jurisdiction—Money agreed to be sent to S—Dishonestly misappropriated at L—Jurisdiction, to try offence.*

If money is to be sent to Sukkur which is dishonestly misappropriated or converted or used or disposed of within the meaning of S. 405, Penal Code, at Lucknow and is not sent to Sukkur, it cannot be said that it was mis-appropriated or converted or used or disposed of at Sukkur, nor does S. 43, Penal Code, make any difference to the case. It may be said that the failure to send it to Sukkur is evidence of dishonest misappropriation or conversion or user or disposal at Lucknow, but a jurisdiction is not to be determined by the place where evidence is to be found but by the place where the offence is committed: Jurisdiction, so far as the offence of criminal breach of trust is concerned, is quite clearly and specifically provided for in S. 181 (2), Cr. P. C. and not by S. 179. The Sukkur Court in this case has, therefore, no jurisdiction to try the offence.

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Mukhi Tirathdas v. Jethanand Matvalomal (F. B.) 38 Cr. L. J. 512 :
168 I. C. 89 : 9 R. S. 222 :
31 S. L. R. 123 : A. I. R. 1937 Sind 68.

—S. 179—Jurisdiction of British Courts.

All the sections in Chap. XV are to be read subject to the general rule that an act committed on land outside British territory by a foreigner not being a servant of the King is not an offence triable by the British Courts. *Gokaldas Amarsee v. Emperor*.

35 Cr. L. J. 585 :
148 I. C. 135 (2) : 27 S. L. R. 392 :
6 R. S. 180 : A. I. R. 1933 Sind 333.

—S. 179—Jurisdiction—Offence of criminal misappropriation—Place of trial.

Criminal breach of trust is not an offence which counts as one of its factors the loss, which is the usual consequence of the act and, therefore, the jurisdiction to try an offence of criminal misappropriation or criminal breach of trust is governed by S. 181, Sub-s. (2) and not by S. 179. Unless the offence of which the person is accused is an offence not only by reason of something which he has done, but also of some consequence which has ensued. S. 179 has no application. *In re : Jivandas Sauchand*. 32 Cr. L. J. 331 :

129 I. C. 385 : 32 Bom. L. R. 1195 :
55 Bom. 59 : I. R. 1931 Bom. 161 :
A. I. R. 1930 Bom. 490.

—Ss. 179—Jurisdiction.

On 2nd October 1905, one D. of Lahore presented a forged draft of Rs. 10,000 and got it cashed at the Bombay Office of the Mercantile Bank of India having no Branch in the Punjab. On 26th October 1905, one I of Amsitsar presented another forged draft for Rs. 7,000 and got it cashed with the help of D. at the Multan Branch of the Punjab National Bank. Both these drafts purported to be signed by M. as Manager of, and to have been issued by the Amritsar Branch of the said Punjab National Bank, which has no Branch at Bombay having the Head Office at Lahore. It was not proved by whom and where the drafts and advices were forged or, as alleged by the prosecution, the forms on which these were written were stolen from the Head Office of the Punjab National Bank. Both the accused D. and I, were jointly tried by a Magistrate of Lahore. As regards the Multan fraud, the Magistrate convicted I. under Ss. 379-109, 420 and 467, and D. under Ss. 379-109, 420-109 and 467-109, Penal Code. As regards Bombay fraud, D's convictions were under Ss. 411, 467-109 and 420, Penal Code. On appeal to the Chief Court, Punjab, conviction of D. was only upheld under S. 420, Penal Code, as regards Bombay case, and under Ss. 420-109, as regards the Multan case. The conviction of I. also was only confirmed under S. 420, Penal Code. It was contended that the trial was bad as the Magistrate at Lahore had no jurisdiction and there was misjoinder of charges and accused : *Held*, that under S. 179 of Cr. P. C., the Lahore Court had jurisdiction as loss to the Bank ensued at Lahore where the Head Office

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of the Punjab National Bank is situate. The loss occurs at the place where the accounts of the Bank are made up and its business as a Company is transacted. *Ishar Das v. Emperor*. 8 Cr. L. J. 75 :
3 P. W. R. Cr. 37.

—S. 179—Jurisdiction.

Where accused were employed to look after a business in C and their only connection with J was to render annual accounts : *Held*, that Court at J had no jurisdiction to try complaint for offence under S. 408, Penal Code. *Jagannath v. Emperor*. 35 Cr. L. J. 934 :

149 I. C. 402 : 6 R. A. 90 :
3 A. W. R. 494 : A. I. R. 1934 All. 127.

—S. 179, 181 (2)—Jurisdiction—Place of trial.

Accused was charged with misappropriation of money. He received the money on behalf of his master at Raniganj, and deposited in his master's name with a firm at Barh ; he withdrew it from this firm and failed to account for it. The complaint was filed in the Court of the City Magistrate of Patna, who dismissed it on the ground that the case was of a civil nature for the adjustments of accounts : *Held*, (1) that the facts alleged did not necessarily involve an adjustment of accounts, and the complaint should not have been dismissed on that ground alone ; (2) that the offence was complete when the accused received or retained the money for misappropriating it or converting it to his own use, and as he received the money at Barh, the City Magistrate of Patna had no jurisdiction to entertain the complaint. *Gowkaran Lal v. Sarju Saw*.

21 Cr. L. J. 519 :
56 I. C. 775 : 1 P. L. T. 200 :
1921 Pat. 31 : 3 U. P. L. R. Pat. 9 :
A. I. R. 1921 Pat. 85.

—S. 179—Scope—Cheating—'Consequence', what is.

The complainant was induced to part with his money at Meerut on false representation that a certain barrel contained a certain amount of spirit. At Agra it was discovered that the barrel did not contain the amount of spirit : *Held*, that the discovery at Agra of the alleged fraud after the goods were delivered could not be said to be a 'consequence which has ensued' within the meaning of S. 179 of Cr. P. C. *Prag Das Bhargava v. Daulat Ram*.

16 Cr. L. J. 825 :
31 I. C. 1001 : 13 A. L. J. 1067 :
A. I. R. 1915 All. 428.

—S. 179—Scope.

S. 179, Cr. P. C., is controlled by S. 181 in respect of offences mentioned in the latter section. *Girdhar Das v. Emperor*.

24 Cr. L. J. 929 :
75 I. C. 353 : 21 A. L. J. 621 :
A. I. R. 1924 All. 77.

—S. 179—Scope.

S. 181 (2) does not, in any way, modify the

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provisions of S. 179 of the Code. *Mohammad Rashid Khan Arzoo v. Emperor.*

27 Cr. L. J. 992 :
96 I. C. 656 : L. R. 7 All. 114 Cr. :
A. I. R. 1926 All. 466.

————S. 179—Scope.

The Illustration to S. 179, Cr. P. C. is not exhaustive and to hold that all the consequences prescribed by the Legislature in framing the section as conferring jurisdiction are *ejusdem generis* with the consequences specified in the illustration is not justified by the language of the section. *Ishar Das v. Emperor.*

8 Cr. L. J. 75 :
3 P. W. R. Cr. 37.

————S. 179—Scope of—"Consequence," meaning of.

Though loss to the complainant is the normal result of criminal misappropriation or criminal breach of trust, it is not an ingredient of those offences and cannot, therefore, be described as a "consequence", within the meaning of S. 179, Cr. P. C. *Mahlab Din v. Emperor.*

25 Cr. L. J. 410 :
77 I. C. 490 :
A. I. R. 1924 Lah. 663.

————Ss. 179, 181—Scope of.

S. 179, Cr. P. C., neither controls nor is controlled by S. 181. These sections have a cumulative effect and are not mutually exclusive in the sense that if one section applies, the other can never possibly apply. *Kashi Ram v. Emperor.* (F. B.)

35 Cr. L. J. 982 :
149 I. C. 420 : 1934 A. L. J. 308 :
L. R. 15 All. 68 Cr. :
6 R. A. 902 : 3 A. W. R. 506 :
A. I. R. 1934 All. 499.

————S. 180—Application of.

See Jurisdiction.

————S. 180—Continuing offence—Abduction.

Abduction is a continuing offence. Accused can be tried in any Court within whose jurisdiction offence takes place. *Nanhua Dhimar v. Emperor.*

32 Cr. L. J. 690 :
131 I. C. 246 : 1930 A. L. J. 1485 :
L. R. 12 All. 18 Cr. : 53 All. 140 :
I. R. 1931 All. 358 : A. I. R. 1931 All. 55.

————S. 180—Continuing offence—Abduction.

Abduction is a continuing offence and when it continues to be committed in more local areas than one, it may be enquired into or tried by a court having jurisdiction over any of such local areas. *Emperor v. Parag.*

34 Cr. L. J. 220 :
141 I. C. 741 : 9 O. W. N. 1181 :
I. R. 1933 Oudh 77 : A. I. R. 1933 Oudh 45.

————Ss. 180, 182—Continuing offence—Kidnapping, offence of.

Offence of kidnapping from lawful guardianship is not a continuing offence. *Nanhua Dhimar v. Emperor.*

32 Cr. L. J. 690 :
131 I. C. 246 : 1930 A. L. J. 1485 :
L. R. 12 All. 18 Cr. : 53 All. 140 :
I. R. 1931 All. 358 : A. I. R. 1931 All. 55.

————S. 180—Jurisdiction—Conspiracy and attempt to murder—Place of trial.

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Where a conspiracy to murder a person is entered into in one district and an attempt to murder according to conspiracy is made in another district, the Courts in both districts have, under S. 180 of the Cr. P. C., jurisdiction to enquire into and try the case. *Gurdit Singh v. Emperor.*

18 Cr. L. J. 514 :
39 I. C. 482 : 1 P. W. R. 1917 Cr. :
24 P. R. 1917 Cr. : 74 P. L. R. 1917 :
A. I. R. 1917 Lah. 237.

————S. 180—Scope—Abetment of bigamy—Place of trial.

Persons accused of abetting the commission of bigamy are only triable by the Court within whose territorial jurisdiction the abetment takes place. *Bhagwatia v. Emperor.*

26 Cr. L. J. 49 :
83 I. C. 577 : 3 Pat. 417 :
A. I. R. 1925 Pat. 187.

————S. 180—Scope of—Dacoity committed in British India—Stolen property found in Native State—Native Indian British subject—Trial in a British Court—Certificate of Political Agent, necessity for.

Where a dacoity was committed in British territory and a Native Indian British subject was found in possession of stolen property, in a Native State and a charge under S. 412, Penal Code, was preferred against him; *Held*, that, though under S. 180, Cr. P. C., the offence could be tried where the property was retained or where the theft or dacoity took place, yet under S. 188 of the Code, a certificate of the Political Agent was necessary if the charge was to be tried in British India. A commitment without such certificate should be quashed. *Sessions Judge, Tanjore v. Sundar Singh.*

11 Cr. L. J. 306 :
6 I. C. 308 : 1 M. W. N. 143.

————S. 181.

See also (i) Cr. P. C., S. 179.

————S. 181 (2).

See also (i) Cr. P. C., Ss. 179, 202.

————S. 181 (2)—Applicability.

In all cases of criminal breach of trust, S. 181 (2) is preferred to S. 179. *Ali Mohammad Kassim v. Emperor.*

32 Cr. L. J. 1120 :
134 I. C. 209 : 9 Rang. 328 :
I. R. 1931 Rang. 273 :
A. I. R. 1931 Rang. 164.

————Ss. 181 (2), 179—Applicability—Criminal breach of trust.

The provisions of S. 179, Cr. P. C., are not inapplicable to a case of criminal breach of trust merely because there are certain other provisions in S. 181 (2) which would apply to such offences. *S. F. Rich v. Emperor.*

31 Cr. L. J. 865 :
125 I. C. 589 : 1930 A. L. J. 849 :
A. I. R. 1930 All. 449.

————S. 181 (2)—Criminal breach of trust—Forum—Jurisdiction.

Accused employed by a firm at Singapore, but had to account for monies received at Calcutta, the firm filed a complaint of crimi-

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nal breach of trust at Calcutta, and it was contended that as the alleged offence was committed at Singapore, the Calcutta Court had no jurisdiction: *Held*, that as the accused had to account at Calcutta, the Calcutta Court had jurisdiction. *Abdul Latif Yusuf v. Abu Mohamed Kassim*.

24 Cr. L. J. 113 :
71 I. C. 241 : 26 C. W. N. 175 :
A. I. R. 1922 Cal. 46.

-----S. 181—*Criminal breach of trust—Place of suing.*

Criminal breach of trust—Accused bound to render account at a certain place—Failure—Court at that place has jurisdiction to try case. *Brij Kishore v. Chandrika Prasad*.

37 Cr. L. J. 322 :
160 I. C. 567 : 1936 O. L. R. 89 :
8 R. O. 272 :
1936 O. W. N. 212.

-----S. 181 (2)—*Criminal breach of trust—Place of suing.*

Criminal breach of trust at B only non-accounting at C—C held not to be the right venue for trial. *Necasilal v. Routhmull*.

32 Cr. L. J. 1249 :
134 I. C. 929 : I. R. 1931 Cal. 929 :
A. I. R. 1931 Cal. 532.

-----S. 181 (2)—*Criminal breach of trust—Place of trial.*

Complainant charged the accused under S. 406 of the Penal Code on the allegation that at the instance of accused No. 1 who was in collusion with accused No. 2, complainant made over a certain sum of money to the latter in the Kangra District for payment to his firm at Hoshiarpur, and that the money had been dishonestly appropriated by both the accused: *Held*, that the alleged offence was triable only in the Kangra District. *Dina Nath v. Talsi Ram*.

26 Cr. L. J. 136 :
83 I. C. 696 : 6 L. L. J. 471 :
A. I. R. 1925 Lah. 171.

-----S. 181 (2)—*Criminal breach of trust—Place of trial—Failure to render accounts at particular place—Jurisdiction.*

Where a person is under a liability to render accounts at a particular place and fails to do so by reason of having committed an offence of criminal breach of trust which is alleged against him, the Court, within the local limits of whose jurisdiction such place is situate, may try the offence. *Ram Sahai v. Krishna Lal*.

27 Cr. L. J. 930 :
96 I. C. 212 : 7 L. L. J. 586 :
A. I. R. 1926 Lah. 119.

-----S. 181, Cl. (2)—*Criminal breach of trust—Place of trial—Jurisdiction.*

Where the complainant charged the accused under S. 408, Penal Code, alleging that the accused was engaged to manage a branch agency at Rurki, that accounts were sent by accused to Rawalpindi for some time but subsequently discontinued and that on inspection of the accounts he found false entries: *Held*, that inasmuch as the allegations in the

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complaint referred distinctly to three or four specific items in respect of which the accused was charged with having committed the offence of criminal breach of trust at Rurki, the Rawalpindi Court had no jurisdiction to try the case. *Emperor v. Raghubir Singh*.

16 Cr. L. J. 775 :
31 I. C. 375 : 22 P. R. 1915 Cr. :
42 P. W. R. 1915 Cr. :
A. I. R. 1916 Lah. 453.

-----S. 181 (2), 179—*Criminal breach of trust—Person at B purchasing goods from firm at C and depositing money with Bank at B with instructions to remit money to firm at C—Bank dishonestly retaining money—Court at C, if can try case.*

A, at Barisal, ordered for certain goods with the complainant's firm at Calcutta. The goods were to be sent to Barisal and purchase price to be remitted to the complainant's firm by a Bank at Barisal. It was alleged that the sum was deposited with the Bank with instructions to remit the money to the complainant's firm. The Secretary and Managing Director of the Bank dishonestly retained the money in contravention of this direction. Proceedings under S. 409, I. P. C., were started at Calcutta: *Held*, that both the entrustment and the breach took place at Barisal and the Magistrate at Calcutta had no jurisdiction. *S. Huda v. Ali Hussain M. Iqbal*.

41 Cr. L. J. 812 :
189 I. C. 876 : 13 R. C. 128 :
A. I. R. 1940 Cal. 367.

-----S. 181 (2)—*Criminal breach of trust—Servant entrusted with securities for collection from customers abroad—Misappropriation—Proper Court for trial.*

Complainant who resided at Rangoon entrusted the accused at Rangoon with promissory-notes and hundis and directed him to proceed up-country and collect the amounts. The accused collected the amounts but did not render proper accounts and a complaint was filed against the accused at Rangoon for criminal breach of trust: *Held*, that the Rangoon Court had jurisdiction to try the offence. *Yacoub Ahmed v. Abdul Ganny*.

29 Cr. L. J. 940 :
111 I. C. 860 : 6 Rang. 380 :
A. I. R. 1928 Rang. 217.

-----S. 181 (2)—*Criminal breach of trust—T partner in certain firm at Akyab—He agreeing to do business at Cochin and send money and account to Akyab—Failure to do so and closing of business—Complaint by firm lodged at Akyab for breach of trust—Jurisdiction.*

T, was a partner in a firm at Akyab. It was agreed that he should go to Cochin, there receive rice sent from Akyab and Rangoon and sell it. He was to submit accounts and pay the net cash balance of the business at Akyab but did not do so. Further, whilst he was in Cochin, he realized a certain sum on behalf of the firm in a Court of law. This sum also he failed to remit or account for. He closed the business in Cochin but instead of returning to Akyab to submit accounts and pay

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money he proceeded at once to his native place. The firm filed a complaint for breach of trust before a magistrate at Akyab: *Held*, that the Court at Akyab had no jurisdiction. *Vansanji Khimjee v. Kanji Tokersey*.

39 Cr. L. J. 529 :
175 I. C. 175 : 1938 Rang. 1 :
10 R. Rang. 468 : A. I. R. 1938 Rang. 94.

———S. 181 (2)—*Criminal breach of trust by servant*.

The accused, a Tahsildar, realised money from the tenants of his master at M., and being bound to render accounts at a place B, presented a false account with false entries showing a much lesser sum as due from him: *Held*, that it was doubtful whether the Court at B. had jurisdiction to try the offence. *Bimal Chandra Banerjee v. Tez Chandra Banerjee*.

19 Cr. L. J. 896 :
47 I. C. 92 : A. I. R. 1918 Cal. 305.

———Ss. 181 (2), 188—*Penal Code, S. 408—Criminal breach of trust committed in Native State—Jurisdiction*.

S. 181 (2) applies only when the offences referred to therein are committed in British India; it has no application to an offence committed in a Native State. *Imperator v. Tribhun*.

13 Cr. L. J. 530 :
15 I. C. 802 : 5 S. L. R. 266.

———S. 181 (2)—*Jurisdiction—Agreement to render accounts at particular place—If includes further agreement to carry property or money to that place*.

An agreement to render accounts at a particular place cannot be deemed to include in every case a further agreement to carry any property or money to that place. Where the question of jurisdiction turns upon the allegations made by a party, it is not fair to read into them something which they do not express and which may or may not be implied. *Fatch Singh v. Emperor*.

41 Cr. L. J. 325 :
186 I. C. 481 : 1939 A. L. J. 1060 :
I. L. R. 1940 All. 43 : 12 R. A. 436 :
A. I. R. 1940 All. 92.

———S. 181—*Jurisdiction—Criminal breach of trust—Agreement to render accounts at particular place—Place of trial*.

If the accused contracts to render the accounts at a particular place and fails to do so as a result of his criminal act in respect of the money, he dishonestly uses the money at that place as well in violation of the express contract which he had made touching the discharge of the trust by which he came by the money and so commits an offence of criminal breach of trust at that place also and a Court within whose jurisdiction that place is situated may inquire into and try the offence under S. 181, Sub-s. (2) of the Cr. P. C. *Gunananda Dhone v. Santi Parkash Nandy*.

26 Cr. L. J. 725 :
86 I. C. 213 : 41 C. L. J. 80 :
29 C. W. N. 432 : A. I. R. 1925 Cal. 613.

———S. 181—*Jurisdiction—Criminal breach of trust*.

It is the Court within whose jurisdiction the primary loss takes place that can take cognizance

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of the offence of criminal breach of trust. *Krishnamachary v. Shaw, Wallace & Co.*

16 Cr. L. J. 491 :
29 I. C. 331 : 18 M. L. T. 25 :
1915 M. W. N. 419 : 29 M. L. J. 178 :
A. I. R. 1916 Mad. 438.

———S. 181 (2)—*Jurisdiction—Criminal breach of trust*.

Jurisdiction, so far as the offence of criminal breach of trust is concerned, is quite clearly and specifically provided for in S. 181 (2). *Mukhi Tirathdas v. Jethanand Matrilomal*. (F. B.)

38 Cr. L. J. 512 :
168 I. C. 89 : 9 R. S. 222 :
31 S. L. R. 123 :
A. I. R. 1937 Sind 68.

———S. 181 (2)—*Jurisdiction—Criminal breach of trust—Place of accounting*.

Failure to account at a particular place does not give jurisdiction to Court at that place in a case of criminal breach of trust. *G. N. Pascal v. Raj Kishore Mathur*.

32 Cr. L. J. 1042 :
133 I. C. 703 : 35 C. W. N. 320 :
I. R. 1931 Cal. 751 :
A. I. R. 1931 Cal. 521.

———S. 181 (2)—*Jurisdiction—Criminal misappropriation*.

Accused was employed by a Lyallpur firm to sell goods at Karachi. The contract of employment was entered into at Lyallpur and the accused was bound to remit money and send his accounts to Lyallpur. He failed to account for some of the items received by him at Karachi and complaint under S. 408 of the Penal Code was preferred against him at Lyallpur: *Held*, that the misappropriation, if any, had taken place at Karachi, and the Lyallpur Courts had no jurisdiction to try the accused. *Mahtab Din v. Emperor*.

25 Cr. L. J. 410 :
77 I. C. 490 : A. I. R. 1924 Lah. 663.

———S. 181 (2)—*Jurisdiction—Criminal misappropriation and breach of trust*.

Criminal breach of trust is not an offence which counts as one of its factors the loss, which is the usual consequence of the act and, therefore, the jurisdiction to try an offence of criminal misappropriation or criminal breach of trust is governed by S. 181, Sub-s. (2). *In re : Jivandas Savchand*. (F. B.)

32 Cr. L. J. 331 :
129 I. C. 385 : 32 Bom. L. R. 1195 :
I. R. 1931 Bom. 161 : 55 Bom. 59 :
A. I. R. 1936 Bom. 490.

———S. 181 (2)—*Jurisdiction—Criminal misappropriation*.

Money paid by the complainant on insurance policy was misappropriated within the jurisdiction of Court B, but loss to the complainant was caused in the jurisdiction of Court N: *Held*, that Court N had no jurisdiction to try the offence. *Simhachalam v. Rati Kanta Laha*.

18 Cr. L. J. 762 :
41 I. C. 138 : 21 C. W. N. 573 :
25 C. L. J. 456 : 44 Cal. 912 :
A. I. R. 1917 Cal. 381.

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—S. 181 (2)—*Jurisdiction—Criminal misappropriation of rents realised in one District, charge of, whether can be tried in another District.*

A complaint was lodged against the accused in the Magistrate's Court at Burdwan for criminal misappropriation of monies said to have been realised by him as the agent of a Zamindar, who lived in Burdwan, from a tenant in the District of Murshidabad. It was alleged by the prosecution in an affidavit that the accused was called to Burdwan after the alleged occurrence and was there asked to render his accounts, but he declined to do so, and then was dismissed: *Held*, that on allegation of prosecution in the affidavit, it might be reasonably said that the accused had retained the monies, which were due from him, if they were due, in Burdwan, so that the Burdwan Court has jurisdiction to try the accused on a charge of criminal misappropriation by virtue of S. 181 (2), Cr. P. C. *Gauranga Sundar Mandal v. Satish Chandra Chowdhuri*. 19 Cr. L. J. 679 : 46 I. C. 39 : A. I. R. 1918 Cal. 110.

—S. 181 (2)—*Jurisdiction—Only liability to account at certain place but no duty to deliver property at that place—Court at that place, if has jurisdiction to try offence under S. 409, Penal Code.*

Where the accused has failed to account for the property then the second part of S. 405, P. C., will apply and jurisdiction exists at the place where the property should have been delivered by the accused. Where, however, there is only a liability to account at a certain place and no duty to deliver any property at that place, the Criminal Court at the place where the account is to be done has no jurisdiction to try the offence. *Patch Singh v. Emperor*. 41 Cr. L. J. 225 : 186 I. C. 481 : 1939 A. L. J. 1060 : I. L. R. 1940 All. 43 : 12 R. A. 436 : A. I. R. 1940 All. 92.

—S. 181 (3)—*Jurisdiction—Possession of stolen property—Place of trial.*

The offence of being in possession of stolen property may be inquired into and tried either where the property was stolen or where it was found to be dishonestly possessed. *Emperor v. Bhima*. 27 Cr. L. J. 21 : 91 I. C. 53 : L. R. 6 All. 208 Cr. : 24 A. L. J. 148 : A. I. R. 1926 All. 167.

—S. 181 (4)—*Jurisdiction—Enticing away married woman—Detention for purpose of illicit intercourse.*

A complaint under S. 498, Penal Code, for detaining a woman for the purpose of illicit intercourse can be enquired into only in the District where such detention occurs, as S. 181 (4) refers only to cases of kidnapping and abduction, offences dealt with in Ss. 359 to 369 of the Penal Code, but does not apply to offences under Chap. XX of the Code. *Jaswant Singh v. Emperor*. 19 Cr. L. J. 438 : 44 I. C. 955 : 8 P. W. R. 1918 Cr. : 51 P. I. R. 1918 : A. I. R. 1918 Lah. 357.

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—Ss. 181 (4), 531—*Jurisdiction—Girl kidnapped in one district conveyed to another—Joint trial of all accused—Jurisdiction—Trial whether liable to be set aside—Failure of justice.*

A girl under 16 years of age was kidnapped from lawful guardianship in a village in Budaun District by D and B who took her to a village in Etah District where they met H and A and all four then took the girl to certain other district. The Sessions Judge of Budaun convicted D and B of an offence under S. 366, Penal Code, and B, H and A of an offence under S. 368, Penal Code: *Held*, that D and B could have been tried in Budaun or Etah and H and A in Etah only; that, however, in the absence of the procedure having occasioned a failure of justice, the conviction of H and A could not be set aside. *Badlu Shah v. Emperor*. 25 Cr. L. J. 552 : 81 I. C. 40 : 21 A. L. J. 912 : 46 All. 138 : L. R. 5 All. 49 Cr. : A. I. R. 1924 All. 454.

—S. 181, Cl. (4)—*Jurisdiction—Kidnapping—Offence committed outside British India—Person kidnapped detained in British India.*

An offence of kidnapping committed in a State beyond British India cannot be tried in a Court in British India for the mere reason that the person kidnapped was conveyed or concealed or detained in British India. *Bhutta Santal v. Dama Santal*. 17 Cr. L. J. 128 : 33 I. C. 304 : 20 C. W. N. 62 : A. I. R. 1917 Cal. 612.

—S. 181 (2)—*Criminal misappropriation and breach of trust—Property received innocently within jurisdiction of one Court—Offence committed at another place—Trial of offence.*

In view of S. 181 (2) with regard to the jurisdiction of Courts to try the offences of criminal misappropriation and criminal breach of trust, a Court within whose jurisdiction the property which is the subject-matter of the offence was received or detained, has jurisdiction to try such offences even though the actual offence is committed outside its limits. Even if property is received quite properly and innocently at one place and is subsequently dealt with at another place dishonestly by the accused, he can be tried at the place where he received or retained the property. *Emperor v. Lawman*. 28 Cr. L. J. 44 : 99 I. C. 76 : 28 Bom. L. R. 1292 : 51 Bom. 101 : A. I. R. 1927 Bom. 38.

—S. 181—*Misappropriation—Money received at L on account of pro-note at L—Accused belonging to A—Retention of money at A—Complaint under S. 379 read with S. 403, Penal Code—Jurisdiction of Court at A to entertain.*

K residing in A had a pro-note executed in his favour by T, residing at B, in the District of L, on K's demand, I pleaded discharge and produced the original pro-note with an endorsement in the handwriting of H, resident of A. K demanded money from H but he put him off on various excuses and K lodged a

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complaint under S. 379 read with S. 403, Penal Code, against H in the Court at A : *Held*, that though the money was received on account of the pro-note at L, it was retained at A to which place the accused belonged and this retention of money which the accused knew did not belong to him conferred jurisdiction in the Court at A. *Hussain Bakhsh v. Khuda Bakhsh*. 38 Cr. L. J. 1100 : 171 I. C. 629 : I. L. R. 1937 Lah. 299 : 10 R. L. 218 : 39 P. L. R. 868 : A. I. R. 1937 Lah. 85.

———S. 181 (2)—*Criminal misappropriation—Place of trial.*

Complainant authorised the accused to withdraw his money at Rangoon and transmit it to him at Maymyo. The accused withdrew the money but failed to remit it to him. He was prosecuted for criminal breach of trust at Maymyo: *Held*, that money being received, retained and misappropriated at Rangoon, Rangoon Courts alone had jurisdiction to try the case. *Abdul Salam v. Ramnawal Singh*. 21 Cr. L. J. 149 : 54 I. C. 677 : 3 U. B. R. (1919) 172 : A. I. R. 1920 U. Bur. 39.

———S. 181—*Misappropriation—Place of actual receipt.*

If the accused received the money honestly at X and criminally misappropriated it at Y, the offence will be triable at Y as well as at X. *Aya Ram v. Gobind Lal Varma*.

34 Cr. L. J. 902 : 144 I. C. 991 : 6 R. L. 41 : A. I. R. 1933 Lah. 559.

———S. 181—*Misappropriation.*

Venue of trial is either at the place where misappropriation was committed or the place where property was received. *Paul de Flondor v. Emperor*.

32 Cr. L. J. 1167 : 134 I. C. 433 : 59 Cal. 92 : 35 C. W. N. 809 : I. R. 1931 Cal. 817 : A. I. R. 1931 Cal. 528.

———S. 181 (2)—*Place of suing.*

The combined effect of Ss. 222 (2) and 181 (2), is that a person accused of criminal misappropriation can be tried by a Court within the local limits of whose jurisdiction any part of the property which is a subject of the offence was received by him. *Sunder Lal v. Emperor*.

33 Cr. L. J. 127 : 135 I. C. 228 : L. R. 12 All. 157 : 1932 A. L. J. 160 : I. R. 1932 All. 52 : A. I. R. 1932 All. 26.

———S. 181 (2)—*Misappropriation—Property subject of offence.*

Accused was entrusted with a Railway Receipt for goods in one district with instructions to take delivery of the goods at their destination in another district and sell them on complainant's account. Accused did so sell them and misappropriated the sale proceeds : *Held*, that the offence was triable within the jurisdiction of the Court where the goods were sold and the money was received and misappropriated ; (2) that the property which was the subject of the offence in the case was not the railway receipt

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but the money received on sale of the goods. *T. A. Kasi Chetty v. V. V. Kasi Chetty*.

18 Cr. L. J. 645 : 40 I. C. 293 : 10 Bur. L. T. 50 : A. I. R. 1917 L. Bur. 10.

———S. 181 and 188—*Robbery committed outside British India—One of the accused a foreign subject and the other a British subject—Accused in possession of stolen property.*

Two persons were committed to a Sessions Court on a charge of a robbery committed outside British territory. One of them was not a British subject. No certificate under S. 188, Cr. P. C. had been obtained in regard to the accused who was a British subject. Both were found to be possessed of the stolen property within the limits of the jurisdiction of the Sessions Court : *Held*, that the Sessions Court should frame a charge against them under S. 411, Penal Code, and try them for that offence. *Emperor v. Baldawa*.

3 Cr. L. J. 247 : 3 A. L. J. 146 : I. L. R. 28 All. 372 : 26 A. W. N. 52.

———S. 181—*Scope—Offence committed outside British India by foreigner—Place of trial.*

S. 181 does not apply to an offence committed by a person who is not a British subject outside British territory. The section regulates the jurisdiction of Courts in British India in respect of offences committed in British India and cannot vary or abrogate the ordinary rule that no foreign subject can be tried in British India for an offence committed outside British India. *Emperor v. Baldawa*.

3 Cr. L. J. 247 : 3 A. L. J. 146 : 26 A. W. N. 52 : I. L. R. 28 All. 372.

———S. 181—*Scope.*

S. 179, Cr. P. C., is controlled by S. 181 in respect of offences mentioned in the latter section. *Maung Showe Ku v. Emperor*.

24 Cr. L. J. 929 : 75 I. C. 353 : 2 Bur. L. J. 55 : A. I. R. 1923 Rang. 157.

———S. 181—*Scope.*

S. 179, Cr. P. C. neither controls nor is controlled by S. 181. These sections have a cumulative effect and are not mutually exclusive in the sense that if one section applies, the other can never possibly apply. *Kashi Ram v. Emperor*. (F. B.)

35 Cr. L. J. 982 : 149 I. C. 420 : 1934 All. 499 : 1934 A. L. J. 308 : L. R. 15 All. 68 Cr. : 6 R. A. 902 : 3 A. W. R. 506.

———S. 181—*Scope.*

S. 181 (2), Cr. P. C., overrides and is not qualified by S. 179. *Aya Ram v. Gobind Lal Varma*.

34 Cr. L. J. 902 : 144 I. C. 991 : 6 R. L. 41 : A. I. R. 1933 Lah. 559.

———S. 181 (2)—*Scope.*

S. 181 (2) of Cr. P. C. does not, in any way, modify the provisions of S. 179 of the Code. *Mohammad Rashid Khan Arzoo v. Emperor*.

27 Cr. L. J. 992 : 96 I. C. 656 : L. R. 7 All. 114 Cr. : A. I. R. 1926 All. 466.

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———S. 181 (3)—*Stolen property—Place of suing.*

A person found to be in possession of stolen property can be tried by a Court within the local limits of whose jurisdiction the offence was committed or within whose jurisdiction it was possessed by any person having reason to believe it to be stolen. *Zadir Nat v. Emperor.*

35 Cr. L. J. 1092 :
150 I. C. 558 : 7 R. A. 4 :
A. I. R. 1934 All. 455 (2).

———S. 182.

See Cr. P. C., 1898, S. 179.

———S. 182—*Applicability.*

Where it is difficult to ascertain where or the exact point of time when offence was committed, S. 182 applies. *Kashi Ram v. Emperor.*

35 Cr. L. J. 982 :
149 I. C. 420 : 1934 A. L. J. 308 :
3 A. W. R. 506 : L. R. 15 All. 68 Cr. :
3 R. A. 902 : A. I. R. 1934 All. 499.

———S. 182 — *Criminal breach of trust—Jurisdiction to try—Accused, travelling agent, employed by firm at B, selling goods outside B and receiving money—Failure to pay money at B—Criminal breach of trust—Place of trial.*

The accused was employed by a firm as a travelling salesman. He was given articles (ornaments) and he had sold some in K and returned to B, the place of business of his master. The accused did not pay the money for articles sold and a complaint for criminal breach of trust was lodged in B. The trial Court held that the goods were sold and money received was outside B, and that therefore it had no jurisdiction to try the suit: *Held*, that it may no doubt be difficult for the prosecution to prove that any part of the offence of criminal breach of trust was committed in B and it would have been safer to lay the venue in K or one of the places where the proceeds of the goods sold were admittedly received. The Court there would have jurisdiction, wherever the actual misappropriation took place, but since there was a doubt as to whether the criminal breach of trust was committed in K or B, that would give the B Court jurisdiction. *Anthony D'Mello v. Joseph Mathew Pereira.*

38 Cr. L. J. 977 :
171 I. C. 42 : 39 Bom. L. R. 620 :
10 R. B. 169 : I. L. R. 1937 Bom. 743 :
A. I. R. 1937 Bom. 371.

———S. 182—*Defamation—Place of trial.*

Where a defamatory letter is posted at one place in order that it may be read at another, the offence of defamation is triable under Ss. 182 and 179, Cr. P. C. either at place where it was posted or where it was intended to be read. *M. R. Krishna Murthy Aiyer v. C. V. Parasurama Aiyer.*

24 Cr. L. J. 309 (a) :
72 I. C. 69 : 32 M. L. T. 164 :
44 M. L. J. 648 : A. I. R. 1923 Mad. 666.

———S. 182—*Jurisdiction—Forum—Place of offence uncertain—Place where consequence would ensue.*

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The applicant was an agent of a firm in Mirzapur. Goods were entrusted to him for sale in various districts in Lower Bengal, and, as he sold goods, he remitted money to his employer at Mirzapur. Finally furnishing accounts, he offered Rs. 500 as a deposit but did not submit accounts. He embezzled the money at various places in Lower Bengal: *Held*, that the Mirzapur Court had jurisdiction to try the case and that S. 182 did apply. *Mahadev v. Emperor.*

11 Cr. L. J. 372 :
6 I. C. 563 : 7 A. L. J. 319.

———S. 182—*Jurisdiction.*

Offence under S. 403, Penal Code, committed and completed at A but actual loss falling or likely to fall at B. Court at B has no jurisdiction. *Kashi Ram v. Emperor.* (F.B.)

35 Cr. L. J. 982 :
149 I. C. 420 : 1934 A. L. J. 308 :
3 A. W. R. 506 : L. R. 15 All. 68 Cr. :
6 R. A. 902 : A. I. R. 1934 All. 499.

———S. 182—*Jurisdiction.*

The accused posted fraudulent value-payable articles at Panvel to persons residing in Poona, Sialkot and Hissar. The addressee in each case paid the amount to the Post Office, and in two cases, the amounts were in due course paid by the Post Office to the accused at Panvel. The accused was charged before the Magistrate at Panvel with cheating under S. 420, Penal Code: *Held*, that under S. 182, Cr. P. C., the Magistrate of Panvel had jurisdiction to try all the cases. *Emperor v. Gafur Karimbux Pathan.*

31 Cr. L. J. 1155 :
127 I. C. 177 : 32 Bom. L. R. 785 :
A. I. R. 1930 Bom. 358.

———Ss. 182, 185—*Jurisdiction—Offence triable by two Courts subordinate to different High Courts—Choice of forum.*

When under the provisions of Chap. XV two Courts subordinate to different High Courts have concurrent jurisdiction to try an offence, the High Court, within the local limits of whose jurisdiction the offender actually is, is empowered, by S. 185 read with S. 182, to decide by which Court the offence shall be tried. S. 185 is not restricted to cases in which there is doubt as to whether one Court or another has jurisdiction. It expressly refers to the preceding provisions of the Chapter. One of these provisions is S. 182, and the word 'should' includes the case of a choice on the ground of public convenience. *Emperor v. Chaichal Singh.*

9 Cr. L. J. 581 :
2 I. C. 361 : 5 L. B. R. 17.

———Ss. 182, 439—*Procedure—Prosecution instituted in Court without jurisdiction—District Magistrate, power of, to quash proceedings—Notice, necessity of.*

A prosecution was instituted in the Court of the S. D. M. of M. in the District of D. The defence contended that the place of the alleged occurrence lay within the District of P. The Sub-Divisional Magistrate of M. ordered under S. 182, Cr. P. C., that the trial may be held at M. The accused thereupon moved the District Magistrate of D. who, upon the report of a S. D. O. held that neither the S. D. M. of M. nor the District Magistrate of D. had jurisdiction.

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tion and quashed the proceedings: *Held*, that the District Magistrate ought to have issued notice to the complainant and come to a proper finding of his own on the question of the local jurisdiction of the Court at M. that the District Magistrate could not quash the proceedings as he was acting in the exercise of his revisional powers, but should have made a reference to the High Court. *Kasim Ali Molla v. Mahammad Tafajjal Hossain*.

30 Cr. L. J. 401 :
115 I. C. 95 : 49 C. L. J. 62 :
I. R. 1929 Cal. 319 :
A. I. R. 1929 Cal. 204.

———S. 182—Scope—Adultery, whether continuing offence.

If a person has several adulterous sexual intercourses with a woman, the offence committed is not a continuing offence with S. 182, but each act of sexual intercourse amounts to an offence of adultery. *In re : Shanker Tulshiram Navle*.

30 Cr. L. J. 54 :
113 I. C. 70 : 30 Bom. L. R. 1435 :
I. R. 1929 Bom. 788 : 53 Bom. 69 :
A. I. R. 1928 Bom. 530.

———S. 182—Scope.

S. 182 does not apply only to cases where some place of trial cannot be laid down with absolute certainty but it applies to cases where the offence is a continuing one. *Shiamji v. Emperor*.

23 Cr. L. J. 210 :
65 I. C. 994 : A. I. R. 1922 Nag. 40.

———S. 183.

See Penal Code, 1860, S. 407.

———S. 183—Applicability.

S. 183, Cr. P. C., applies only to cases where the offence is committed in British India and not in foreign territory. It extends to the whole of British India, but cannot give the Courts jurisdiction over offences committed outside British India. The word "journey" in S. 193 does not include a journey in foreign territory, but is confined to a journey within British India. Where an offence is committed during journey, part of which lay through foreign territory, and it is doubtful whether the offence was committed in foreign territory or in British India, S. 183, Cr. P. C., is not applicable to the case and it is not triable in British India. *Nadar v. Emperor*.

24 Cr. L. J. 579 :
73 I. C. 323 : A. I. R. 1923 Lah. 487.

———S. 183—Place of trial—Offence during journey.

When an offence is committed whilst the offender is in the course of performing a journey, and he is arrested and taken to the destination, a Court having jurisdiction at the latter place, can try the offence, though it was committed outside its jurisdiction. *Emperor v. Moulabux*.

25 Cr. L. J. 439 :
77 I. C. 727 : A. I. R. 1925 Sind 177.

———S. 183—Place of trial—Offence, during journey—Where triable.

The only Courts competent to try the case of an offender in respect of an offence committed

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on a journey, are the Courts through or into the local limits of whose jurisdiction the offender in the course of the journey he was performing passed at the time the offence was committed. *Aminulla Serang v. P. M. Guha*.

2 Cr. L. J. 411 :
1 C. L. J. 334.

———S. 183—Place of trial—Theft in train—Jurisdiction of Appellate Court to hear appeal.

A Railway Guard committed a theft in a train running from Delhi to Bhatinda. He was convicted by a Magistrate of the First Class exercising jurisdiction within Ferozepore District: *Held*, that inasmuch as a portion of the line between Delhi and Bhatinda passed through the Ferozepore District, the Ferozepore Court had jurisdiction to hear the case. *Lazarus Meghnath v. Emperor*.

24 Cr. L. J. 253 :
71 I. C. 797.

———S. 183—Place of trial—Theft in train.

Where a theft is committed in a train during journey, the offence can, under the provisions of S. 183, be enquired into and tried by any Court having jurisdiction over any part of the territory through which the train passed in the course of that journey. *Lazarus v. Meghnath*.

24 Cr. L. J. 253 :
71 I. C. 797.

———S. 183—Meaning of words—"That journey," meaning of.

The journey referred to in the first part of S. 183, is the journey which the offender is in the course of performing; and the words 'that journey' at the end of the section refer to the same journey. *Aminulla Serang v. P. M. Guha*.

2 Cr. L. J. 411 : 1 C. L. J. 334.

———S. 184—Confession and statement—Admissibility.

Where the confession is not recorded in the handwriting of the Magistrate, it can be admitted in evidence and acted upon if the Magistrate deposes under S. 533. *Salu Mangan v. Emperor*.

34 Cr. L. J. 808 :
144 I. C. 664 : I. R. 1933 Sind 194 :
A. I. R. 1933 Sind 166.

———S. 185.

See Cr. P. C., S. 179.

———S. 185 (1)—Applicability.

A prosecution was initiated at Lahore against certain persons who live in Chitagon under S. 409, 420, 467 and 477, Penal Code, on the ground that under the terms of the Agency between the parties, all accounts were to be rendered and moneys collected to be paid by the accused to the complainant at Lahore: *Held*, that there was no doubt that the Courts at Chittagong and Lahore were equally competent to exercise jurisdiction in the matter and that as there was no doubtful question to decide, S. 185, Cl. (1), was not applicable. *Rajani Binod Chakravarti v. All India Banking and Insurance Co., Ltd.*

15 Cr. L. J. 48 :
22 I. C. 192 : 17 C. W. N. 1207 :
41 Cal. 305 : A. I. R. 1914 Cal. 386.

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———S. 185. 527—Construction — “Doubt”, meaning of—Jurisdiction—Form of order.

Per Woodroffe, J.—The “doubt” referred to in S. 185 is a doubt as to the competency or jurisdiction of a Court and does not include a doubt whether one or another Court should inquire into or try a case on the ground of convenience or expediency. S. 185 is not designed to cut down admitted jurisdiction, but to determine cases where the facts said to constitute jurisdiction are doubtful. The doubt as to what are the acts which are said to constitute the offence and where they were committed is not the “doubt” which is referred to in S. 185. Cr. P. C. *Charu Chandra Majumdar v. Emperor*.

18 Cr. L. J. 81 :
37 I. C. 145 : 21 C. W. N. 320 :
25 C. L. J. 165 : 44 Cal. 595 :
A. I. R. 1917 Cal. 137.

———S. 185—Jurisdiction by consent of parties—High Court's power under section.

Per Mookerjee, J.—Jurisdiction cannot be conferred by consent of parties where there is an entire absence of jurisdiction. A narrow construction should not be placed upon S. 185. The High Court has jurisdiction to make an order under S. 185 in respect of an enquiry instituted or trial commenced in a court not subordinate to itself. *Charu Chandra Majumdar v. Emperor*.

18 Cr. L. J. 81 :
37 I. C. 145 : 21 C. W. N. 320 :
25 C. L. J. 165 : 44 Cal. 595 :
A. I. R. 1917 Cal. 137.

———S. 185. cl. (1)—Jurisdiction—Choice of forum by High Court.

S. 185, Cl. 1, does not warrant the interference by the High Court merely upon the ground of convenience. The decision of the High Court, within the local limits of whose Appellate Jurisdiction the offender actually is, can only be sought when a doubt arises as to the Court by which an offence should be inquired into or tried. *Rajani Bindo Chakravarti v. All India Banking and Insurance Co., Ltd.*

15 Cr. L. J. 48 :
22 I. C. 192 : 17 C. W. N. 1207 :
41 Cal. 305 : A. I. R. 1914 Cal. 386.

———S. 185—Object and scope—High Court, power of, to interfere on ground of convenience.

The object of S. 185 is to give a High Court power to decide, on the ground of general convenience of parties or witnesses, which of two Courts having jurisdiction to enquire into or try an offence, but under the jurisdiction of different High Courts, should enquire into or try such offence. *Gurdit Singh v. Emperor*.

18 Cr. L. J. 514 :
39 I. C. 482 : 24 P. R. 1917 Cr. :
1 P. W. R. 1917 Cr. : 74 P. L. R. 1917 :
A. I. R. 1917 Lah. 237.

———S. 185—Scope—High Court's powers, use of.

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Per Sanderson, C. J. and Neebould, J.—The jurisdiction under S. 185 should be exercised sparingly by a High Court, when proceedings against an accused residing within the local limits of the criminal appellate jurisdiction of the Court have been instituted in the Court of competent jurisdiction subordinate to another High Court. *Charu Chandra Majumdar v. Emperor*.

18 Cr. L. J. 81 :
37 I. C. 145 : 21 C. W. N. 320 : 25 C. L. J. 165 :
44 Cal. 595 : A. I. R. 1917 Cal. 137.

———S. 185—Scope.

No question of convenience or expediency can be considered under S. 185, Cr. P. C. It deals with the question of competency only in case of doubt. *Girdhar Das v. Emperor*.

24 Cr. L. J. 929 :
75 I. C. 353 : 21 A. L. J. 621 :
A. I. R. 1924 All. 77.

———S. 185—Scope.

Per Curiam (Woodroffe, J., dissenting).—Section 185 is not restricted to cases in which there is doubt as to whether one Court or another has jurisdiction, but includes cases in which the doubt arises as to the suitability of one Court as compared with another (by which the offence shall be enquired into or tried), from the point of view of convenience or expediency. *Charu Chandra Majumdar v. Emperor*.

18 Cr. L. J. 81 :
37 I. C. 145 : 21 C. W. N. 320 : 25 C. L. J. 165 :
44 Cal. 595 : A. I. R. 1917 Cal. 137.

———S. 185—Scope—Practice and procedure—Choice of forum—Powers of High Court.

Per Sadasiva Aiyar, J.—Section 185 was intended only to apply to and provide for the following two sets of circumstances: (1) Where two cases are pending in two Courts within the jurisdiction respectively of two separate High Courts on the same set of facts, the High Court within which the offender is found has the deciding voice ‘whether the Court within its own jurisdiction’ shall or shall not proceed against the accused. If it decides in the affirmative, the outside Court cannot proceed further, as the High Court has full powers to prevent a person who is within its jurisdiction from being taken out of that jurisdiction till the case in its subordinate Court is concluded; (2) Where only one case has been instituted in a Court subordinate to the High Court in whose jurisdiction the offender is, that High Court can decide whether the case should be enquired into and tried by its own subordinate Court or should be tried in a Court within the jurisdiction of some other High Court. *Mahomed Ghouse v. Nathu Vallabhji*. 18 Cr. L. J. 148 :
37 I. C. 576 : 5 L. W. 349 : 40 Mad. 835 :
A. I. R. 1918 Mad. 1183.

———S. 185—Scope.

Section 185 refers to those cases only where some offence is being inquired into or tried. The section does not apply to proceedings under Ch. XII of the Code. *Rudra Partap Sahi v. Dewan Singh*.

15 Cr. L. J. 520 :
24 I. C. 608 : 12 A. L. J. 390 :
A. I. R. 1914 All. 473.

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———Ss. 185, 526.—*Scope of S. 185—Transfer, powers of High Court.*

Section 185 gives no powers of transfer to the High Court even inferentially. The power to transfer vested in the High Court under the Code is dealt with solely by S. 526. *Mahomed Ghouse v. Nathu Vallabhji.*

18 Cr. L. J. 148 :
37 I. C. 576 : 5 L. W. 349 : 40 Mad. 835 :
A. I. R. 1918 Mad. 1183.

———S. 185.—*Transfer—High Court's power.*

Section 185 cannot be availed of by any High Court even to express a pious opinion that a case pending outside its jurisdiction should be inquired into and tried by a Court subordinate to it. *Mahomed Ghouse v. Nathu Vallabhji.*

18 Cr. L. J. 148 :
37 I. C. 576 : 5 L. W. 349 : 40 Mad. 835 :
A. I. R. 1918 Mad. 1183.

———Ss.—185, 526.—*Transfer of case from one Court to Court not subordinate to same High Court.*

A Magistrate before whom a case is pending, has no jurisdiction to transfer it to a Court subordinate to another High Court, but if the Magistrate makes such an order, the case no longer remains pending in his Court. *Gurdit Singh v. Emperor.*

18 Cr. L. J. 514 :
39 I. C. 482 : 1 P. W. R. 1917 Cr :
24 P. R. 1917 Cr.

74 P. L. R. 1917 : A. I. R. 1917 Lah. 237.

———Ss. 185, 527.—*Transfer—Conflict of jurisdiction of different High Courts—Transfer from Court subordinate to another High Court.*

A High Court has no jurisdiction, under S. 185, to transfer a case pending in a Court outside its jurisdiction and subject to the superintendence of a different High Court, though it has the power to prevent a Court subordinate to itself from grasping at jurisdiction or trying a case which had better be tried by another Court, whether subordinate to that High Court or not. The only person who has any jurisdiction to pass orders binding on different High Courts is the Governor-General acting under S. 527. *Mahomed Ghouse v. Nathu Vallabhji.*

18 Cr. L. J. 148 :
37 I. C. 576 : 5 L. W. 349 :
40 Mad. 835 :
A. I. R. 1918 Mad. 1183.

———S. 186.

See Child Marriage Restraint Act, 1929,
Ss. 5, 6.

———S. 188.

See also (i) Child Marriage Restraint
Act, 1929, Ss. 5, 6, 9.

(ii) Cr. P. C., Ss. 179, 271,
184.

(iii) Penal Code, 1860, Ss. 302,
303, 396.

(iv) Certificate, when necessary.
See Penal Code, 1860,
Ss. 302, 303, 306.

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———S. 188.

Sanction of Local Government is sufficient in cases of offences committed in territories where there is no official representative of British Indian Government. *Jeramdans Vishendas v. Emperor.*

36 Cr. L. J. 240 :
153 I. C. 60 : 28 S. L. R. 27 :
7 R. S. 117.
A. I. R. 1934 Sind 96.

———Ss. 188 and 537.

No certificate under S. 188—Defect, if curable under S. 537—Arrest of accused on March 27, 1933—Certificate by Government on May 15, 1933—Objection not taken during that period but taken subsequently—Defect is cured under S. 537. *Mohammad Qasim Khan v. Emperor.*

36 Cr. L. J. 430 :
153 I. C. 747 : 16 Lah. 73 :
37 P. L. R. 419 : 7 R. L. 454 :
A. I. R. 1934 Lah. 827.

———S. 188.—*Applicability.*

A Court in British India cannot try an offence by virtue of the terms of S. 179 of the Code merely because part of the consequences have ensued within its jurisdiction if some part of the offence has been committed in a Native State, without the certificate of the Political Agent. *In re: T. Fakurulla Khan.*

37 Cr. L. J. 195 :
159 I. C. 1048 : 41 L. W. 352 :
1935 M. W. N. 325 (2) :
68 M. L. J. 415 : 8 R. M. 598 :
A. I. R. 1935 Mad. 326.

———S. 188.—*Applicability.*

S. 188 does not apply to cases tried by a Court in its Admiralty Jurisdiction. *Francis Xavier Fernandez v. Emperor.*

37 Cr. L. J. 314 :
160 I. C. 375 : 29 S. L. R. 281 :
8 R. S. 122 :
A. I. R. 1936 Sind 3.

———S. 188.—*Certificate, absence of—Effect.*

A conviction of a British Indian subject for dishonest retention of property in French territory, in the absence of a certificate of the Political Agent of the French territory, is illegal. *In re: Narayanaswamy Padayachi.*

34 Cr. L. J. 545 (1) :
143 I. C. 190 : 1932 M. W. N. 1229 :
I. R. 1933 Mad. 281 :
A. I. R. 1933 Mad. 461 (1).

———S. 188.—*Certificate—Absence of—Effect.*

A Magistrate has no jurisdiction to try accused in the absence of a certificate or sanction required by S. 188, and a trial held without such certificate or sanction is void. *Kharwas Habib v. Emperor.*

41 Cr. L. J. 565 :
188 I. C. 290 : 12 R. Pesh. 41 :
A. I. R. 1940 Pesh. 4.

———S. 188.—*Certificate—Absence of—Effect.*

The defect of the absence of a certificate is not curable by the subsequent production of the certificate. *Ram Charan v. Emperor.*

27 Cr. L. J. 218 :
92 I. C. 170 : 5 Lah. 416 :
A. I. R. 1925 Lah. 185.

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—S. 188—Certificate—Native State, offence, committed in.

An offence committed in a Native State cannot be inquired into and tried by a British Court without the certificate of the Political Agent as required by S. 188. *Nurain v. Emperor*.

20 Cr. L. J. 276 :
50 I. C. 164 : 17 A. L. J. 450 :
41 All. 452 : A. I. R. 1919 All. 370.

—S. 188—Certificate, necessity of.

An agreement between Native State and the authorities of a British Indian District, conceding to the British Indian Courts the right to try subjects of the State arrested in British India, cannot take the place of the certificate or sanction contemplated by S. 188. *Nandu v. Emperor*.

20 Cr. L. J. 700 :
52 I. C. 668 : 17 A. L. J. 1055 :
42 All. 89 : A. I. R. 1919 All. 44.

—S. 188—Certificate—Offence committed by European British subject outside British India—Trial in British India whether to be tried as European subject.

A European British subject who commits an offence outside British India and is brought for trial in British India on a certificate being furnished by the Political Agent as required by the proviso to S. 188, the certificate operates and the case may be dealt with as if the offence had been committed in British India. When any British subject commits an offence in a Native State whether he is an Indian British subject or a European British subject his claim to be tried as a European British subject arises after the certificate has been furnished and it has been decided to deal with him as if the offence had been committed in British India. It is open to him to plead that he is a European British subject and the provisions of Ch. XXXIII, will then operate. The certificate under S. 188 does not invest the District Magistrate with jurisdiction to order the trial of a European British subject before a Magistrate of the First Class in British India as is set out in the application for revision. If the accused is a European British subject, the Magistrate can do no more than hold in enquiry and commit him for trial; he cannot try him himself. *W. T. Zinke v. Emperor*.

37 Cr. L. J. 979 :
164 I. C. 687 : 9 R. N. 26 (2) :
A. I. R. 1936 Nag. 152.

—S. 188—Certificate—Offence committed in a Native State—Certificate of the Political Agent obtained after inquiry.

There is nothing in the proviso to S. 188 making illegal the obtaining of the certificate after the complaint has been filed and the inquiry has begun or been completed as far as framing of the charge. *Emperor v. Saktharam Pandu*.

11 Cr. L. J. 543 :
7 I. C. 934 : 12 Bom. L. R. 667.

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—S. 188—Certificate—Offence committed in Native State by British Indian subject—Trial in British India—Certificate of Political Agent, necessity of.

Where the offence of kidnapping has been committed by British Indian subjects in a Native State, it is not triable in British India without a certificate of the Political Agent. *Ram Charan v. Emperor*.

27 Cr. L. J. 218 :
92 I. C. 170 :
5 Lah. 416 : A. I. R. 1925 Lah. 185.

—S. 188—Certificate—Offence committed in Native State—Trial in British India—Certificate of Political Agent, necessary.

A subject of a Native State arrested in British India cannot be tried in a British Indian Court for an offence committed in that State without the certificate of the Political Agent of the State or the sanction of the local Government required by S. 188. *Nandu v. Emperor*.

20 Cr. L. J. 700 :
52 I. C. 668 : 17 A. L. J. 1055 :
42 All. 89 : A. I. R. 1919 All. 44.

—S. 188—Certificate—Offence committed outside British India—Certificate, necessity of.

Where an offence is committed without and beyond the limits of British India by a Native Indian subject of His Majesty, it cannot be inquired into in British India without the certificate of a Political Agent or the Local Government, as the case may be, but although the inquiry in such a case cannot be proceeded with in the absence of the sanction required, the proceedings may be continued in the event of such sanction being subsequently obtained. *Allbhoy Jivraj v. Emperor*.

25 Cr. L. J. 620 :
81 I. C. 193 : A. I. R. 1925 Sind 88.

—S. 188—Certificate—Offence under Child Marriage Restraint Act committed in French territory—Trial in British India, necessity of certificate.

In the absence of the certificate of the Political Agent or sanction of the Local Government, a charge of an offence under Child Marriage Restraint Act committed in French territory cannot be inquired into in British India as there is nothing to the contrary in the Child Marriage Restraint Act. *Maganti Subba Rao v. Vedullapalli Kamaraju*.

40 Cr. L. J. 822 (2) :
183 I. C. 708 : 49 L. W. 656 :
1939 M. W. N. 742 : 12 R. M. 368 :
A. I. R. 1939 Mad. 577.

—S. 188—Certificate—Penal Code S. 411—Theft in British India—Accused found in possession of stolen property in Native State—Trial of accused in British India—Certificate, necessity of.

Ss. 179 to 184 of the Cr. P. C. are controlled by the provisions of S. 188 of the Cr. P. C. and the alternative jurisdiction conferred by those sections can be exercised only on the production of the certificate of the Political Agent

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according to the special provisions of S. 188 of the Cr. P. C. A bullock was stolen in British India and the accused, a Native Indian British subject, was found in possession of it in a Native State: *Held*, that the accused could not be tried in British India for an offence under S. 411, Penal Code, without the certificate of the Political Agent. *Emperor v. Sana Mathur*.

31 Cr. L. J. 833 :
125 I. C. 417 : 32 Bom. L. R. 98 :
54 Bom. 171 :
A. I. R. 1930 Bom. 155.

———S. 188—Certificate—Trial of accused for an offence beyond Mysore—Permission of Political Agent—Proof.

The accused committed theft of a bullock in British India and was arrested in Mysore. The permission of the British Resident for trial in Mysore was communicated to the Magistrate by a letter from the Secretary to Government, General and Revenue Department. In appeal held that the letter of the Secretary to Government was not legal evidence of the Resident's consent and that the Resident's order itself should have been produced: *Held*, that the letter was sufficient under S. 188 and that the production of the order was not necessary under that section. *In the matter of : Samo alias Pujari*.

9 Cr. L. J. 435 :
12 M. C. C. R. 241.

———S. 188—Certificate, validity of—Certificate signed by Under-Secretary, whether sufficient—Order by Agent directing issue of certificate.

A document certifying that a case should be tried in British India and purporting to be signed by an Under-Secretary for the Political Agent cannot be made the basis of an assumption that the Agent has himself certified that the charge ought to be inquired in British India. But a certified copy of an order dated before the commencement of the proceedings signed by the Agent himself and directing that a certificate should issue under S. 188 in the particular case sufficiently meets the requirements of the section. *Rulija Singh v. Emperor*.

27 Cr. L. J. 942 :
96 I. C. 398 : 7 Lah. 468 :
27 P. L. R. 708 : A. I. R. 1926 Lah. 609.

———S. 188—Proviso—Certificate, validity of.

Political Agent should be of opinion that case should be tried in British India. It is not necessary that he himself should sign certificate. *Bhaiji Manor v. Emperor*.

35 Cr. L. J. 629 :
148 I. C. 268 : 35 Bom. L. R. 1177 :
58 Bom. 97 : 6 R. B. 283 :
A. I. R. 1934 Bom. 41.

———S. 188—Certificate, when unnecessary

Where the dacoity was committed in British India and the murder in a Native State, the British Indian Court has jurisdiction to try the offenders under S. 396, Penal Code, without certificate under S. 188. *Punjab Singh Ujagar Singh v. Emperor*.

35 Cr. L. J. 322 :
147 I. C. 2 : 35 P. L. R. 51 :
15 Lah. 84 : 6 R. L. 339 :
A. I. R. 1933 Lah. 977.

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———S. 188—Certificate by Political Agent—Commitment—Charge not mentioned in the certificate.

Where a Political Agent granted a certificate to the effect that the offence with which the accused was charged ought to be inquired into in British India: *Held*, that the commitment of the accused on a charge not specified in the certificate was good. *In re : Sessions Judge of South Arcot*.

11 Cr. L. J. 531 :
7 I. C. 802 : 8 M. L. T. 203.

———Ss. 188, 537—Certificate—Offence committed outside British India—Inquiry by Magistrate—Committal proceedings—Certificate from the Political Agent received after inquiry—Charge, meaning of.

In inquiry, before the Committing Magistrate into an offence committed outside British India, the certificate from the Political Agent required by S. 188 was not received until some witnesses were examined; but the certificate was received before the commitment was made. It was objected that the commitment was irregular and the trial that ensued was void: *Held*, that there was nothing to show that the word "charge" was used in S. 188 in the sense in which it was used elsewhere in the Code. Assuming that it would be more regular for the Committing Magistrate to have re-called the witnesses whom he had examined before the certificate was issued, nevertheless it had not been shown that the accused had in any way been injured or prejudiced. *Emperor v. Mohamadbuksh*.

4 Cr. L. J. 49 :
8 Bom. L. R. 507.

———S. 188—Construction.

Since the amendment of the Code, S. 188 overrides S. 179 in any case in which S. 188 is applicable. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Ludur Chandra Das*.

33 Cr. L. J. 267 :
136 I. C. 137 : 36 C. W. N. 456 :
59 Cal. 1065 : I. R. 1932 Cal. 185 :
A. I. R. 1932 Cal. 465.

———Ss. 188, 192, 537—Native Indian subject committing offence in foreign country—Sanction of Local Government not obtained—Effect.

A Native Indian subject of the King was charged with the offence of criminal breach of trust committed in Spain. He objected to his trial by the City Magistrate, Hyderabad, on the ground that it was illegal for want of sanction of the Local Government. The Magistrate decided that he had jurisdiction as the case had been made over to him, under S. 192 by the District Magistrate: *Held*, on revision, (i) that an order under S. 192 does not import a decision of any question either of law or fact arising in the case; (ii) that the proviso to S. 188 is universal in its application and is not restricted to Native States in India; (iii) that whether the proceedings were irregular or illegal for want of sanction, S. 537 could not be applied at an intermediate stage

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so as to allow the error to remain uncorrected. *Imperator v. Chellaram Naraindas*.

14 Cr. L. J. 298 :
19 I. C. 954 : 6 S. L. R. 260.

———**S. 188—Illegal arrest, effect of.**

Where a man is charged in India with an offence under the Penal Code, it will not avail him to say that he was brought there illegally from a foreign country. *Emperor v. Vinayak Damodar*.

12 Cr. L. J. 356 :
10 I. C. 956 : 13 Bom. L. R. 296 :
35 Bom. 225.

———**S. 188—Jurisdiction.**

For the purposes of criminal jurisdiction, an accused person is found wherever he is actually present whether or not he has been brought there against his will. *W. Y. Zincke v. Emperor*.

37 Cr. L. J. 979 :
164 I. C. 687 : 9 R. N. 26 (2) :
A. I. R. 1936 Nag. 152.

———**S. 188—'Political Agent,' meaning of.**

A British Vice-Consul appointed by the British Government in any part of a foreign territory or colony under the suzerainty of a foreign independent state is not an officer appointed by the British Indian Government, and does not come within the meaning of a Political Agent as used in S. 188. *Jeramdas Vishandas v. Emperor*.

36 Cr. L. J. 240 :
153 I. C. 60 : 28 S. L. R. 27 : 7 R. S. 117 :
A. I. R. 1934 Sind 96.

———**S. 188—Procedure—Extradition Act, Ss. 7, 22—Indian (Foreign Jurisdiction) Order in Council, 1902—Extradition Rules, R. 3—Political Agent—Warrant issued on requisition of Native State—Accused surrendering of his own accord—Certificate granted by Political Agent for trial of accused in British India—Subsequent recall of certificate—Accused ordered to be tried in Native State—Practice.**

A Native State made a requisition to the Political Agent, who was also the District Magistrate of Bijapur, for the surrender of an accused. The Political Agent issued a warrant under S. 7 of the Extradition Act, for arrest. Accused surrendered of his own accord. Upon application of the accused, the Political Agent issued certificate under S. 188, Cr. P. C., that the accused be tried in British India. The Native State pressed for the man's surrender and finally the accused was tried in the Native State: *Held*, that the Political Agent had no power to cancel the certificate already granted and that the subsequent trial of the accused in the Native State must be set aside. R. 3 of the Rules under the Indian (Foreign Jurisdiction) Order in Council 1902 and under S. 22 of the Extradition Act does not control S. 188, Cr. P. C. The Rule contains a reminder to Political Agents of their duty to consider the admissibility of issuing a certificate prior to issuing any warrant. A certificate under S. 188, Cr. P. C., can be issued even after a warrant has already gone out. *In re: Fazirsahab Allisahab Jhagirdar*.

13 Cr. L. J. 537 :
15 I. C. 809 : 14 Bom. L. R. 377.

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———**Ss. 188, 537—Sanction—Offence committed in Feudatory State—Sanction, necessity of.**

If an offence of forgery has been committed in a Feudatory State under S. 188, the accused cannot be tried without the sanction of the Political Agent for that State or the Local Government. The obtaining of sanction is imperative in such a case, and the omission to do so, vitiates the trial and the conviction of an accused of that charge. *Ram Prasad Guru v. Emperor*.

31 Cr. L. J. 364 :
122 I. C. 155 : 11 P. L. T. 433 :
A. I. R. 1930 Pat. 501.

———**S. 188—Scope—Jurisdiction of British Indian Courts.**

S. 188, Cr. P. C., was intended to draw into the net of the jurisdiction of the British Indian Courts cases which notwithstanding the full use of Ss. 179 to 187 could not be brought within their jurisdiction, and its proviso could not have been intended to restrict the extended jurisdictional privileges conferred by S. 178 to 184, on Courts which, according to the ordinary rule of S. 177, would not have had jurisdiction. *Assistant Sessions Judge v. Ramaswami Asari*.

15 Cr. L. J. 207 :
22 I. C. 991 : 26 M. L. J. 235 :
1 L. W. 302 :
1914 M. W. N. 324 :
A. I. R. 1914 Mad. 330.

———**S. 188—Scope—Offence committed on high seas.**

The first proviso to S. 188 refers only to offences which are said to have been committed on any territory and not to offences committed on the high seas. *Emperor v. Manuel Philip*.

18 Cr. L. J. 782 :
41 I. C. 158 : 19 Bom. L. R. 527 :
41 Bom. 667 : A. I. R. 1917 Bom. 280.

———**S. 188—Certificate, signing of—Proof.**

S. 188, Cr. P. C., does not mention the word certificate at all, and there is no direction for the signing of a certificate by any particular person. Nor is the manner prescribed in which it is to be proved that the Political Agent has certified that the charge ought to be enquired into in British India, although obviously the most convenient method of proving this is by the production of a document signed by the Political Agent. *Ruliya Singh v. Emperor*.

27 Cr. L. J. 942 :
96 I. C. 398 : 7 Lah. 468 :
27 P. L. R. 708 :
A. I. R. 1926 Lah. 609.

———**S. 188—Stolen property—Offence committed outside British India—Place of trial.**

Where dacoity was committed in British territory and a Native Indian British subject was found in possession of stolen property in a Native State and a charge under S. 412, Penal Code, was preferred against him: *Held*, that a certificate of Political Agent under S. 188, Cr. P. C., was necessary if the charge was to be tried in British India. A commitment

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without such certificate should be quashed.
Sessions Judge, Tanjore v. Sundara Singh.

11 Cr. L. J. 306 :
6 I. C. 308 : 1910 1 M. W. N. 143 :
8 M. L. T. 54.

—S. 188—*Meaning of words—"Place", meaning of.*

Per *Shah, J.*—The word "place" in the first paragraph of S. 188 includes high seas in its ambit. *Emperor v. Manuel Philip.*

18 Cr. L. J. 782 :
41 I. C. 158 : 19 Bom. L. R. 527 :
41 Bom. 667 :
A. I. R. 1917 Bom. 280.

—S. 188—*Meaning of words—"Where there is no Political Agent", meaning of.*

Per *Batchelor, J.*—The words "where there is no Political Agent" in the first proviso to S. 188 mean where there is no Political Agent for the territory in which the offence is alleged to have been committed. *Emperor v. Manuel Philip.*

18 Cr. L. J. 782 :
41 I. C. 158 : 19 Bom. L. R. 527 :
41 Bom. 667 :
A. I. R. 1917 Bom. 280.

—S. 190.

—Applicability,

—Charge-sheet by Police.

—Cognizance.

—Complaint.

—Complainant.

—Conspiracy,

—Discharge.

—Information.

—Jurisdiction.

—Miscellaneous.

—Police Report.

—Power and Duty of Magistrate.

—Powers of District Magistrate.

—Power of Magistrate.

—Powers under.

—Procedure.

—Report.

—Scope.

—Transfer.

—S. 190.

See also (i) Arms Act, S. 19.

(ii) *Burma Ghee Adulteration Act.*

(iii) *Burma Precaution of Prostitution Act, 1923, S. 3.*

(iv) *Cantonment Code, S. 167.*

(v) *Cr. P. C., 1898, Ss. 4 (g) (h), 4 (b), 155, 157, 173, 197, 250, 476.*

(vi) *Penal Code, Ss. 154, 220.*

—S. 190 (1).

See also (i) Cr. P. C., S. 436.

—S. 190 (1) (a).

See also (i) Cr. P. C., S. 4 (1), Cl. (b).

—S. 190 (1) (a) 195 (1) (b).

See also (i) Penal Code, 1860, S. 182.

—S. 190 (1) (b).

See also (i) Cr. P. C., 1898, Ss. 173, 197.

(ii) *Madras Abkari Act, 1888, S. 31*

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—S. 190 (1) (c).

See also (i) Burma Village Act, 1907, S. 28.

(ii) *Cr. P. C., 1898, S. 476.*

(iii) *Penal Code, 1860, S. 182.*

—S. 190 (1) (c).

See also (i) Cr. P. C., 1898, S. 4 (b).

—S. 190 (c).

See also (i) Cr. P. C., 1898, Ss. 94, 191.

—Ss. 190, 191—*Applicability—Cognizance taken by Magistrate on information derived from a Police report.*

A Magistrate after perusing a Police report in which it was recommended that proceedings should not be taken against two persons, R and J, came to the conclusion that a charge of theft ought to be framed against D, and ordered accordingly : *Held*, that the Magistrate had not taken cognizance of the case on his own information within the meaning of S. 190(c) so as to render it necessary for the case to be transferred for trial to another Magistrate. *Emperor v. Dalip Singh.*

5 Cr. L. J. 275 :
27 A. W. N. 93.

—Ss. 190, 191—*Applicability—False information to Police—Magistrate taking action under S. 211, I. P. C.—Action justified—Stopping pending case on revision.*

L gave information of theft at a Police Station. The Police under S. 173, Cr. P. C., reported it mistaken. The Magistrate held a preliminary inquiry and sent L for trial before another Magistrate under S. 211, Penal Code. His proceedings purported to be under Ss. 159 and 476, Cr. P. C. : *Held*, that those sections did not apply, but that the proceedings were lawful under Ss. 190 and 191, Cr. P. C. As there was no manifest in justice on the face of the record, the Court declined to interfere in revision to stop a pending case which had been legally commenced. *Lachmanan Chetty v. Emperor.*

1 Cr. L. J. 539 :

U. B. R. 1904 1st Qr. Cr. P. C. 4.

—Ss. 190, 476—*Applicability—Presentation of forged document for registration—Order by District Registrar for prosecution—District Registrar also District Magistrate.*

An application for the compulsory registration of a sale-deed was rejected, whereupon the applicant appealed to the District Registrar, who dismissed the appeal, but a few days later, directed the prosecution of the applicant for an offence under S. 471, Penal Code, and referred the case under the provisions of S. 476, Cr. P. C. After enquiry, the accused was committed and convicted. On appeal, it was objected that the District Registrar not being a Civil, Criminal or Revenue Court within the meaning of S. 476 had no jurisdiction to proceed under that section : *Held*, that as the District Registrar was also the District Magistrate it was competent for him to take cognizance under S. 190, Cl. (1), Sub-s. (c) and to transfer the case to a Subordinate Magistrate in order

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that a commitment enquiry might be held. *Cheta Mahto v. Emperor.*

24 Cr. L. J. 792 :
74 I. C. 536 : 2 Pat. 459 :
4 P. L. T. 727 :
A. I. R. 1924 Pat. 128.

-----S. 190 (a)—*Applicability.*

Discharge of accused—Subsequent application in same case by Assistant Police Prosecutor to issue warrants to certain persons—Application can be entertained as a complaint—Absence of particulars of offence in application—Quashing of proceedings ordered. *Balomal v. Emperor*

35 Cr. L. J. 266 :
146 I. C. 1088 : 6 R. S. 118 :
A. I. R. 1933 Sind 393.

-----Ss. 190 (1) (a), (b) and (c), 200 (a)—*Applicability—Police investigation—Report that charge is false—Magistrate directing action under S. 211, Penal Code—Formal complaint by Police—Magistrate, whether bound to inform accused that he could be tried by another, or to examine complainant—S. 190 (1) (a), (b) and (c), applicability of—‘His own knowledge,’ meaning of—Complaint by Police about non-cognizable offence—Examination of Police Officer complaining, whether necessary—Acting in the discharge of duty.*

There was a Police investigation into a charge under S. 379, Penal Code. The Police reported that the charge was false and the Magistrate made an endorsement on the report that the charge was false and that action should be taken under S. 211, Penal Code, against the complainant. A complaint was lodged against the complainant in the earlier case and the Magistrate convicted him under S. 211, Penal Code. On revision : *Held*, that if the Magistrate took cognizance of the offence when he made the endorsement on the Police report, he took cognizance under Sub-cl. (b) of Sub-s. (1) of S. 190, Cr. P. C., that is, upon a Police report, and not upon his knowledge or suspicion under Sub-cl. (c) and it was necessary for the Magistrate to inform the accused under S. 191, Cr. P. C., that he could be tried, if so desired by another Magistrate ; that assuming that the Magistrate took cognizance only, when the Police lodged the complaint, he was excused from examining the complainant as the complaint made by the Police was a complaint made by a public servant acting or at any rate purporting to act in the discharge of official duties within the meaning of S. 200 (a), Cr. P. C. *Lal Behari Singh v. Emperor.* 31 Cr. L. J. 55 : 120 I. C. 297 : 10 P. L. T. 601 : A. I. R. 1929 Pat. 514.

-----S. 190 (1) (b)—*Applicability—Non-cognizable offence—Report by Police Officer—Magistrate’s power to take cognizance of offence.*

A Magistrate has power under S. 190 (b) to take cognizance of a non-cognizable offence on a report made by a Police Officer. *Prag Dall Tiwari v. Emperor.* 29 Cr. L. J. 938 : 111 I. C. 858 : 1928 A. L. J. 68 : A. I. R. 1929 All. 765.

-----Ss. 190 (1), Cls. (b) and (c), 191—*Applicability.*

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The police sent one S. for trial for stealing a pony. The Magistrate began proceedings by examining the Sub-Inspector investigating the case. On his evidence, the Magistrate directed the applicant who was present in custody on another charge to be put in the dock along with S. Re-examined the Sub-Inspector and proceeded against both accused together and convicted them. On revision it was contended by applicant that the Magistrate took cognizance of the case as against the applicant under Cl. (c) of S. 190 (1), and that consequently as he did not proceed under S. 191 proceedings were void : *Held*, that the Magistrate took cognizance under Cl. (b) and not under Cl. (c) of S. 190 (1) and his proceedings were not void. *Nga Po Yon v. Emperor.*

11 Cr. L. J. 489 :
7 I. C. 461 : U. B. R. 1910 Cr. P. C. 2.

-----S. 190 (1), Sub-cl. (c)—*Applicability—Proceedings under Chap. VII, Cr. P. C.—Opportunity to be tried by another Magistrate, accused whether entitled to.*

S. 190 (1), Sub-cl. (c) has no application when proceedings are instituted under Chap. VIII, Cr. P. C., by a Magistrate upon information received from any person other than a Police Officer. *Mahomedally v. Emperor.*

27 Cr. L. J. 1280 :
98 I. C. 128 : A. I. R. 1927 Sind 77.

-----Ss. 190 (1) (c) and 191—*Applicability.*

Magistrate taking cognizance under S. 190 (1) (c)—Evidence recorded and *prima facie* case made—Accused examined—Accused not informed that they were entitled to have case tried by another Court under S. 191—Case proceeded with and accused convicted—Trial is vitiated. *Emperor v. Malak.*

35 Cr. L. J. 1407 (1) :
151 I. C. 792 : 7 R. L. 207 :
A. I. R. 1934 Lah. 210.

-----Ss. 190 (1) (c), 191—*Applicability—Magistrate transferring person from witness-box to dock—Right of such person to be tried by another Court.*

A Magistrate takes cognizance of an offence, not of offender. Therefore, if he transfers a person from the witness-box to the dock, he does not act under S. 190 (c), and takes cognizance of an offence at all. Consequently the person so transferred is not entitled, under S. 191, to be tried by some other Court. *Sri Kishen v. Debi Dayal.* 26 Cr. L. J. 1619 : 90 I. C. 915 : 2 O. W. N. 823 : A. I. R. 1925 Oudh 739.

-----Ss. 190 (1) (c), 195 (1) (b)—*Applicability—Offence under S. 211, Penal Code—No complaint by Court—Offence, whether can be taken cognizance of under S. 190 (1) (c).*

S. 195 (1) (b), Cr. P. C., is a bar to cognizance of an offence under S. 211, Penal Code, alleged to have been committed in or in relation to a proceeding in a Court except on complaint in writing by that Court or some other Court to which that Court is subordinate. It is not open to a Magistrate to take cognizance of the offence in such a case under S. 190 (1) (c) of

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the Code without any complaint. *Emperor v. Lalchand Teli.* 31 Cr. L. J. 494 : 123 I. C. 399 : A. I. R. 1930 Pat. 346.

—Ss. 190 (2), 201—*Applicability—Complaint of murder—Second Class Magistrate, whether competent to take cognizance—Procedure—Complainant charged with offence under S. 211, Penal Code, legality of.*

A complaint of murder was made to a Second Class Magistrate who sent it to the Police for inquiry, and on their reporting the case to be false, dismissed the complaint under S. 203, Cr. P. C., without even examining the complainant on oath and then himself complained against the latter under S. 211, Penal Code : *Held*, that the Magistrate was not competent to take cognizance of the complaint and the proper procedure for him to adopt was that laid down in S. 201, Cr. P. C., which required him to return the complaint for presentation to the proper Court with an endorsement to that effect ; that the proceedings before the Magistrate were void *ab initio* and he had no jurisdiction to make a complaint against the complainant for an offence under S. 211, Penal Code. *Bengal Gope v. Emperor.* 27 Cr. L. J. 704 : 94 I. C. 896 : 7 P. L. T. 335 : 5 Pat. 447 : A. I. R. 1926 Pat. 400.

—S. 190 (c)—*Applicability of, to proceedings under S. 110.*

The provisions of S. 190 (c) and 191 do not apply to proceedings under S. 110. *In the matter of : the Petition of Milhu Khan.*

1 Cr. L. J. 807 : 24 A. W. N. 206 : I. L. R. 27 All. 172 : 1 A. L. J. 685.

—S. 190 (c)—*Applicability—Offence of giving false evidence, cognizance of.*

There is no provision in the Code empowering a Magistrate to take cognizance of the offence of giving false evidence under S. 190 (c) or to refer it for preliminary inquiry. *Imperator v. Shoukatmal.* 14 Cr. L. J. 600 : 21 I. C. 472 : 7 S. L. R. 75.

—Ss. 190 (c), 192, 195 (b), 200—*Applicability—Proceedings under the Village Act are not judicial proceedings.*

The Commissioner, Pegu Division, in a proceeding under the Village Act wrote to the District Magistrate requesting him to proceed against the petitioner under S. 476, Cr. P. C., for an offence under S. 199 of the I. P. C. : *Held*, that no sanction was necessary under S. 195 (b), Cr. P. C., and the District Magistrate could take cognizance under S. 190 (c) and transfer the case to a Subordinate Magistrate under S. 192. *Maung Kye v. Emperor.* 11 Cr. L. J. 736 : 8 I. C. 949 : 3 Bur. L. T. 120.

—Ss. 190 (c), 556—*Applicability—Cognizance of offence—Magistrate also manager of encumbered estate—Cognizance as Magistrate on report as manager—Attachment of subject-matter of alleged offence.*

A Magistrate, who was manager of an encumbered estate, received a report from an officer of the Court of Wards and ordered the

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prosecution of the petitioner of the wrongfully cutting certain trees in a forest and also ordered the trees to be attached : *Held*, he had no authority to attach the trees. By *Stephen, J.*—That the Magistrate had no authority to direct the prosecution, because having received the information as the manager, he could not act upon it as a Magistrate. By *Carduff, J.*—That the Magistrate had power to take cognizance of the alleged crime. *Lakhai Narain v. Emperor.* 11 Cr. L. J. 305 : 6 I. C. 276 : 14 C. W. N. 589 : 11 C. L. J. 415 : 37 Cal. 221.

—S. 190 (1), (b)—*Charge sheet by Police—Cognizance of case :*

A Magistrate cannot take cognizance of an offence under S. 190 (1) (b), upon a Police charge-sheet which does not contain the facts which constitute the offence. *In re : Shivlingappa Bhagappa.* 31 Cr. L. J. 1142 : 127 I. C. 110 : 32 Bom. L. R. 782 : A. I. R. 1930 Bom. 372.

—S. 190—*Cognizance—Charge-sheet, whether should mention what each witness is to prove.*

No provision of law requires that a Magistrate before taking cognizance of an offence should know exactly what each of the witnesses named in the charge-sheet will prove. The charge-sheet alleges that a certain offence will be established by the evidence of certain witnesses and this is sufficient to enable a Magistrate to take cognizance. *Grant v. Emperor.* 23 Cr. L. J. 69 : 65 I. C. 421 : A. I. R. 1922 Pat. 294.

—S. 190—*Cognizance—Magistrate framing charge on offence not mentioned in charge.*

Where a Magistrate who takes cognizance of an offence on complaint, discovers that there is a *prima facie* case against the accused person which would support a charge in respect of an offence not mentioned in the complaint, and he frames such charge, he cannot be held to have taken cognizance of the latter offence under Cl. (c) of S. 190. The case must still be treated as being one falling within the purview of cl. (a) of the section. *V. M. Abdul Rahman v. Emperor.* 28 Cr. L. J. 259 : 100 I. C. 227 : 31 C. W. N. 271 : 25 A. L. J. 117 : 1927 M. W. N. 103 : 38 M. L. T. 64 : 8 P. L. T. 155 : 4 O. W. N. 283 : 6 Bur. L. J. 65 : 5 Rang. 53 : 52 M. L. J. 585 : 28 Bom. L. R. 813 : 45 C. L. J. 441 : 54 I. A. 96 : A. I. R. 1927 P. C. 44.

—S. 190—*Cognizance of offence, meaning of.*

Under S. 190, a Magistrate takes cognizance of an offence and not of the offender. Taking cognizance of a case does not involve any formal action or action of any kind, but occurs as soon as a Magistrate applies his mind to the offence. *Mehrab v. Emperor.* 26 Cr. L. J. 181 : 83 I. C. 885 : 17 S. L. R. 150 : A. I. R. 1924 Sind 71.

—S. 190—*Cognizance of an offence, meaning of.*

Cr. P. CODE (1898), S. 190

The expression in S. 190 "cognizance of any offence" is not equivalent to cognizance of any offender, for the definition of complaint includes a complaint that some person unknown has committed an offence. *Imperator v. Lalu*.

12 Cr. L. J. 399 :

11 I. C. 583 : 4 S. L. R. 258.

—S. 190—*Cognizance of an offence—Procedure.*

Before proceedings are taken against an accused person, such as would bring him before a Court of Justice, a Magistrate must have before him knowledge, independent of his own knowledge, based either upon a complaint or upon a Police report. If he chooses to take action without such independent report, he is bound to inform the accused that he is entitled to have the case tried by another Court. *Sarferaz Khan v. Emperor*.

14 Cr. L. J. 218 :

19 I. C. 314 : 11 A. L. J. 331.

—S. 190—*Cognizance of offence and not offenders.*

Under S. 190, cognizance is taken of the offence, and not necessarily of the individual offenders, whose names transpire in the course of the investigation. *Mathura Singh v. Emperor*.

36 Cr. L. J. 641 :

151 I. C. 58 : 15 P. L. T. 438 :

7 R. P. 536 : A. I. R. 1934 Pat. 467.

—S. 190—*Cognizance—Power to take cognizance of offence against person not sent up for trial.*

A case was sent up for trial by the Police to a 2nd Class Magistrate, who was competent to take cognizance of offences under S. 190 (a) and (b). In the course of the trial, the Magistrate saw reason for believing that the offence was committed not by the person sent up but by another person A, who had given evidence before him. The Magistrate, thereupon, took cognizance of the case against A., had him arrested and reported the case for transfer to the Sub-Divisional Magistrate. It was objected that the Magistrate not being empowered under S. 190 (c), his proceeding was *ultra vires* : *Held*, that the Magistrate was empowered to take cognizance of the offence against A. *Imperator v. Lalu*.

12 Cr. L. J. 399 :

11 I. C. 583 : 4 S. L. R. 258.

—S. 190.

Cognizance, taking of, what is.

Baldev Prasad v. Emperor.

34 Cr. L. J. 942 :

145 I. C. 382 : 14 P. L. T. 330 :

12 Pat. 758 : 6 R. P. 166 :

A. I. R. 1933 Pat. 297.

—Ss. 190, 191, 537—*Cognizance—Chalan case—Accused added by Magistrate—Not bound to act under S. 191—Evidence to be taken afresh—Irregularity—Effect.*

L. was challaned and the Magistrate after examining the investigating officer, considered that S. should be joined as an accused. Process was accordingly issued to S and he was tried along with L. Both were convicted : *Held*, that the Magistrate took cognizance of S's offence under Cl. (b), not under

Cr. P. CODE (1898), S. 190

Cl. (c) of Sub-s. (1), S. 190, and was consequently, not bound to act under S. 191. That the Magistrate committed an irregularity in simply reading over the investigation officer's deposition to S. who then cross-examined, instead of examining the witness again. That the mistake had not prejudiced S, and therefore, he taken as cured by S. 537. *Saraca v. Emperor*.

14 Cr. L. J. 290 :

19 I. C. 946 : 9 N. L. R. 65.

—Ss. 190, 200—*Cognizance—Cognizance by Magistrate of non-cognizable case on report of Police.*

There is nothing illegal or irregular in a Magistrate taking cognizance of a non-cognizable offence on a report in writing made by a Police Officer without examining such officer on oath. *Shanker Lal v. Emperor*.

28 Cr. L. J. 821 :

104 I. C. 437 : A. I. R. 1927 Lah. 702.

—Ss. 190, 254 — "Cognizance of an offence", meaning of—Magistrate under S. 254 framing charge different from that indicated by complaint—Whether 'takes cognizance'.

The expression "taking cognizance of an offence" in S. 190 deals with a matter of a purely technical nature. Cognizance is usually taken upon complaint when process is issued, but no restricted interpretation can be given to that expression in the consideration of the character of the action of a Magistrate at any particular stage of the proceeding before him. But the terms of S. 190 make it clear that cognizance is taken upon issue of process before evidence is recorded. It is the complaint, therefore, which gives jurisdiction to the Magistrate to try the offence. Consequently, when under the provisions of S. 254 the Magistrate thinks, upon the evidence heard, that a charge different from the one indicated by the complaint should be framed, he does not take cognizance under S. 190 (1) (c); for the power to frame a charge in a warrant case of the offence disclosed is inherent in the jurisdiction assumed by the Magistrate upon the original complaint. *Baburao Tatyrao v. Emperor*.

38 Cr. L. J. 9 :

165 I. C. 867 : 38 Bom. L. R. 916 :

9 R. B. 171 : A. I. R. 1936 Bom. 379.

—S. 190 (1) (a)—*Cognizance—Cognizance is of offence and not of offenders.*

It is not a condition requisite for the initiation of proceedings in a Criminal Court that there should necessarily be a person named as the offender. The Magistrates mentioned in S. 190, Sub-s. (1), are empowered to take cognizance of an offence whether or not the complaint before them charges any particular individual or individuals with having committed the offence. *Fateh Muhammad v. Emperor*.

41 Cr. L. J. 750 :

189 I. C. 586 : 1940 Kar. 287 :

13 R. S. 33 : A. I. R. 1940 Sind 97.

—Ss. 190 (1) (a), 200—*Cognizance of case on complaint, when taken.*

Under S. 190 (a) a Magistrate takes cognizance of a case before he examines the

Cr. P. CODE (1898), S. 190

complainant under S. 200 and omission to examine is an irregularity. *In re : Ambayara Goundan.*

25 Cr. L. J. 730 :
81 I. C. 218 : 19 L. W. 461 :
A. I. R. 1924 Mad. 587.

————S. 190 (1) (a), (c) — *Cognizance—Cognizance of offences and not of offenders—Complaint against persons mentioned in the complaint unfounded—Other persons appearing from prosecution evidence to be real offenders—Magistrate, whether competent to proceed against those persons.*

A Magistrate having taken cognizance of complaint, can proceed against another person who, although not mentioned in the complaint, appears in the evidence for the prosecution to have been concerned in the commission of the offence. In issuing process against person whose name thus transpires in the prosecution evidence during the trial of a case, the Magistrate takes cognizance under cl. (1) (a) of S. 190 and not under cl. (1) (c) of the section. *Dedar Bux v. Syamapoda Malakar.*

15 Cr. L. J. 546 :
24 I. C. 954 : 18 C. W. N. 921 :
41 Cal. 1013 : A. I. R. 1914 Cal. 801.

————Ss. 190 (1) (a), (c), 537—*Cognizance—Complaint—Information—Burma Municipal Act, S. 195.*

If the Magistrate was competent to take cognizance under S. 190 (1) (c), he must be deemed to have so taken cognizance. In the present case the Magistrate was not so competent, because the complaint was of an offence under the Municipal Act, S. 195 of which bars the taking of cognizance except upon complaint. The Magistrate, therefore, took cognizance under S. 190 (1) (a). *Meshidi Khan v. Rangoon Municipal Committee.*

8 Cr. L. J. 505 :
4 L. B. R. 300 : 14 Bur. L. R. 250.

————S. 190 (1) (c)—*Cognizance—Bombay Prevention of Gambling Act, S. 6—Warrant, issue of—If cognizance.*

A Magistrate not empowered to take action under S. 190 (1) (c), cannot be said, by merely issuing a warrant under S. 6 of the Bombay Prevention of Gambling Act, to have taken cognizance of a case till it is brought up before him for trial. *Hotu v. Emperor.*

15 Cr. L. J. 657 :
25 I. C. 985 : 8 S. L. R. 66 :
A. I. R. 1914 Sind 121.

————S. 198 (1) (c)—*Cognizance of case, what is.*

A Magistrate passing orders for the issue of summons against the accused in a case placed before him by an order of the Collector to the effect that the case should be put before the Magistrate for the issue of necessary orders, takes cognizance of the case under S. 190 (1) (c). *Bansi Lal v. Emperor.*

7 Cr. L. J. 224 ;
12 C. W. N. 438.

————S. 190 (1) (c)—*Cognizance—District Magistrate, competency of, to take cognizance of offence on information received as President, District Board.*

Cr. P. CODE (1898), S. 190

A District Magistrate, who is President of the District Board, is competent, under S. 190 (1) (c) to take cognizance of an offence upon information received by him in his capacity of President of the District Board. *In re : Sundaresan.*

21 Cr. L. J. 348 :
55 I. C. 684 : 38 M. L. J. 219 :
11 L. W. 355 : 27 M. L. T. 123 :
1920 M. W. N. 231 : 43 Mad. 709 :
A. I. R. 1920 Mad. 79.

————S. 190 (1) (c)—*Cognizance—District Registrar—Cognizance by District Registrar as District Magistrate under s. 190 (1) (c), whether competent.*

If the District Registrar happens to be a District Magistrate, he can proceed under s. 190 (1) (c) of the Code. *Chela Mahto v. Emperor.*

26 Cr. L. J. 1482 :
89 I. C. 1050.

————Ss. 190 (1) (c), 191, 351—*Cognizance—on personal knowledge—Strict observance of S. 191 necessary.*

The competency of a Magistrate to try a person for an offence of which he has taken cognizance under S. 190 (1) (c), is contingent on a strict observance of the provisions of S. 191.

A Magistrate proceeding under S. 351 (1), against any person, who may appear, upon the evidence taken, to be concerned in the offence under investigation, cannot properly be regarded as taking cognizance of the case upon information received, or upon his own knowledge or suspicion, within the meaning of clause (c) of Sub-sec. (1) of S. 190, so as to enable the accused to object to that Magistrate proceeding further with the case. *Emperor v. Sakhia.*

10 Cr. L. J. 303 :
3 I. C. 568 : 3 N. L. R. 113.

————S. 190 (1) (c)—*Cognizance of offence—Duties of Magistrates.*

If a Magistrate takes cognizance under S. 190 (1) (c), he must give the accused the option of being tried by some other Magistrate, but this point does not arise in a case where the trying Magistrate is not the Magistrate who calls for the charge-sheet. *Uma Singh v. Emperor.*

34 Cr. L. J. 1198 :
146 I. C. 70 : 14 P. L. T. 162 : 12 Pat 234 :
6 R. P. 237 : A. I. R. 1933 Pat 242.

————Ss. 190 (1) (c) and 191—*Cognizance—Applicability to the Appellate Court—Appeal, part of a trial.*

A Subordinate Magistrate who took cognizance of a case under S. 190 (1) (c) could not, after becoming District Magistrate, hear an appeal from a conviction in the case which was tried by another Subordinate Magistrate without following the procedure laid down by S. 191, an appeal being part of the trial for an offence. *Bansi Lal v. Emperor.*

7 Cr. L. J. 224 :
12 C. W. N. 438.

————Ss. 190 (a) (c) and 191—*Cognizance—Cognizance of offence by Magistrate upon receiving complaint of facts.*

Upon evidence recorded by a Magistrate

Cr. P. CODE (1898), S. 190

trying a case of theft against a person, it appeared that the present petitioner was guilty of the offence of theft, and the petitioner having been tried and convicted of the same by the Magistrate, urged on revision that the Magistrate should not have tried the case himself: *Held*, that the contention had no force.

Qutba v. Croon. 1 Cr. L. J. 511 :
5 P. L. R. 254 : 32 P. R. Cr. of 1904.

—Ss. 190 (1) (c), 191, 556—*Cognizance by Magistrate on personal knowledge—Accused's right to transfer.*

The mere fact that a Magistrate takes cognizance of a case on his own knowledge under S. 190 (c) does not bring the case within the operation of S. 556 and so long as the Magistrate complies with the provisions of S. 191, he is entitled to try the case. *Nga Chit Kyaw v. Emperor.* 26 Cr. L. J. 249 :

84 I. C. 249 : 3 Bur. L. J. 121 :
A. I. R. 1924 Rang. 352.

—Ss. 190 (b), (c), 351—*Cognizance—Prosecution directed by Magistrate—Cognizance on Police report.*

Where, after the close of a trial, the Trying Magistrate directs the Police to institute criminal proceedings against a witness, and upon receipt of the Police report, himself tries the case, he takes cognizance under S. 190 (b), and not under S. 190 (c) or S. 351. But the trial is illegal, for a Magistrate cannot be both a Prosecutor and a Judge. *Gundo Chikko Kulkarni v. Emperor.* 22 Cr. L. J. 603 :

62 I. C. 875 : 23 Bom. L. R. 842 :
A. I. R. 1921 Bom. 365.

—S. 190, Cl. (c),—*Cognizance, meaning of—Magistrate making judicial inquiry—Summoning accused—Transfer of case.*

The opposite party lodged information against the petitioners with the Police, who found the information false and recommended his prosecution. This came up before the Deputy Magistrate in charge who ordered a judicial inquiry, which was held by a Magistrate B who, making evidence, summoned the accused: *Held*, that as B was the first Magistrate who really contemplated taking proceedings against the accused, they ought to be allowed to have the case tried by another Magistrate. *Ananta Ram v. Allob Sarkar.* 14 Cr. L. J. 425 :

20 I. C. 409 : 17 C. W. N. 795.

—S. 190 (c)—*Cognizance of offence.*

A necessary condition for taking cognizance of a case under Cl. (c) of S. 190 is for the proceedings to be instituted upon information received from any person other than a Police Officer or upon the Magistrate's own knowledge or suspicion. *Abdul Ali v. Emperor.*

22 Cr. L. J. 9 :
59 I. C. 41 : 1 P. L. T. 446.

—S. 190 (c)—*Cognizance—Information sufficient to justify taking of cognizance.*

What allegations or how much of the information should be recorded by the Magistrate in a case, it is difficult to lay down in general terms; but when it is found that the recorded information is sufficient to justify the

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Magistrate in considering that a *prima facie* case has been made out, the High Court will not interfere with the Magistrate's action in taking cognizance under S. 190 (c).

8 Cr. L. J. 235 :
12 C. W. N. 1075 : 35 Cal. 1076.

—S. 190—*Complaint—Report.*

In order that a Magistrate may take cognizance of a case, there must be a complaint preferred by the complainant. A mere report by a Police officer is not a complaint within the meaning of S. 190 (b). *Narayanasami Pillai v. Government of Mysore.* 9 Cr. L. J. 331 :

12 M. C. C. R. 86.

—S. 190—*Complaint—False charge of dacoity before village Magistrate—Case struck off on Police report—Charge by Police of false information, legality of—Procedure.*

Accused made a complaint to a Village Munsif of a dacoity in his house, mentioning certain persons. The Police reported the case to be false, and the Sub-Magistrate struck the case off. The Police put in a charge-sheet against the accused before the Sub-Divisional Magistrate for an offence under S. 211, Penal Code: *Held*, that it was open either to the persons against whom complaint was made or to the Village Munsif or to any Police Officer, to prefer a complaint under S. 190, Cr. P. C., in which case the Magistrate before whom the complaint was made could take the case on his file but that the Police could not start proceedings of their own accord, and that, consequently, the proceedings must be quashed as illegal. *In re : Perumal Naick.* 26 Cr. L. J. 1550 :

99 I. C. 398 : 1925 M. W. N. 317 : 22 L. W. 209 :
A. I. R. 1925 Mad. 672.

—S. 190—*Complaint—Telegram alleging commission of offence.*

Where, a telegram alleging that a certain offence has taken place does not contain a prayer asking the addressee to take action as contemplated by the Code, there must be clear proof that this was the petitioner's intention before it can be held that he submitted a complaint. *Hidayatullah v. Emperor.*

37 Cr. L. J. 604 :
162 I. C. 140 : 8 R. Pesh. 189 :
A. I. R. 1936 Pesh. 66.

—S. 190—*Complaint—Trial for offence not mentioned therein.*

Once parties are before the Court the Magistrate can try the accused for any offence disclosed by evidence. No separate complaint is necessary. *Baldeo Prasad v. Emperor.* 34 Cr. L. J. 942 :
145 I. C. 382 : 14 P. L. T. 330 : 12 Pat. 758 :
6 R. P. 166 : A. I. R. 1933 Pat. 297.

—Ss. 190, 195, 476—*Complaint—Offence committed in respect of document in Court—Complaint by Presiding Officer against persons not parties to proceedings, competency of.*

There is nothing in the Code which either expressly or by implication prohibits the Presiding Officer of a Court to make a complaint about an offence committed in connection with a document produced in his Court when the person complained of is not a

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party to the proceedings. *Emperor v. Bal Mukand*.
29 Cr. L. J. 652 :

110 I. C. 108 : 9 Lah. 678 ;
A. I. R. 1928 Lah. 510.

———Ss. 190, 202—*Complaint, necessity of—Inquiry, when can be made—Cognizance of case—Jurisdiction of Magistrate.*

There is no provision in the Code empowering a Magistrate to hold a judicial or preliminary inquiry, unless there is a complaint under S. 190 (1) (a). S. 202 under which alone an inquiry can be made, relates exclusively to complaints. No such inquiry can be made when cognizance is taken under Cls. (b) and (c) of S. 190. *Tiloki Mahten v. Emperor*.

22 Cr. L. J. 735 :
64 I. C. 47 : 2 P. L. T. 220 :
A. I. R. 1921 Pat. 302.

———S. 190 (1), 191—*Complaint by Municipality, whether cognizable under S. 190 (a).*

A prosecution by a Municipality for an offence under the Bengal Municipal Act started on the complaint of one of its servants is initiated under S. 190 (1) (a), and not under S. 190 (1) (c), and the procedure prescribed under S. 191 does not apply to it. *Baldeo Lall v. Emperor*.

18 Cr. L. J. 273 :
38 I. C. 805 : A. I. R. 1916 Pat. 3.

———S. 190 (1) (a)—*Complaint.*

A complaint with the report of a Police Officer must contain the facts which constitute the offence, and a charge-sheet which does not contain such facts cannot, therefore, be treated as a valid complaint within S. 190 (1) (a). *In re : Shivlingappa Bhagappa*.

31 Cr. L. J. 1142 :
127 I. C. 110 : 32 Bom. L. R. 782 :
A. I. R. 1930 Bom. 372.

———S. 190 (1) (a)—*Complaint—Charge-sheet in non-cognizable case.*

Charge-sheet sent up in a non-cognizable case can be treated as a complaint within the meaning of S. 190 (1) (a) and the Magistrate can take cognizance of the case under that clause. *Raghunath v. Emperor*.

33 Cr. L. J. 733 :
139 I. C. 281 : 34 Bom. L. R. 901 :
I. R. 1932 Bom. 484 : A. I. R. 1932 Bom. 610.

———S. 191 (1) (a)—*Complaint, requirements of—Mere repetition of words of section, whether complaint—Complainant, whether bound to have personal knowledge of facts.*

Before a Magistrate takes cognizance of an offence on complaint, he must have before him an allegation of facts constituting the offence, a mere repetition of the words of a section of the Penal Code is not a proper compliance with the provisions of S. 190 (1) (a), which is to be read along with the definition of complaint given in S. 4 (h). *Sukummar Chatterjee v. Mufizuddin Ahmed*.

22 Cr. L. J. 455 :
61 I. C. 839 : 25 C. W. N. 357 :
A. I. R. 1921 Cal. 561.

———S. 190 (1) (a)—*Complaint.*

Tampered sale deed produced in Magistrate's Court—Report to Registrar—Enquiry by Re-

Cr. P. CODE (1898), S. 190

gistrar—Complaint by Registrar against scribe, vendee and attesting witness in respect of forgery—Held, complaint came within S. 190 (1) (a) and S. 195 (1) (c) was no bar. *Emperor v. Krishnarao*.

36 Cr. L. J. 1477 :
158 I. C. 647 : 18 N. L. J. 247 :
31 N. L. R. 377 : 8 R. N. 100 :
A. I. R. 1933 Nag. 190.

———Ss. 190 (1) (a), 195 (1) (b), 476—*Scope—Complaint under S. 476 by Court—Proceeding against persons not mentioned therein.*

S. 476 has no reference to jurisdiction. If then in respect of one of the offences enumerated in S. 195 (1) (b) committed in or in relation to any proceeding in any Court that Court or some Court to which that Court is subordinate has proceeded under S. 476 and filed a complaint, the bar under S. 195 is removed; the Magistrate before whom the complaint is lodged takes cognizance of the offence under S. 190 (1) (a) and thereafter proceeds to inquire into complaint and to deal with it according to law, using for this purpose all the powers vested in him by the Code. If an offender is named in the complaint, the Magistrate will proceed against him. If, on inquiring into the complaint, other persons appear to be involved therein by the evidence recorded by the Magistrate, he is entitled to proceed against those others under the powers conferred upon him by S. 190 (1) (a) and S. 195 (1) (b) cannot possibly bar him from doing so. *Fateh Muhammad v. Emperor*.

41 Cr. L. J. 750 :
189 I. C. 586 : 1940 Kar. 287 :
13 R. S. 33 : A. I. R. 1940 Sind 97.

———Ss. 190 (1) (a), 200—*Complaint—Examination of complainant, omission of, effect of.*

A Magistrate who, under S. 190 (1) (a), takes cognizance of a case on a complaint ought to examine the complainant before issuing summons. But his omission to do so is a mere irregularity and does not go to the root of his jurisdiction. *Bhairab Chandra v. Emperor*.

20 Cr. L. J. 794 :
53 I. C. 698 : 29 C. L. J. 318 :
23 C. W. N. 484 : 46 Cal. 807 :
A. I. R. 1916 Cal. 433.

———Ss. 190 (1) (a) and (b), 155 (2)—*Complaint—Application for sanction to make investigation, whether complaint.*

An application requiring sanction of the Court for making an investigation under S. 155 (2) cannot be regarded as a complaint within S. 190 (1) (a). *In re : Shivlingappa Bhagappa*.

31 Cr. L. J. 1142 :
127 I. C. 110 : 32 Bom. L. R. 782 :
A. I. R. 1930 Bom. 372.

———S. 190 (1) (c)—*Complaint—Person who lodges first information report making petition of protest to Magistrate—Petition, whether complaint—Action of Magistrate on such petition, and Police diary.*

A petition of protest (as it is sometimes called) made to the Magistrate by a person who lodges a first information with the Police and who is reported against by them is really a petition of complaint and must be

Cr. P. CODE (1898), S. 190

dealt with as such. Where the Sub-Divisional Magistrate only acts on information contained in the Police diary and the petition of complaint filed by the other side, this latter coming within Cl. (a) of the Sub-s. (1) of S. 190 and the former within Cl. (b). Cl. (c) has no application whatsoever. *Panu Samal v. Emperor*.

41 Cr. L. J. 318 :

186 I. C. 435 : 6 B. R. 368 :

12 R. P. 513 : A. I. R. 1940 Pat. 111.

———S. 190 (a) (c)—*Complaint—Petition not amounting to complaint—Jurisdiction of Magistrate to take cognizance of offence.*

A Magistrate may take cognizance of a case under S. 190 (c) upon a petition which does not strictly fall within the definition of a complaint. *Sarfraz Singh v. Emperor*.

32 Cr. L. J. 124 (b) :

128 I. C. 279 : 7 O. W. N. 947 :

I. R. 1930 Oudh 39 : 6 Luck. 354 :

A. I. R. 1930 Oudh 500.

———Ss. 190 (1) (c), 200—*Complaint by private person—Investigation by Police—Magistrate, whether can proceed on Police report—Examination of complaint, necessity of—Irregularity.*

A private party informed a Magistrate that he suspected forgery in the records of a case pending in a Civil Court and asked for an investigation; the Magistrate ordered such an investigation, and on the report of the Criminal Investigation Department, ordered the prosecution of the accused: *Held*, that under S. 190, Cl. 1 c), it was not open to the Magistrate to take cognizance upon the report of any Police Officer or on the complaint of the complainant without examining him on oath and that the proceeding directing the prosecution were irregular, and in the event of their commitment to the Court of Session, to result in the commitment being quashed. *Jhuna Lal Sahu v. Emperor*.

18 Cr. L. J. 890 :

41 I. C. 1002 : 2 P. L. W. 152 :

2 P. L. J. 657 : A. I. R. 1917 Pat. 611.

———Ss. 190, 200—*Complainant—Cognizance of case.*

S. 190 must be read with S. 200. The cognizance of an offence by a Magistrate on complaint is not completed until he has examined the complainant on oath. *Mangu Koeri v. Emperor*.

20 Cr. L. J. 481 :

51 I. C. 465 : 1 P. L. T. 346 :

A. I. R. 1920 Pat. 670.

———Ss. 190 (1) (c), 254—*Conspiracy—Sameness of transaction.*

The offence of conspiracy and offences committed in pursuance of that conspiracy form one and the same transaction. Therefore, where a Magistrate acting on the facts disclosed in the evidence for the prosecution, adds a second charge in respect of an act alleged to have been done in pursuance of the alleged conspiracy contained in the complaint, his action is not only justified under S. 235 but such initiation taken by him is on the original complaint and not upon his own knowledge or suspicion. *Abdul Rahman v. Emperor*.

27 Cr. L. J. 669 :

94 I. C. 717 : 4 Bur. L. J. 213 :

A. I. R. 1926 Rang. 53.

Cr. P. CODE (1898), S. 190

———S. 190—*Discharge—Fresh trial.*

Where a Magistrate has passed an order discharging an accused person, it is competent to the same Magistrate or to another Magistrate of co-ordinate jurisdiction to take fresh proceedings against the accused upon the same facts without the order of discharge being set aside by higher authority. Though such further inquiry is not actually illegal, it should be only undertaken in exceptional cases and for good reason shown. *Emperor v. Keru*.

12 Cr. L. J. 364 :

11 I. C. 132 : 10 P. R. 1911 Cr. :

24 P. W. R. 1911 Cr. :

205 P. L. R. 1911.

———S. 190—*Information—Complaint—Information to Magistrate—Initiation of Criminal Proceedings—Prosecution in conformity with an ultra vires order.*

Where a District Judge directed the prosecution of a guardian and the District Magistrate ordered the case to be tried by the Additional District Magistrate, the Chief Court set aside the order of the District Magistrate as passed without jurisdiction as the order of the District Judge was illegal and there was no authority for the prosecution. The order of District Judge could not be regarded as information within the meaning of S. 190 (1) (c). *Sital Das v. Emperor*.

11 Cr. L. J. 602 :

8 I. C. 247 : 87 P. L. R. 1910.

———S. 190—*Jurisdiction—District Magistrate, C. and M. Station, Bangalore, to take cognizance of offences against European British subjects.*

The District Magistrate of the Civil and Military Station, Bangalore, has jurisdiction to take cognizance of, and try offences committed by, European British subjects in accordance with the provisions of the Code. *In re: Lawrence*.

12 Cr. L. J. 42 :

9 I. C. 254 : 9 M. L. T. 322 :

1911 2 M. W. N. 199 : 34 Mad. 346.

———S. 190 (1) (a)—*Jurisdiction—Complaint against Receiver in absence of leave from High Court—Magistrate's jurisdiction to take cognizance of—Leave asked for but no specific leave granted—Effect.*

It is within the jurisdiction of the Additional Chief Presidency Magistrate or the Third Presidency Magistrate to take cognizance of complaint against a Receiver even in the absence of leave from the High Court, since no such leave is required by any provision of the Code or any other law. It would not, however, be proper for him to do so, if there was no specific leave from the High Court for the institution of a criminal case although leave had been specifically asked for. This may not be a bar to jurisdiction but it is certainly relevant on the question of the propriety or desirability of criminal proceedings. *Jnanendra Nath Pramanik v. Nilmony Dey*.

41 Cr. L. J. 52 :

184 I. C. 603 : I. L. R. 1929 Cal. 587 :

43 C. W. N. 582 : 12 R. C. 249 :

A. I. R. 1939 Cal. 701.

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———Ss. 190 (1) (b), 351—*Jurisdiction—Cognizance of offence on Police report—Witness, prosecution of, with other accused—Magistrate, jurisdiction of.*

Where after some evidence for the prosecution had been led in a case in which the prosecution was initiated on a Police report, the Magistrate ordered the prosecution of one of the witnesses jointly with another accused and commenced the trial *de novo*: *Held*, Per *Robinson, C. J.* and *Macgregor, J.*, that the Magistrate had full jurisdiction to act, that S. 351 applied to the case, and that the Magistrate so far as S. 190 was applicable, if it was applicable at all, had acted under S. 190 (1) (b). Per *Mavng Kin, J.* That S. 190 (1) (b) applied to the facts of the case. *Nag Chan Tha v. Emperor.*

24 Cr. L. J. 519 :
73 I. C. 55 : 11 L. B. R. 398 ;
A. I. R. 1923 Rang. 31.

———S. 190 (1) (c)—*Jurisdiction—Case transferred from one Magistrate to another—Issue of process by the latter suo motu against other than original accused.*

A case pending in the Court of a Magistrate if after issue of process is transferred to another Magistrate, the latter stands in the shoes of the Magistrate who originally issued the process. Therefore, if he discharges the accused and *suo motu* issues process against another person under S. 190 (1) (c), he cannot be said to be acting without jurisdiction. *Hemendra Nath Sen v. Emperor.*

30 Cr. L. J. 352 :
114 I. C. 800 : 55 Cal. 1274 :
I. R. 1929 Cal. 288 :
A. I. R. 1929 Cal. 192.

———Ss. 190 (b), 202—*Jurisdiction—Non-cognizable offence—Jurisdiction of Magistrate to take cognizance on Police report.*

A duly empowered Magistrate may take cognizance of a non-cognizable offence on a Police report under S. 190 (b), but in that case, he must immediately summon the accused. He cannot hold a judicial enquiry under S. 202. *Eqbal Khan v. Emperor.*

20 Cr. L. J. 413 (b) :
51 I. C. 173 : A. I. R. 1919 Pat. 319.

———Ss. 190, 478—*Miscellaneous—Witness—False deposition—Prosecution for perjury—Deposition taken before the Assistant Judge—Trial for perjury by the same officer as District Magistrate—Sanction.*

An Assistant Judge before whom a witness gave a false deposition, took cognizance of the case, as a District Magistrate, under S. 190 (c) on the statement in the deposition. An objection was taken that sanction was required under S. 195 and that action taken by the officer as District Magistrate was not tantamount to a sanction by him as a Civil Judge: *Held*, that the action taken by the officer was in effect action, which, as a Civil Judge, he was perfectly competent to take under S. 478 as the offence was brought under his notice as a Civil Court in the course of a judicial proceeding. As Civil Judge, he could either transfer the case to

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himself as a Magistrate for inquiry or completing the inquiry as a Civil Judge, commit the accused. *Emperor v. Rashid.* 5 Cr. L. J. 202 :
9 Bom. L. R. 212.

———S. 190—*Police report.*

A Police report in a non-cognizable case is a Police report within the meaning of S. 190 (1) (b), Cr. P. C. *Naga Saw Ke v. Emperor.*

16 Cr. L. J. 97 (b) :
27 I. C. 145 : U. B. R. 1914 II 19 :
A. I. R. 1914 U. Bur. 31.

———S. 190—*Police Report—Magistrate's refusal to initiate proceedings.*

A Magistrate is competent to refuse to initiate proceedings on a Police report where there is no complaint but only a report to the police. If a Magistrate wrongly makes an order for the discharge of the accused under S. 253, his order is to be taken as one refusing to initiate proceedings under S. 190, and the High Court will not interfere with such an order. *Bhiku Bari v. Emperor.*

1 Cr. L. J. 980 ;
1 A. L. J. 609.

———Ss. 190 (1), 537—*Police report—Cognizance of case by Magistrate—Irregularity—Objection, when to be taken.*

In trial of an accused for theft, a *prima facie* case of receiving stolen goods was made out against two other persons by Prosecution and were added as accused by Magistrate. Evidence already recorded was read over to the new accused: *Held*, that there was nothing irregular in the procedure adopted, inasmuch as the proceedings against the two accused were started by the Magistrate on taking cognizance of the facts in a Police report: that reading over the evidence to the accused was an irregularity curable under S. 537, unless objection was taken at once or immediately after the procedure adopted. *Gulab Rai v. Emperor.*

18 Cr. L. J. 425 :
38 I. C. 985 : A. I. R. 1917 All. 133.

———S. 190 (1) (b)—“Police report,” meaning of.

The expression “Police report” in S. 190 (1) (b) does not refer exclusively to reports under Chap. XIV of the Code. It refers to and includes any report by a Police officer whether in a cognizable or non-cognizable case and it is not necessary for a Magistrate receiving such report to treat the reporting officer as a complainant under S. 200. *Emperor v. Nga Po Thin.*

6 Cr. L. J. 193 :
10 B. L. R. 36 : 2 L. B. R. 146.

———S. 190—(b)—*Police report in S. 190 (b), meaning of.*

The expression “Police report” in S. 190 (b), before the amendment of the clause, meant a Police report within the meaning of S. 170. Under S. 190 (b) as amended in 1923, a Magistrate can take cognizance of an offence upon a report made by any Police Officer, but the report must state facts which constitute the offence. A mere assertion that an offence has been committed is not enough. *Nagendra Nath Chakrabarti v. Emperor.* 25 Cr. L. J. 732 :

81 I. C. 220 : 38 C. L. J. 388 :
51 Cal. 402 : A. I. R. 1924 Cal. 476.

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———S. 190 (1) (b)—*Police report—Meaning of.*

The Police report mentioned in S. 190 (1) (b) of the Cr. P. C. is a Police report within the meaning of S. 173 of the Code, i. e., a report during investigation of a cognizable offence. *Ram Lal v. Emperor.* 21 Cr. L. J. 269 : 55 I. C. 285 : 1 P. L. T. 73.

———S. 190—"Police report," what amounts to.

The report of the Police is not restricted merely to reports under Chap. XIV upon information lodged to the Police but embraces all reports by the Police submitted under S. 24 of the Police Act. An application by the Police to a Magistrate to take action against a person amounts to a "Police report" within the meaning of term in Cl. (b) of S. 190. *Abdul Ali v. Emperor.* 22 Cr. L. J. 9 : 59 I. C. 41 : 1 P. L. T. 446.

———S. 190—"Police report", what is.

The term 'Police report' in S. 190 is not limited to the report mentioned in S. 170. A report made by the Police in a non-cognizable case under the order of a Magistrate is a Police report. *Sarferaz Khan v. Emperor.* 14 Cr. L. J. 218 : 19 I. C. 314 : 11 A. L. J. 331.

———S. 190 (1) (b)—*Police report, what is.*

"Police report" in S. 190 (1) (b) includes all kinds of Police reports, and not only reports under Chap. XIV or reports in cognizable cases. *Emperor v. Nga Thauung.* 1 Cr. L. J. 1047 : U. B. R. 1904 3rd Qr., C. P. C. 25.

———Ss. 190 (1) (b) and (c) and 191—*Police report—(Burma Act No. IV of 1899), S. 29—Penal Code Ss. 223, 225-A 366, and 375—Proceedings against Police Officer—Whether sanction is necessary—By whom sanction be granted—Reports included in "report of a Police Officer" and "Police report".*

Police constable Nga Nyun, went to the St. John's Leper Asylum to arrest Po Saw, for an offence under S. 366 or S. 376 of the Penal Code. He along with Nga Thauung, constable, and Po Maung, a block-elder, after permission of the Superintendent of the Asylum, arrested Po Saw. Po Saw struck Nga Nyun and ran off. Nga Thauung, did not prevent escape. He was sent for trial under S. 29 of the Police Act and fined. The District Magistrate referred the case for the orders of the High Court on the following grounds, viz., (a) that the District Superintendent of Police applied for the District Magistrate's sanction and in the latter's absence, sanction was given by the Headquarter's Assistant Commissioner, Mr. Scott, for the District Magistrate; (b) that the same officer in his capacity of Magistrate tried the case; (c) that Mr. Scott could only take cognizance under S. 190 (1) (c) of the Cr. P. C. because the Police report on which he did take cognizance was not a Police report within the meaning of S. 190 (1) (b) and he did not comply with S. 191, Cr. P. C.; (d) that the punishment was inadequate and that the trial should be under S. 223 of the Penal Code: *Held*, that no sanction was necessary, as proceedings were

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initiated by the District Superintendent of Police, that Judicial Department Circular No. 22 of 1892 deals with prosecutions otherwise initiated, and that, if a sanction had been necessary, Mr. Scott was not competent to grant it "for the District Magistrate": *Held*, also that S. 190 (b) of the Cr. P. C. includes all kinds of Police reports and not only reports under Chap. XIV, or reports in cognizable cases; there was no illegality involved in Mr. Scott's trial without the application of S. 191 Cr. P. C.: *Held*, further that on the evidence the question arose whether an offence under S. 223 (or 225-A) of the Penal Code had been committed; the respondents should have been prosecuted for the more serious offence; the S. 29 of the Police Act provides for cases of misconduct, which do not fall under some section of the Penal Code or other law. *Emperor v. Nga Thauung.* 2 Cr. L. J. 322 : 11 Bur. L. R. 135.

———S. 190 (b)—*Power and duty of Magistrate—Magistrate taking cognizance of offence on Police report—Action against persons not mentioned in report.*

The fact that the Police in a report submitted under S. 173 of the Cr. P. C., have not mentioned all the parties concerned in the offence, does not debar a Magistrate from taking action against persons not mentioned in the Police report. Once a Magistrate has taken cognizance of a case and proceeds to deal with the evidence before him, it is his duty to see that justice is done with regard to any other person that may be suspected of being concerned in the offence. His action against such persons would fall under S. 190, Cl. (b) and not Cl. (c) of the Code. *Mehrab v. Emperor.* 26 Cr. L. J. 181 : 83 I. C. 885 : 17 S. L. R. 150 : A. I. R. 1924 Sind 71.

———S. 190 (1) (c)—*Powers of District Magistrate—Case not disposed of by Magistrate—District Magistrate taking cognizance under S. 190 (1) (c)—Legality of procedure.*

A District Magistrate should not take cognizance under S. 190 (1) (c) of offences which have been made the subject of a Police report and which have not yet been finally disposed of by a Subordinate Magistrate. If he thinks it necessary to continue the proceedings against the accused, the proper procedure to be adopted is to transfer the case to his own file under S. 528, Cr. P. C. *Ghana Mahapatra v. Emperor.* 31 Cr. L. J. 472 : 123 I. C. 78 : A. I. R. 1929 Pat. 710.

———S. 190 (1) (c)—*Powers of—District Magistrate to take cognizance on information received by him in another official capacity.*

A District Magistrate may take cognizance of an offence, under S. 190 (1) (c) on information received by him in his capacity as a Deputy Commissioner. *Emperor v. Nga Po Win.* 31 Cr. L. J. 867 : 125 I. C. 360 : 8 Rang. 246 : A. I. R. 1930 Rang. 253.

———S. 190—*Powers of Magistrate—Cognizance of offence—Adding co-accused.*

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Even if there is complaint of the Court as regards the principal offender before the Magistrate, he can add the abettors of that offence as co-accused, because S. 190 refers in terms to "offence" and not "offender", and a Magistrate having taken cognizance of an offence, can add co-accused. *Assudomal Ramdas v. Jhamandas Holchand Malli*.

41 Cr. L. J. 861 :
190 I. C. 222 : 1940 C. W. N. 435 :
13 R. S. 73 : A. I. R. 1940 Sind 100.

————S. 190—*Powers of Magistrate—Magistrate may proceed against persons other than those mentioned.*

The Code provides for taking cognizance of offences and not of offenders. Therefore, a Magistrate who takes cognizance of an offence against a particular person; becomes seized of the whole matter and has jurisdiction to hold judicial proceedings in regard to all other persons who may be proved by evidence to be concerned in that offence. *Girdharee Lal v. Emperor*.

18 Cr. L. J. 901 :
42 I. C. 133 : 21 C. W. N. 950 :
A. I. R. 1917 Cal. 121.

————S. 190—*Powers of Magistrate.*

Once a Magistrate takes cognizance of an offence, he is entirely independent of any opinion the Police may offer and it is within his powers to order that any persons who have been accused as participants in the offence, be produced before him, to undergo the preliminary inquiry before committal or for trial. *Raghupal Narain Singh v. Emperor*.

26 Cr. L. J. 241 :
84 I. C. 241 : 1924 Pat. 162 :
A. I. R. 1924 Pat. 597.

————S. 190—*Power of Magistrate—Complaint under S. 476, Cr. P. C. — Proceedings against persons not mentioned in complaint.*

Semble.—Where by an order passed by a District Judge under S. 476, definite person has been directed to be prosecuted, and the offence has been definitely stated, the Magistrate to whom the case is sent for investigation and trial is competent to issue summonses against any other persons who may have been implicated in the offence. *Girdharee Lal v. Emperor*.

18 Cr. L. J. 901 :
42 I. C. 133 : 21 C. W. N. 950 :
A. I. R. 1917 Cal. 121.

————S. 190 (a)—*Powers of Magistrate.*

The power of taking cognizance may be conferred by the Local Government, or a District Magistrate, and once given, remains personal to the Magistrate and independent of the local area. *Bhat v. Emperor*.

33 Cr. L. J. 68 :
134 I. C. 1230 : 33 Bom. L. R. 1192 :
I. R. 1932 Bom. 14 :
A. I. R. 1931 Bom. 517.

————Ss. 190, 192 and 254—*Power of Magistrate—Cognizance without a complaint. Validity of.*

F. sent an application to the District Magistrate, stating that the accused took Rs. 30 to bribe a Magistrate for F, and that the accused had declared that he had paid the amount to the Magistrate, which he had not done.

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The District Magistrate recording statements of F, and examining witnesses, transferred the papers to the Resident Magistrate for action under S. 162, I. P. C.: *Held*, that the proceedings were not bad for want of complaint before the District Magistrate by a person having a personal knowledge of the fact that a bribe was offered. The District Magistrate could take cognizance of the offence otherwise than on a complaint, and Ss. 190, 192 and 254, Cr. P. C., validated the proceedings. *Emperor v. Allahwaraya*.

8 Cr. L. J. 374 :
1 S. L. R. 119.

————S. 190 (1) (b)—*Power of Magistrate.*

A Magistrate is empowered by S. 190 (1) (b) of the Cr. P. C. to take cognizance both of the cognizable and non-cognizable offences, upon a report such as is mentioned in the section. *Bholanath Das v. Emperor*.

26 Cr. L. J. 68 :
83 I. C. 628 : 28 C. W. N. 490 :
A. I. R. 1924 Cal. 614.

————S. 190 (b)—*Power of Magistrate.*

Upon report of the Police under S. 173, Cr. P. C., the Magistrate can take cognizance of the case under S. 190, Cr. P. C. *Abdullah Mandal v. Emperor*.

14 Cr. L. J. 297 :
19 I. C. 953 : 17 C. W. N. 1004 :
40 Cal. 854.

————S. 190 (1) (c)—*Powers of Magistrate to proceed on information.*

The power of a Magistrate to proceed upon information is intended to be used in cases in which a Magistrate has good reason to believe that there has been a serious infringement of the law but is unable to take action in the ordinary manner for the reason that the party aggrieved is unwilling or unable to prosecute. *Jhuna Lal Sahu v. Emperor*.

18 Cr. L. J. 890 :
41 I. C. 1002 : 2 P. L. W. 152 :
2 P. L. J. 657 : A. I. R. 1917 Pat. 611.

————S. 190 (a)—*Powers under.*

The omission to mention the power to commit while naming the power to try, does not limit the Special Magistrate to the exercise of the latter power only. *Bhat v. Emperor*.

33 Cr. L. J. 68 :
134 I. C. 1230 : 33 Bom. L. R. 1192 :
I. R. 1932 Bom. 14 : A. I. R. 1931 Bom. 517.

————S. 190—*Powers under.*

A Magistrate empowered under S. 190 (1) (c), is competent to record and act on the information by the accused himself. Investigation by the Police is not an essential condition. *In re : Arunachala Reddi*.

33 Cr. L. J. 586 :
138 I. C. 240 : 55 Mad. 717 :
35 L. W. 607 : 62 M. L. J. 680 :
1932 M. W. N. 644 : I. R. 1932 Mad. 552 :
A. I. R. 1932 Mad. 500.

————S. 190 (1)—*Power under.*

A Magistrate can take cognizance of a case either under S. 190 (1) (a) (b) or (c), or under all three of them if he is invested with powers thereunder. *U Pa Yone v. Emperor*.

34 Cr. L. J. 1185 :
146 I. C. 196 : 6 R. Rang. 78 :
A. I. R. 1933 Rang 271.

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—S. 190—*Procedure—Jurisdiction of Magistrate to take cognizance—Failure to examine complainant on oath, effect of—Irregularity.*

If a Magistrate, duly empowered, takes cognizance of an offence upon complaint, but omits to examine the complainant on oath, the omission is no more than an irregularity and it does not affect the Magistrate's jurisdiction to try the offender. *Harihar Roy v. Emperor.*

20 Cr. L. J. 675 :
52 I. C. 595 : 23 C. W. N. 481 :
29 C. L. J. 383 : A. I. R. 1919 Cal. 383.

—S. 190—*Procedure—Magistrate taking cognizance of offence—Persons omitted by Police from charge-sheet, proceedings against.*

Purely as a matter of procedure, the proper course for a Magistrate taking cognizance of an offence and of opinion that certain persons who have not been sent up by the Police, but who have been mentioned as accused persons should be included in the charge-sheet is to call upon the Police to put forward a supplementary charge-sheet embodying the names of such persons. *Raghupat Narayan Singh v. Emperor.*

26 Cr. L. J. 241 :
84 I. C. 241 : 1924 Pat. 162 :
A. I. R. 1924 Pat. 597.

—S. 190—*Procedure—Prosecution for encroachment on grazing grounds.*

The report of a Revenue Surveyor is a complaint and not a Police report. If the Magistrate proceeds under S. 190 (1) (a) he must examine the complaint thoroughly. He can proceed under Cl. (c) if specially empowered and is bound by the provisions of S. 191. Before issuing process the Magistrate should endeavour to ascertain if the grazing ground has been finally demarcated under Rule 68 of the Rules under the Lower Burma Land and Revenue Act and whether its boundaries are defined by visible marks or are otherwise well-known. A plea that the accused did not know that the land which he cultivated was in a grazing ground is a good ground of defence and although the burden of proving it is on the accused, it must be investigated. *Emperor v. Po Chon.*

1 Cr. L. J. 1118 :
2 L. B. R. 311.

—Ss. 190, 202—*Procedure—Magistrate receiving complaint whether entitled to proceed on other sources.*

A Magistrate before whom a complaint is made is not bound to take cognizance invariably on that complaint. He may proceed upon any other source of information permitted by S. 190, and Ss. 200 and 202 which impose upon the Magistrate the duty of examining the complainant on oath are only applicable where the Magistrate proposes to take proceedings upon the information supplied by the complainant. *Bharat Kishore Lal Singh Deo v. Judhitstir Modah.*

30 Cr. L. J. 1056 :
119 I. C. 413 : I. R. 1929 Pat. 589 :
10 P. L. T. 779 : A. I. R. 1929 Pat. 473.

—Ss. 190, 556—*Procedure.*

Sessions Judge ordering arrest and production of witness before him for trial before City Magistrate—Magistrate committing him to

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Sessions—Same Judge convicting him—Magistrate is justified in taking cognizance—Permission under S. 556 not taken—Defect, is serious. *Rahimbux Karimbux v. Emperor.*

36 Cr. L. J. 824 :
155 I. C. 448 : 28 S. L. R. 347 :
7 R. S. 196 : A. I. R. 1935 Sind 1.

—S. 190 (1) (b)—*Procedure—Inquiry for committal in murder case—Evidence that real murderer is third person—Suspension of inquiry and inquiry against stranger, legality of—Duty of Committing Magistrate.*

S was accused of murder. During the course of the enquiry for committal, some of the witnesses gave evidence that M was the real murderer. Though the evidence against S was fully recorded, the proceedings against S were suspended and were started against M to commit either S or M after recording the evidence against M also: *Held*, that the procedure adopted, though not illegal, was improper, and proceedings against M should not be started until S's case was decided. *Sher Mahomed v. Emperor.*

30 Cr. L. J. 459 :
115 I. C. 335 : I. R. 1929 Sind 95 :
A. I. R. 1929 Sind 17.

—S. 190 (i) (c)—*Procedure—Case being tried as summons case subsequently found by Magistrate to be warrant case.*

S. 190 (i) (c) is concerned with extrajudicial information, knowledge or suspicion and it has nothing to do with knowledge gathered by a Magistrate in open Court from the evidence. If a Magistrate begins a trial as a summons case and then finds that an offence triable only under warrant case procedure has been committed, he is bound to apply warrant case procedure thenceforward and he is not in any way disqualified from proceeding with the trial. *In re: K. V. Venkata Ramanier.*

39 Cr. L. J. 958 :
177 I. C. 814 : 47 L. W. 739 :
1938 M. W. N. 589 : 1938 2 M. L. J. 360 :
I. L. R. 1938 Mad. 814 : 11 R. M. 385 :
A. I. R. 1938 Mad. 815.

—S. 190 (1) (c)—*Procedure—Cognizance of offence on private information—Magistrate whether bound to record information—Prejudice to accused.*

It is most desirable that a Magistrate taking cognizance of an offence under S. 190 (1) (c), should place on record the ground on which he is taking action, and this not only in fairness to the person against whom action is so taken, and who is entitled to know for what reason he is being arrested but also for his own protection. His omission, however, to do so, does not necessarily vitiate the proceedings, where the accused has not in any way been prejudiced. *Maung Nyi Bu v. Emperor.*

27 Cr. L. J. 413 :
93 I. C. 77 : 4 Bur. L. J. 211 :
A. I. R. 1926 Rang. 46.

—S. 190 (1) (c)—*Procedure—Cognizance of offence upon private information—Duty of Magistrate to record information.*

When a Magistrate takes cognizance of an offence on information from any person other

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than a Police officer, under S. 190 (1) (c), he should at least record the information on which he has acted, though it may not be obligatory upon him to disclose the sources of that information. *Thakur Pershad Singh v. Emperor*.

3 Cr. L. J. 473 :
10 C. W. N. 775.

———S. 190 (1) (c)—*Procedure—Cognizance under S. 190 (1) (c)*.

If a Magistrate takes cognizance of an offence under S. 190 (1) (c), he is bound under the mandatory provision of S. 191 of the Code to inform the accused that he is entitled to have the case tried by another Court. *Suraj Deen v. Emperor*.

29 Cr. L. J. 591 :
109 I. C. 607.

———S. 190 (1) (c)—*Procedure*.

Magistrate concluding that accused should be prosecuted should not return records to Police to deprive accused of his right under S. 191. *Nek Ram v. Emperor*.

32 Cr. L. J. 370 :
129 I. C. 267 : I. R. 1931 All. 139 :
L. R. 12 All. 36 Cr. :
A. I. R. 1931 All. 273.

———Ss. 190 (1) (c), 191—*Procedure—Cognizance of offence by Magistrate—Omission to inform of right to have case transferred—Illegality*.

When a Magistrate takes cognizance himself of an offence under S. 190 (1) (c), the accused has a right under S. 191 to have the case tried by another Magistrate and to be told by the Magistrate that he has such a right. An omission to do so and Magistrate's refusal to transfer the case are fatal. The accused may waive his right. He can do so only when he is distinctly told that he has the right to decline to be tried by him. *Chander Sen v. Emperor*.

24 Cr. L. J. 656 :
73 I. C. 376 : 21 A. L. J. 89 :
A. I. R. 1923 All. 383.

———Ss. 190 (1), (c), 191—*Procedure—Charge-sheet against person at instance of Magistrate—Cognizance by Magistrate on such charge-sheet—His action, comes under S. 190 (1) (b) or (c)—Non-compliance with S. 191, vitiates trial*.

Where a charge-sheet is filed against any person at the instance of a Magistrate and the Magistrate takes cognizance on such charge-sheet, though apparently the case is taken cognizance of on a Police report, and as such, technically comes under S. 190 (1) (b), the Magistrate being the real originator of the proceedings, his action practically comes under S. 190 (1) (c), and the accused is entitled to have the case transferred to some other Magistrate. *Mohammad Sadiq v. Emperor*.

39 Cr. L. J. 299 :
173 I. C. 324 : 10 R. L. 436 :
A. I. R. 1938 Lah. 19.

———Ss. 190 (1) (c), 191—*Procedure—Magistrate taking cognizance of case under S. 190 (1) (c)—Failure to comply with procedure laid down in S. 191, effect of*.

Where a Magistrate takes cognizance of a case under S. 190 (c) but omits to inform

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the accused, before any evidence is taken, that the latter is entitled to have the case tried by some other Court, the proceedings before the Magistrate are illegal. *Ram Rattan v. Emperor*.

22 Cr. L. J. 319 :
60 I. C. 1007 : 19 A. L. J. 138 :
A. I. R. 1921 All. 322.

———Ss. 190 (1) (c), 191—*Procedure—Report by Cantonment Magistrate to Assistant Commissioner—Cognizance, whether under S. 190 (c)*.

A Magistrate received information from another Magistrate about the commission of an offence by A. He thought B to be the culprit and proceeded to try B : *Held*, that the Magistrate took cognizance of the case under S. 190 (c) and that the accused was entitled to have the case transferred to another Magistrate. *Makhan Singh v. Gunner Jepson*.

15 Cr. L. J. 261 :
23 I. C. 469 : 10 P. W. R. 1914 Cr. :
65 P. L. R. 1914 : A. I. R. 1914 Lah. 165.

———Ss. 190, (1) (c), 191, 537—*Procedure—Proceedings initiated on Magistrate's own motion—Failure to comply with provisions of S. 191, effect of—Trial, whether legal*.

Where a Magistrate initiated proceedings on his own motion but did not comply with the provisions of S. 191, and did not inform the accused that he had the option of having his case tried by another Magistrate : *Held*, that this omission was not a mere irregularity curable by the provisions of S. 537, but was an absolute illegality which vitiated the whole trial. *Bodha v. Emperor*.

22 Cr. L. J. 96 :
59 I. C. 384 : 4 P. W. R. 1921 Cr. :
16 P. I. R. 1921 : A. I. R. 1921 Lah. 235.

———Ss. 190 (c) — *Procedure — Abettors, whether can be proceeded against under S. 476—Procedure*.

With regard to persons other than parties, however, a District Magistrate receiving the judgment or order of a Court under S. 476, may, on reading it and obtaining information that persons other than parties have abetted the offence, take cognizance under S. 190 (c) if empowered by the Local Government in that behalf and transfer the case to some Magistrate subordinate to him. *Emperor v. Rahim Dino*.

28 Cr. L. J. 978 :
105 I. C. 802 : A. I. R. 1928 Sind 69.

———S. 190 (c)—*Procedure—District Magistrate sending matter to Sub-Divisional Magistrate for inquiry and report—Sub-Divisional Magistrate reporting that offence of theft had been committed—District Magistrate ordering Sub-Divisional Magistrate to try case himself*.

A matter was brought to the notice of a District Magistrate and the latter sent the matter to the Sub-Divisional Magistrate for inquiry and report with the result that the Sub-Divisional Magistrate reported that an offence of theft had been committed and the District Magistrate ordered the Sub-Divisional Magistrate to try the case himself : *Held*, that it was the Sub-Divisional Magistrate, and not the

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District Magistrate who took cognizance of the case under S. 190 (c) and that the accused should be given an opportunity to be tried by a different Magistrate. *Lachhmi Narain v. Emperor*.

30 Cr. L. J. 134 :
113 I. C. 326 : 5 O. W. N. 1136 :
I. R. (1929) Oudh 88 : 4 Luck. 353 :
A. I. R. 1929 Oudh 87.

———Ss. 190 (c), 191—*Procedure—Magistrate acting on his own knowledge—Duty to inform accused of his right to be tried by another Court.*

Where a Magistrate acts on his own knowledge of facts under S. 190 (c), he is bound to inform the accused that he is entitled to be tried by another Court. Failure to comply with this, is a defect which invalidates the proceedings. *Madar Sahib v. Emperor*.

13 Cr. L. J. 52 :
13 I. C. 388 : 4 Bur. L. T. 259.

———Ss. 190 (c), 191, 537—*Procedure—Cognizance by Magistrate on his own knowledge, etc. Duty to inform accused of right to be tried by another Magistrate.*

Where a Magistrate takes cognizance of a case otherwise than on a complaint or the report of a Police Officer, he must be deemed to have taken cognizance of it upon his own knowledge or suspicion under Cl. (c) of S. 190, and it is his duty under S. 191 to inform the accused that he can, if he wishes, be tried by another Magistrate; Section 191 is imperative and a failure to comply with it is an illegality which vitiates the trial and not a mere irregularity which is cured by S. 537. *Narain Das v. Emperor*.

27 Cr. L. J. 325 :
92 I. C. 471 : L. R. 7 All. 38 Cr. :
A. I. R. 1926 All. 325.

———S. 190 (b)—*Report, what is.*

Prosecuting Inspector applying that prosecution witness should be put on trial—Application is a report within meaning of S. 190 (b). *Chuni Lal v. Emperor*.

34 Cr. L. J. 761 :
144 I. C. 380 : L. R. 14 All. 176 Cr. :
1933 A. L. J. 735 : I. R. 1933 All. 426 :
A. I. R. 1933 All. 399.

———S. 190 (b)—*Report, what is.*

To bring a report within Cl. (b) of S. 190, it must be a report which is validly made in accordance with the law governing a Police investigation and the committing of an accused to a Magistrate's Court. *Chandri Bawoo v. Emperor*.

26 Cr. L. J. 441 :
85 I. C. 57 : 26 Bom. L. R. 1225 :
49 Bom. 212 : A. I. R. 1925 Bom. 131.

———S. 190 (1), (b)—*'Report,' meaning of—Competency of Magistrate to take cognizance of non-cognizable offence upon report by Police Officer.*

The word "report" as used in S. 190 (1) (b), as amended in 1923, means not only a "Police report" or "report of a cognizable case" but also covers a "report in a non-cognizable case." Therefore, a Magistrate can take cognizance of cognizable as well as non-cognizable offences

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upon a report made by a Police Officer. *Emperor v. Wali Mohammad*.

29 Cr. L. J. 65 :
106 I. C. 577 :
A. I. R. 1928 Lah. 66.

———S. 190—*Scope—Alternatives not mutually exclusive.*

The three alternatives upon which a Magistrate may take cognizance under S. 190 cannot mutually be exclusive. *Bharat Kishore Lal Singh Deo v. Judhisir Modha*.

30 Cr. L. J. 1056 :
119 I. C. 413 : I. R. 1929 Pat. 589 :
10 P. L. T. 779 : A. I. R. 1929 Pat. 473.

———S. 190—*Scope—Complaint against public official duly signed by Public Prosecutor—Erroneous impression of Magistrate, effect of—Cognizance.*

Where a complaint under S. 161, Penal Code, against a Government official is duly signed by the Public Prosecutor and proceedings thereon are taken, the mere fact that the Magistrate subsequently, by oversight, thought that he was taking cognizance of the offence on a Police report would not render him incompetent to take cognizance of the offence. *Girdhari Lal v. Emperor*.

12 Cr. L. J. 217 :
10 I. C. 156 : 11 P. R. 1911 Cr. :
32 P. W. R. 1911 Cr. : 146 P. L. R. 1911.

———S. 190—*Scope.*

Distinction between S. 190 (1) and S. 192 (1) pointed out. *Deonarain Singh v. Emperor*.

35 Cr. L. J. 533 :
147 I. C. 913 : 14 P. L. T. 176 :
12 Pat. 341 : 6 R. P. 384 :
A. I. R. 1933 Pat. 244.

———S. 190—*Scope.*

Non-cognizable offence—On complaint by Police or if complaint cannot be validly made under S. 190 (1) (b), Court can take cognizance. *Abdullah Khan v. Emperor*.

34 Cr. L. J. 256 :
141 I. C. 879 : I. R. 1933 Sind 79 :
A. I. R. 1933 Sind 188 :

———S. 190—*Scope—Order of District and Sessions Judge to subordinate Magistrate to try certain persons for robbery—Ultra vires—Procedure.*

An order of a District and Sessions Judge to a Magistrate subordinate, to try certain persons sent to him in custody, on charges of robbery and abetment of robbery is *ultra vires*, and no proceedings can be taken on that order inasmuch as none of the requirements of S. 190 for initiation of prosecutions are fulfilled by that order. *Pohunial v. Emperor*.

23 Cr. L. J. 97 :
65 I. C. 481 : 15 S. L. R. 119 :
A. I. R. 1922 Sind 19.

———S. 190—*Scope—Sub-Divisional Magistrate can take cognizance of offence on information*

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by Civil Judge—His non-examination, if vitiates whole trial.

The provisions of S. 190 are exceedingly wide. Nothing in that section prevents a Sub-Divisional Magistrate from taking cognizance of an offence that happens to be reported to him by an officer who presides in a Court of Justice. Civil Judge is certainly a public servant and when the Magistrate takes cognizance of an offence upon a report of the Civil Judge, it is not necessary that he should be examined before the Magistrate as a complainant. However, if he should have been examined and was not examined that would amount only to an irregularity which would not vitiate the whole trial. *Tara Singh v. Emperor.*

39 Cr. L. J. 840 :
176 I. C. 960 : 1938 A. L. J. 528 :
11 R. A. 158 : 1938 A. W. R. 361 :
A. I. R. 1938 All. 449.

————S. 190—Scope—Taking cognizance on anonymous letters, legality of.

A Magistrate can take cognizance of an offence under S. 190 even upon information received from an anonymous letter, provided there is no other bar to the taking of such cognizance. *Bhairon Prasad v. Emperor.*

30 Cr. L. J. 62 :
113 I. C. 78 :
I. R. 1929 All. 105 : 1929 A. L. J. 75 :
L. R. 9 All. 140 Cr. : 51 All. 377 :
A. I. R. 1928 All. 756.

————Ss. 190, 191—Scope—Magistrate hearing story and inspecting locality before receiving written complaint, effect of—S. 191—Application of.

The mere fact that previous to receiving a written complaint, a Magistrate had received an oral complaint and had inspected the place of offence does not bring a case within the purview of Sub-cl. (c) of S. 190 (1) so as to render it incumbent on him to inform the accused that they are entitled to have the case tried by another Court. *Saldeo v. Emperor.*

27 Cr. L. J. 1406 :
98 I. C. 718 : L. R. 7 All. 191 Cr. :
A. I. R. 1927 All. 101.

————S. 190 (a)—Scope—A complaint, as defined under S. 4, was presented by the complainant to a Magistrate, who recorded that he took cognizance of the case under S. 190 (c); *Held*, that the Magistrate really took cognizance under S. 190 (1) (a). *Meshidi Khan v. Rangoon Municipal Committee.*

8 Cr. L. J. 505 :
4 L. B. R. 300 : 14 Bur. L. R. 250.

————S. 190 (1) (a)—Scope.

Report of Magistrate deputed to make local investigation recommending prosecution of complainant, when taken cognizance of by District Magistrate, he must be deemed to be taking cognizance under S. 190 (1) (a) and being made by public servant in discharge of public duties, he need not be examined on oath under S. 200. *Sulch Sahu v. Emperor.*

34 Cr. L. J. 237 :
141 I. C. 810 : 13 P. L. T. 791 :
I. R. 1933 Pat. 91 : A. I. R. 1933 Pat. 87.

————S. 190 (1) (a)—Scope.

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S. 190 (1) (a) is conclusive on the question of jurisdiction and save as provided in the Code itself (or in any other law such as is referred to in S. 1 (2) of the Code), there is no warrant for denying or limiting the power to take cognizance of offences, upon complaint. *Jnanendra Nath Pramanik v. Nilmony Dey.*

41 Cr. L. J. 52.

————Ss. 190 (1) (a), 200 (aa)—Scope—Police report in writing of non-cognizable offence—Magistrate's jurisdiction to take cognizance.

Under Ss. 190 (1) (b) and 200 (aa), Cr. P. C., as demanded by Act XVIII of 1923, Magistrate referred to in S. 190 have jurisdiction to take cognizance of even non-cognizable offences upon a report made in writing by any Police Officer without examining him on oath. *Public Prosecutor v. Ratnavelu Chetty.*

27 Cr. L. J. 1031 :
96 I. C. 983 : 49 Mad. 525 :
1927 M. W. N. 43 :
25 L. W. 248 : 52 M. L. J. 210 :
A. I. R. 1926 Mad. 865.

————S. 190 (1) (b)—Scope—Statement of fact not made in charge-sheet but found in document annexed to charge-sheet.

Where the facts though not actually on the charge-sheet, were in a separate document annexed to it: *Held*, that it was sufficient compliance with S. 190 (1) (b). *Hamendra Nath Gupta v. Emperor.*

38 Cr. L. J. 94 :
165 I. C. 966 : 17 P. L. T. 932 :
3 B. R. 114 (2) : 9 R. P. 243 :
A. I. R. 1937 Pat. 160.

————S. 190 (1) (c)—Scope—Magistrate taking cognizance of offence, whether can hold inquiry preliminary to commitment.

The fact that a Magistrate took cognizance of an offence under S. 190 (1) (c), is no bar to his holding an inquiry preliminary to commitment. *Azem Ali v. Emperor.*

20 Cr. L. J. 47 :
48 I. C. 687 (b) : A. I. R. 1918 Cal. 3.

————S. 190, Cls. (b) and (c)—Scope.

A Magistrate issued warrants against two persons named in the first information to the police but afterwards issued warrants against other three whose names were given in a subsequent Police report submitted by the Police after investigating the case: *Held*, that the Magistrate took cognizance of the case under Cl. (b) and not under Cl. (c) of S. 190. *Rajani Kanto Chatterji v. Emperor.*

1 Cr. L. J. 844 :
8 C. W. N. 864.

————S. 190 (c)—Cognizance of an offence under S. 190 (c)—Information, nature of.

To justify a Magistrate in taking cognizance of an offence under S. 190 (c), upon information received from any person other than a police officer, the information need not contain all the allegations necessary to be proved to establish the offence; it is sufficient if enough is alleged to justify the Magistrate in dealing judicially with the matter.

8 Cr. L. J. 1076 :
12 C. W. N. 1075 : 35 Cal. 1076.

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———S. 190 (c)—*Scope—Magistrate interested in his capacity as Collector—Competency to issue warrants.*

Deputy Commissioner as Collector and representing the Court of Wards which was part proprietor of a bazar, granted a lease with other co-proprietors to C, and from certain information lodged to him as Collector, ordered, as Magistrate, the issue of warrants against C and others on the ground that there was *prima facie* evidence of an offence under Ss. 465 and 468, I. P. C., with respect to the lease and that there was abetment by other shareholders: *Held*, that the Deputy Commissioner as Magistrate was not competent to act on that information and to issue the warrants, as by such action, he was practically making himself a Judge in his own case. *Thakur Prashad Singh v. Emperor.* 3 Cr. L. J. 473 : 10 C. W. N. 775.

———S. 190 (c)—*Scope.*

Where a complaint is made against a bullock-driver, it is open to the Court to take cognizance of the offence against the owner of the animal also under S. 190 (c) *Bindeshwar Prasad v. Emperor.* 33 Cr. L. J. 232 : 136 I. C. 59 : 10 Pat. 847 : 13 P. L. T. 44 : I. R. 1932 Pat. 59 : A. I. R. 1932 Pat. 65.

———Ss. 190 (1)(c), 191—*Transfer—Names of co-accused not in original complaint, but added under instructions from District Magistrate—Application for transfer premature before all accused have appeared.*

Names of two accused were not in the complaint when it was presented to the Magistrate; they were added by the Public Prosecutor under instructions from the District Magistrate: *Held*, that the case against these was taken cognizance of by the District Magistrate under Cl. (c) of S. 190 (1) and S. 191 applied to the case. But as the accused had not all appeared, the time had not arrived, when the Magistrate should act under S. 191 and an application for transfer was premature. *Maung Shwe Hla v. Emperor.* 9 Cr. L. J. 64 : 14 Bur. L. T. 327.

———S. 191.

See also (i) Cantonment Code, S. 167.

(ii) Cr. P. C., 1898, Ss. 167, 190, 190 (1) (c).

(iii) Defence of India Act.

———S. 191—*Applicability of the proceedings under S. 110.*

The provisions of Ss. 191 and 190 (c) do not apply to proceedings under S. 110. *In the matter of : the Petition of Pithu Khan.*

1 Cr. L. J. 807 : 24 A. W. N. 206 : I. L. R. 27 All. 172 : 1 A. L. J. 685.

———S. 191—*Construction.*

The section is imperative and non-compliance, is an illegality and it cannot be cured under S. 537. *Narain Das v. Emperor.*

27 Cr. L. J. 325 : 92 I. C. 741 : A. I. R. 1926 All. 325.

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———S. 191—*Discretion—Committing to Sessions—Judicial discretion to be exercised.*

A Magistrate should exercise judicial discretion in deciding whether under S. 191 he should commit the case to the Sessions or transfer it for trial to another Magistrate, and in so doing, his decision will depend chiefly upon whether the punishment which a Magistrate is competent to inflict in case of conviction, will be adequate or not. *Emperor v. Tarumal.*

10 Cr. L. J. 224 : 2 S. L. R. 9.

———S. 191—*Court, accused's right to choose.*

S. 191 does not give the accused the right to be tried by a Court or Magistrate of his choice, but only makes it impossible for the Magistrate who took cognizance under Sub-s. (1), Cl. (c) of S. 109 to try the accused except with his consent. *Panu Zamal v. Emperor.*

41 Cr. L. J. 318 : 186 I. C. 435 : 6 B. R. 368 : 12 R. P. 513 : A. I. R. 1940 Pat. 111.

———S. 191—*Court—Magistrate taking action on his own knowledge—Right of accused to have case transferred.*

If a Magistrate takes action against the accused on his own knowledge of facts and convicts the accused without informing him of his right to have the case tried by some other Magistrate, the conviction is illegal. *Emperor v. Mul Raj.*

2 Cr. L. J. 365 : 6 P. L. R. 333.

———S. 191—*Court, right of accused to choose.*

Under S. 191 all that the accused is entitled to is to have the case tried by another Court. The section gives the accused no right to select or determine for himself by what other Court the case is to be tried. *In re : Shrinivas Krishna Shriralkar.*

2 Cr. L. J. 582 : 7 Bom. L. R. 161.

———Ss. 191, 190, 556—*Court—Magistrate initiating proceedings on his own knowledge—Disqualification—Want of independent evidence.*

Where a Cantonment Magistrate had warned the accused not to tie his cattle on a certain spot in the Cantonment, but the accused had disregarded the warning, and the Magistrate on going out one morning found the spot in a filthy state owing to the accused having kept his cattle there regardless of the warning which had been administered to him, and on this, the Magistrate sent for the accused and fined him Rs. 16: *Held*, that the Magistrate was debarred from trying the case without first taking action under S. 191: *Held, further*, that the mere fact that a Magistrate has himself inspected the spot would not of itself debar him from trying a charge and acting on *independent evidence*, but he cannot act merely on his own knowledge of the offence. *Emperor v. Abdul Rahim.*

2 Cr. L. J. 45 : 8 P. R. Cr. 1905 : 6 P. L. R. 586.

———S. 191—*Procedure—Non-compliance—Effect of—Accused not informed under S. 191—Trial, whether legal.*

Failure of the Magistrate to follow the pro-

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visions of S. 191 in a case will vitiate the trial.
Suraj Deen v. Emperor. 29 Cr. L. J. 591 :
109 I. C. 607.

—S. 191—Procedure — Non-compliance—Effect.

A failure to comply with the provisions of S. 191 is an illegality which vitiates a trial.
Sammun v. Emperor. 27 Cr. L. J. 1037 :
96 I. C. 989 : A. I. R. 1926 Lah. 627.

—S. 191—Procedure — Non-compliance—Effect.

Failure to comply with the imperative rule of law in the section is a defect which invalidates the proceedings under S. 190 (c). *Madar Sahib v. Emperor.* 13 Cr. L. J. 52 :
13 I. C. 388 : 4 Bur. L. T. 259.

—S. 191—Procedure — Non-compliance—Effect.

Where a Magistrate takes cognizance of a case and proceeds to try it himself without informing the accused that he was entitled to have the case tried by another Magistrate, the omission to do so is an irregularity which vitiates the trial. *Sardar v. Emperor.* 35 Cr. L. J. 1308 :
151 I. C. 357 (a) : 7 R. A. 158 (1) :
A. I. R. 1934 All. 693 (1).

—S. 191—Procedure—Omission to inform accused of privilege of transfer.

Where a Magistrate instituting proceedings under S. 476 takes cognizance of the offence himself without informing the accused under S. 191 of the Code that he is entitled to have his case tried by another Court, the omission is more than a mere irregularity and vitiates the whole trial. *Emperor v. Naipal.*

25 Cr. L. J. 1224 :
82 I. C. 152 : 10 O. & A. I. R. 735 :
11 O. L. J. 532 : 1 O. W. N. 329 :
28 O. C. 1 : A. I. R. 1924 Oudh 448.

—Ss. 191, 537—Procedure—Omission to inform accused of his right to be tried by another Court—Illegality.

The omission on the part of a Magistrate to inform an accused person to whom the provisions of S. 191 are applicable of his right to have the case tried by another Court amounts to more than a mere irregularity to which S. 537 will apply, but a Magistrate taking cognizance of an offence under S. 190, Cl (c), is not competent to try the case unless and until he has informed the accused, before taking any evidence, that he is entitled to have his case tried by another Court. *Emperor v. Chedi.*

2 Cr. L. J. 809 :
2 All. L. J. 745 : 25 A. W. N. 258 :
28 All. 204.

—S. 191—Scope.

On the addition of a new accused in a case, he is not entitled as of right, to have the case tried by another Court under the provisions of S. 191. It is open to the Magistrate to act under S. 351. *Intaj Khan v. Emperor.* 35 Cr. L. J. 1312 :
151 I. C. 406 : 7 R. Kang. 71 :
A. I. R. 1934 Rang. 193.

—S. 191—Summary trial—Procedure.**Cr. P. CODE (1898), S. 192**

The brevity permitted in a summary trial does not mean that there shall be no trial at all, or that an accused can be heavily fined at a Magistrate's discretion on mere personal knowledge notwithstanding that the law gives him the right of demanding that the case should be tried by another Court. *Kanahaya Lal v. Emperor*

2 Cr. L. J. 188 :
6 P. L. R. 143.

—Ss. 191, 190 (c), 537—Summary trial—Judgment—Proof—Inspection by Magistrate—Initiation of proceedings—Transfer.

The petitioner was convicted of an offence under S. 6 of Act XI of 1890 after a summary trial. The conviction was based merely on the Magistrate's own observation of the condition of the horse in question, and on no evidence. There was no complaint on the record; nor did the record show that any evidence was recorded by the Magistrate in the case: *Held*, that the omission to follow the procedure prescribed by S. 190 (c) and S. 191, and the omission to hear evidence were both irregularities which could not be cured by S. 537. *Kanahaya Lal v. Emperor.*

21 Cr. L. J. 188 :
6 P. L. R. 143.

—S. 191—Trial by another "Court"—Meaning of.

The expression "trial by another Court" in S. 191 means trial by Court of Sessions or by another Magistrate. *Panu Samal v. Emperor.*

41 Cr. L. J. 318 :
186 I. C. 435 : 6 B. R. 368 :
12 R. Pat. 513 : A. I. R. 1940 Pat. 111.

—S. 192—See also (i)—Cattle Trespass Act, S. 20.

(ii)—Cr. P. C. Ss. 114
(4), 145, 190,
201, 476.

—Ss. 192, 107—Applicability to proceedings under S. 107.

A District Magistrate has power to transfer to a Subordinate Magistrate the proceedings, initiated before him, under S. 107. *Surjya Kanla Roy Chowdhry v. Emperor.*

1 Cr. L. J. 344.
I. L. R. 31 Cal. 350.

—S. 192—Complaint by Pardanashin lady, cognizance of.

If a *pardanashin* lady makes a complaint to a Magistrate, he is entitled to take cognizance of it. But before he takes cognizance, he must be satisfied that it is her complaint. It is comparatively unimportant by what means the complaint reaches the Magistrate, if really it is her own complaint. *Abhoyeswari v. Kishori Mohan Banerji.*

15 Cr. L. J. 348 :
23 I. C. 700 : 18 C. W. N. 1020 :
42 Cal. 19 : A. I. R. 1914 Cal. 479.

—S. 192—Jurisdiction—Case under S. 427, Penal Code, transferred to Third Class Magistrate—Trial by latter is without jurisdiction—Illegality not curable by S. 537.

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The Court's jurisdiction must be determined on the allegations made in the complaint and on the complainant's statement in support of the complaint. If the Magistrate to whom a case is transferred under S. 192, lacks jurisdiction to try the case, the order of transfer is bad in law. A First Class Magistrate taking cognizance of a case under S. 427, I. P. C., cannot transfer it to a Third Class Magistrate, the trial of the case by the Third Class Magistrate is illegal. The case is not covered by S. 537, as a question of jurisdiction is involved and a defect of jurisdiction is not curable by S. 537. *Mathra v. Kamla*, 41 Cr. L. J. 469 : 187 I. C. 553 : 1940 O. W. N. 354 : 1940 O. L. R. 215 : 15 Luck. 468 : 12 R. O. 394 : A. I. R. 1940 Oudh 244.

—Ss. 192, 526—*Jurisdiction — Offence committed on Railway lands in Native State—Transfer of case by Chief Court and by District Magistrate—Government of India Notification Nos. 515 I. B. & 516 I. B., dated 17th March 1915.*

K was charged with an offence under S. 409, I. P. C. committed within the Railway lands situate in the Jhind State. On the application of the District Magistrate of Rohtak, the Chief Court transferred the case to the District Magistrate of Hissar, with the direction that he should either dispose of the case himself or make it over for trial to some competent Magistrate in his District. The District Magistrate of Hissar accordingly made over the case to an Honorary Magistrate, 1st Class, Bhiwani, who tried K and convicted and sentenced him : *Held*, that the Court had power under S. 526 to transfer the case to any Court in the Province and S. 192 empowered the District Magistrate of Hissar to transfer it for trial to any Magistrate subordinate to him, that Ss. 192 and 526 were in force in Railway lands situate in the Jhind State, and that the powers conferred on District Magistrates by those sections had not been taken away by the Government of India Notification No. 515 I. B. or No. 516 I. B. and that, therefore, the Honorary Magistrate had jurisdiction to try the case. *Kishen Singh v. Emperor*, 18 Cr. L. J. 881 : 41 I. C. 993 : 30 P. R. 1917 Cr. : 44 P. W. R. 1917 Cr. : A. I. R. 1917 Lah. 329.

—S. 192—*Meaning of words—"Case of which he has taken cognizance," meaning of.* "Case of which he has taken cognizance" only means the judicial investigation into any offence of which he has taken cognizance. *Deonarian Singh v. Emperor*, 35 Cr. L. J. 533 : 147 I. C. 913 : 14 P. L. T. 176 : 12 Pat. 341 : 6 R. P. 384 : A. I. R. 1933 Pat. 244.

—S. 192—*Powers if curtailed by S. 202.*

The provisions of S. 192 and S. 202 are separate and distinct and the powers conferred by one section do not curtail those conferred by the other. *Amrit Majhi v. Emperor*, 20 Cr. L. J. 508 : 51 I. C. 668 : 29 C. L. J. 322 : 23 C. W. N. 623 : 46 Cal. 854 : A. I. R. 1919 Cal. 59.

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—S. 192—*Procedure.*

Complaint to Joint Magistrate of offences under Ss. 482 and 483, Penal Code—Transfer of case to Second Class Magistrate after framing charge: *Held*, not illegal. *Public Prosecutor v. Shanmuga Nadar*, 35 Cr. L. J. 1055 : 149 I. C. 1155 : 1934 M. W. N. 521 : 39 L. W. 777 : 67 M. L. J. 120 : 57 Mad. 827 : 6 R. M. 668 : A. I. R. 1934 Mad. 435 (2).

—Ss. 192—*Scope — Complaint — Dismissal—Application for further enquiry—Sessions Judge directing case to be sent to another Magistrate—Transfer to another Magistrate.*

Where the complainant whose complaint has been dismissed, applies for further enquiry and the Sessions Judge while ordering the same directs the case to be sent to another Magistrate and the District Magistrate transfers the case to another Magistrate, the transfer is one under S. 192, and the case is governed by S. 203 and not by S. 350. The Magistrate has power to act upon the evidence already recorded. *Virumal Manghanmal v. Mohammad Khan*, 37 Cr. L. J. 1086 : 164 I. C. 1020 : 30 S. L. R. 217 : 9 R. S. 85 : A. I. R. 1936 Sind 146.

—Ss. 192, 202, 203—*Scope—Magistrate proceeding under S. 202—Transfer for dealing with case under S. 203.*

The provisions of S. 192 or of S. 202 do not entitle a Magistrate after he has proceeded under the latter section to make an order under the provisions of the former section transferring the case to another Magistrate for the purpose of being dealt with under S. 203 without a fresh investigation as contemplated by S. 202. *Mahabir Singh v. Giribala Dassi*, 26 Cr. L. J. 990 : 87 I. C. 526 : 29 C. W. N. 508 : A. I. R. 1925 Cal. 742.

—Ss. 192, 202, 203, 204—*Cognizance taken by Magistrate—Order directing investigation—Transfer of case for consideration of report, validity of.*

Sub-s. (1) of S. 192 of the Cr. P. C. empowers a Magistrate to transfer a case for inquiry or trial, but it does not empower him to transfer a case simply for the purpose of considering the report of an investigation under S. 202 which he was himself ordered. *Mahabir Singh v. Giribala Dassi*, 26 Cr. L. J. 990 : 87 I. C. 526 : 29 C. W. N. 508 : A. I. R. 1925 Cal. 742.

—S. 192—*Transfer of cases under Cattle Trespass Act—Powers of Magistrate.*

Though under S. 20, Cattle Trespass Act, a complaint of illegal seizure or detention must be entertained by a District Magistrate or one specially authorized as required by the section, such Magistrate has power under S. 192 to transfer such cases, after taking cognizance, to any Subordinate Magistrate for trial. *Budhan Mahlo v. Issur Singh*, 6 Cr. L. J. 363 : I. L. R. 34 Cal. 926.

—S. 192—*Transfer of cases—Practice.*

Cr. P. CODE (1898), S. 192

A Magistrate can transfer only those cases under S. 192 of which he has taken cognizance under S. 190 but not those which have been transferred to his Court. *Dara v. Mukat*.

15 Cr. L. J. 357 :
23 I. C. 725 : 12 A. L. J. 277 :
A. I. R. 1914 All. 48.

—Ss. 192, 529—*Transfer of case by Magistrate not authorised to transfer—Irregularity.*

The transfer by a Sub-Divisional Magistrate of a case under S. 192, when the case has already been transferred to him by the District Magistrate, is a mere irregularity covered by S. 529. *Yusuf Ali Khan v. Emperor*.

21 Cr. L. J. 96 :
54 I. C. 496 : A. I. R. 1920 Pat. 518.

—S. 192—*Transfer of case to Subordinate Magistrate—Refusal by trying Magistrate to issue process—If can be issued by any other Magistrate.*

The Police sent up a report in B form to the Joint Magistrate against certain persons, and subsequently on the order of the Joint Magistrate in an A form against some of them; these latter were convicted by a Deputy Magistrate to whom the case was made over for disposal. An application for processes against the remaining persons mentioned in the original B. form was refused by the trying Deputy Magistrate as unnecessary: *Held*, that a subsequent order by the Joint Magistrate for the issue of processes against these persons was without jurisdiction. *Ajab Lal Khirher v. Emperor*.

2 Cr. L. J. 524 :
9 C. W. N. 810 : I. L. R. 32 Cal. 763.

—S. 192—*Transfer of case.*

The order making over the case to the Deputy Magistrate was in these terms: "To B—for disposal": *Held*, that the whole case had been made over. *Ajab Lal Khirher v. Emperor*.

2 Cr. L. J. 524 :
9 C. W. N. 810 : I. L. R. 32 Cal. 763.

—S. 192—*Transfer of case to Subordinate Magistrate—Dismissal of case against one accused—Summons against other—Cognizance of case—Jurisdiction.*

Where a complaint was lodged against several accused persons and the Magistrate after examining the complainant, issued summons against one of the accused only and transferred the case for trial to a Subordinate Magistrate: *Held*, that the whole case of the complainant was transferred and the Subordinate Magistrate was quite competent in discharging the accused before him, to order summons to issue for the attendance of some other accused person against whom the complaint seems to him to be well founded. *In re : Azim Sheikh*.

7 Cr. L. J. 318 :
7 C. L. J. 249.

—S. 192—*Transfer—Frequent transfers.*

Obiter.—The frequent orders of transfer are objectionable in view of the trouble which they give to witnesses and parties. *Dara v. Mukat*.

15 Cr. L. J. 357 :
23 I. C. 725 : 12 A. L. J. 277 :
A. I. R. 1914 All. 48.

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—S. 192—*Transfer, grounds for.*

Where the principal reason which moved a District Magistrate to transfer a case from the Court before which it was pending, without any inconvenience to the parties or any dissatisfaction on their part, to his own Court was that he desired to inform his mind as to the nature of the dispute between the accused and the complainant: *Held*, that the transfer order was not proper and that the case should be restored to the file of the Court from which it had been transferred. *Amrit Majhi v. Emperor*.

20 Cr. L. J. 508 :
51 I. C. 668 : 29 C. L. J. 322 :
23 C. W. N. 623 : 46 Cal. 854 :
A. I. R. 1919 Cal. 59.

—S. 192—*Transfer—Powers of transferring Magistrate after transfer.*

Under S. 192 the transferring Magistrate cannot intermeddle with the case transferred, unless and until having power to do so, he recalls it to his own file. *Amrit Majhi v. Emperor*.

20 Cr. L. J. 508 :
51 I. C. 668 : 29 C. L. J. 322 : 23 C. W. N. 623 :
46 Cal. 854 : A. I. R. 1919 Cal. 59.

—S. 192—*Transfer—Process issued to witnesses of complainant, effect of—Transfer of case.*

The fact that a Magistrate before transferring a complaint under S. 192 for enquiry and disposal, issues processes upon the witnesses of the complainant, does not materially alter the nature of the transfer, nor does it affect his jurisdiction. *Eqbal Khan v. Emperor*.

20 Cr. L. J. 413 (b) :
51 I. C. 173 : A. I. R. 1919 Pat. 319.

—S. 192—*Transfer—Re-transfer.*

Where a Magistrate transfers a case for trial under the provisions of S. 192, he has no power to transfer it again. *Ganga Sahai v. Jaswant*.

23 Cr. L. J. 89 :
65 I. C. 441.

—S. 192—*Transfer—Sub-Divisional Magistrate, ordering transfer of case referred to him.*

A Sub-Divisional Magistrate, to whom a case has been referred for trial by the District Magistrate, has no power to transfer it to any other Magistrate who may happen to be subordinate to him. *Bashir Husain v. Ali Husain*.

15 Cr. L. J. 406 :
23 I. C. 1006 : 12 A. L. J. 225 : 36 All. 166 :
A. I. R. 1914 All. 150.

—S. 192—*Transfer of whole case.*

Where no reservation is made in the order, transferring a case to another Magistrate, it should be concluded that the whole case had been made over. *Ajab Lal Khirher v. Emperor*.

2 Cr. L. J. 524 :
9 C. W. N. 810 : I. L. R. 32 Cal. 783.

—S. 192—*Whole case to be transferred.*

Under S. 192 the whole case must be transferred. *In re : Azim Sheikh*.

7 Cr. L. J. 249.

—S. 193.

See also (i) Cr. P. C., 1898, S. 195, (1), (b).

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—Ss. 193, 339, 532—*Approver, prosecution of—Commitment to Sessions—Certificate of Public Prosecutor, absence of—Certificate supplied at trial—Irregularity.*

Accused and two others were arrested on charges of kidnapping and murder. Accused was tendered a pardon which he accepted and he was examined as a witness at the trial of the other two accused. On the conclusion of that trial, the Magistrate ordered the Police to prosecute the accused of the original offence and the accused was sent before a Magistrate who committed him to the Sessions Court on charges of kidnapping and murder. On the case coming up for trial, the Sessions Judge noticed the absence of the certificate from the Public Prosecutor required by S. 339. The trial was adjourned, and on the adjourned date, a certificate was filed by the Public Prosecutor and was accepted by the Sessions Judge and the trial proceeded and the accused was eventually convicted; *Held*, that the proceedings before the Magistrate who made the commitment were merely an inquiry and were not a trial within the meaning of S. 339 and that it was open to the Sessions Judge to accept the commitment made by the Magistrate even if it was irregular and that the provisions of S. 339 having been complied with before the trial commenced, the trial was in order. *Nga Wa Gyi v. Emperor*. 27 Cr. L. J. 254 : 92 I. C. 430 : 3 Rang. 55 : 4 Bur. L. J. 23 : A. I. R. 1925 Rang. 219.

—Ss. 193, 476—*Jurisdiction to make complaint.*

Where an offence under S. 193, I. P. C., is alleged to have been abetted by a Subordinate Judge in the course of a suit before him and the case is transferred to the Court of a Senior Subordinate Judge by the District Judge as a superior Court reserving, however, to himself the power of taking proceedings under S. 476, Cr. P. C., the effect of this order is to take away the jurisdiction of the Senior Subordinate Judge to make complaint. An order passed by the Senior Subordinate Judge, in such a case, that he has no jurisdiction to make a complaint is correct. *Behari Lal v. Abdul Qadar Hamyari*. 41 Cr. L. J. 843 : 190 I. C. 178 : 13 R. L. 140 : A. I. R. 1940 Lah. 292.

—S. 193 (2)—*Object.*

S. 9 (2) and S. 193 (2) contemplate general directions for the convenience of people. *Emperor v. Lakshman Chanji Narangikar*. (F. B.) 32 Cr. L. J. 1147 : 134 I. C. 347 : 33 Bom. L. R. 675 : 55 Bom. 575 : I. R. 1931 Bom. 459 : A. I. R. 1931 Bom. 313.

—S. 193—*Sanction to prosecute given by the District Magistrate as head of the Police—Revision.*

The High Court has no power to interfere in revision where a District Magistrate has granted sanction for a prosecution under S. 193 acting therein as head of the Police of the district. *Emperor v. Shib Singh*.

1 Cr. L. J. 899 : 24 A. W. N. 231 : 1 A. L. J. 597 : I. L. R. 27 All. 292.

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—Ss. 193, 423 (1)—*Sessions Court—Jurisdiction.*

Except in cases in which a Court of Session is expressly empowered to take cognizance of an offence as a Court of original jurisdiction, it has no power to do so unless a commitment has been made by a Magistrate duly empowered in that behalf. *Emperor v. Maula Khan*.

6 Cr. L. J. 7 : 27 A. W. N. 178.

—Ss. 193(2), 226, 227—*Sessions Court, power of, to add charges for offences different from those specified by Committing Magistrate.*

Although under S. 193 (1) a Court of Session cannot take cognizance of any offence as a Court of original jurisdiction, regard must be had to the exception contained in the words "except as otherwise expressly provided in this Code." Ss. 226 and 227 give the Court of Session power to add a charge for any offence different from that specified by the Committing Magistrate disclosed in the evidence recorded before the Magistrate or at the trial by itself, subject only to the consideration of prejudice to the accused. *Dodo v. Emperor*.

16 Cr. L. J. 573 : 30 I. C. 125 : 9 S. L. R. 37 : A. I. R. 1915 Sind 50.

—S. 193 (2)—*Transfer—Power of Sessions Judge to transfer appeal to Assistant Sessions Judge—"Case," meaning of.*

S. 193 (2) confers on the Sessions Judge no power to transfer appeals to the Assistant Sessions Judge. The word "case" in the section does not include an appeal. *Emperor v. Abdul Razzak*.

16 Cr. L. J. 316 : 28 I. C. 652 : 13 A. L. J. 353 : 37 All. 286 : A. I. R. 1915 All. 101.

—S. 194 (1).

See also Cr. P. C., 1898, S. 5.

—S. 194—*Information, requisites of.*

An *ex officio* information under S. 194 (2) should contain a statement of the charge as certain and detailed as an indictment. *Dwarkanath Verma v. Emperor*. Cr. P. C.

34 Cr. L. J. 322 : 142 I. C. 325 : 37 L. W. 584 : 64 M. L. J. 466 : 1933 M. W. N. 409 : 10 O. W. N. 522 : 37 C. W. N. 514 : 57 C. L. J. 177 : 14 P. L. T. 305 : 1933 A. L. J. 645 : 35 Bom. L. R. 507 : I. R. 1933 P. C. 95 : A. I. R. 1933 P. C. 124.

—S. 195.

—Absence of sanction.

—Amendment.

—Appeal.

—Applicability.

—Application.

—Application for sanction to Prosecute.

—'Case,' meaning of.

—Complaint.

—Construction.

—Costs.

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——— Court.
 ——— Death of applicant.
 ——— Defect in Procedure.
 ——— Delay.
 ——— Deposition by witness.
 ——— Dismissal in default.
 ——— Duty of Court.
 ——— Effect of.
 ——— Evidence.
 ——— False charge.
 ——— False information.
 ——— Forgery.
 ——— 'Given,' meaning of.
 ——— Grant of sanction.
 ——— High Court.
 ——— 'In relation to any proceedings, meaning of.
 ——— Irregularity.
 ——— Jurisdiction.
 ——— Limitation.
 ——— Miscellaneous.
 ——— Object.
 ——— Offence.
 ——— Order of sanction.
 ——— Ordinarily.
 ——— 'Original Jurisdiction,' meaning of.
 ——— Period of sanction.
 ——— Power of Court.
 ——— Power of District Magistrate.
 ——— Power of High Court.
 ——— Power of Magistrate.
 ——— *Prima facie* case.
 ——— Procedure.
 ——— Proceeding.
 ——— 'Produced,' meaning of.
 ——— 'Produced in the Court,' meaning of.
 ——— Proof required.
 ——— Prosecution.
 ——— Prosecution for defamation.
 ——— Prosecution for perjury.
 ——— Provision is imperative.
 ——— Public servant.
 ——— Reasons.
 ——— Registrar of High Court.
 ——— Remand.
 ——— Revenue Court.
 ——— Revision.
 ——— Revocation of sanction.
 ——— Sanction.
 ——— Scope.
 ——— Subordination.
 ——— Summonses and orders.
 ——— Superior Court.
 ——— Transfer.
 ——— Trial without Complaint.
 ——— Use of power.
 ——— Vague sanction.
 ——— Validity.
 ——— Village Munsif Complaint.
 ——— Want of Complaint.
 ——— Want of Sanction.
 ——— Withdrawal of Complaint by Civil Court.

——— S. 195.

See also (i) Arms Act.

(ii) Bengal Agricultural Debtors' Act, 1936, S. 40.

(iii) Bengal Tenancy Act, 1885, Sub-s. (3).

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(iv) Cr. P. C., Ss. 4, 4 (g) (b), 4 (b), 17, 144, 190, 195, 196-A (2), 238, 366, 407, 408, 435, 439, 470, 587.

(v) Defamation.

(vi) General Clauses Act, 1807, S. 6 (e).

(vii) Penal Code, 1860, Ss. 182, 183, 186, 195, 211, 193, 228, 504, 380.

(viii) Sanction to prosecute.

——— S. 195 (1) (a)—*District Judge's lawful power if can be used to annoyance or injury of Subordinate Judge.*

The District Judge has lawful power which he can use to the injury or annoyance of a Subordinate Judge under him. Under S. 24, C. P. C., and S. 22 (2) of the Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887) the District Judge has power of his own motion to transfer suits and appeals pending on the file of a Subordinate Judge to some other competent Court, and the exercise of such a power by the District Judge on receiving information about corruption on the part of a Subordinate Judge would manifestly be to the annoyance, if not also to the injury of the Subordinate Judge. *Government Advocate, Bihar v. Kumar Singh.*

39 Cr. L. J. 314 :

173 I. C. 432 : 16 Pat. 571 :

19 P. L. T. 51 : 10 R. P. 408 :

4 B. R. 274 :

A. I. R. 1938 Pat. 83.

——— S. 195—*Absence of sanction—Effect of.*

Absence of the sanction under S. 195, Cr. P. C., or the sanction having become ineffective under S. 195 (6), does not entail the reversal of conviction unless it is shown to have occasioned a failure of justice. The fact that an objection as to absence of sanction was taken at the beginning of the trial before a Magistrate would not of itself indicate that a failure of justice has occurred. *Pirbhu Dial v. Emperor.*

14 Cr. L. J. 183 :

19 I. C. 183 : 52 P. L. R. 1913 :

4 P. R. 1913 Cr.

——— S. 195—*Amendment, effect of—Case instituted before amending Act.*

A case instituted under S. 195, Cr. P. C., before its amendment by Act XVIII of 1923, is governed by the provisions of the old section and the Court has jurisdiction to proceed with the trial. *Emperor v. Akbar Ali Shah.*

27 Cr. L. J. 724 :

95 I. C. 52 : 8 L. L. J. 87 :

7 Lah. 99 : 27 P. L. R. 181 :

A. I. R. 1926 Lah. 131.

——— S. 195—*Amendment, effect of.*

Omission through Act 18 of 1923 of Cl. (b) in S. 537, makes compliance with S. 195 (1) (a), a necessary condition to jurisdiction. *Mosafir Singh v. Emperor.*

36 Cr. L. J. 904 :

156 I. C. 310 : 16 P. L. T. 440 :

7 R. P. 713 : A. I. R. 1935 Pat. 356.

——— S. 195—*Amendment, effect of—Prose-*

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cution sanctioned and instituted before amendment, whether affected.

The amendment of S. 195, Cr. P. C., does not affect the legality of a prosecution sanctioned and instituted before the amendment. *Kewal Ram v. Emperor*. 27 Cr. L. J. 560 : 93 I. C. 1056 : A. I. R. 1926 All. 421.

—S. 195—*Amendment, effect of—Sanction for prosecution for perjury before amendment—Trial, commencement of—Trial, legality of.*

Sanction for the prosecution for the offence of perjury was granted to a private individual under S. 195, Cr. P. C. and the trial commenced under the provisions of that Code. Before the trial was concluded, the Code was amended and the procedure with regard to sanction was abolished: *Held*, that the trial was not affected by the amendment of the Code inasmuch as the Court having taken cognizance of the case lawfully, its jurisdiction to try the case to its conclusion was not ousted by the subsequent amendment of the Code. *In re: Appaswamy Iyer*. 27 Cr. L. J. 84 : 91 I. C. 388 : 49 M. L. J. 276 : 1925 M. W. N. 668 : 22 L. W. 554 : A. I. R. 1925 Mad. 1122.

—S. 195—*Amendment.*

The omission of the word 'only' in Sub-s. 7 of S. 195 as it stood in 1898 has not changed the law. *Ohim Chandra Nath v. Emperor*.

30 Cr. L. J. 658 : 116 I. C. 638 : 33 C. W. N. 285 : 49 C. L. J. 342 : I. R. 1929 Cal. 494 : 56 Cal. 824 : A. I. R. 1929 Cal. 172.

—S. 195—*Appeal.*

An appeal from an order passed under S. 195, Cr. P. C., should be deemed to be a criminal appeal under that Code. An appeal is a proceeding within the meaning of S. 195. *Bhadesar Tewari v. Kamla Prasad*.

14 Cr. L. J. 47 : 18 I. C. 271 : 11 A. L. J. 11 : 35 All. 90.

—S. 195—*Appeal.*

Appeal from Munsif's Court under S. 476-B—Subordinate Judge is not entitled to hear, but only District Judge can. *Dulari Kori v. Fauzdar Khan*.

34 Cr. L. J. 410 : 142 I. C. 621 : 14 P. L. T. 131 : I. R. 1933 Pat. 161 (2) : A. I. R. 1933 Pat. 179 (2).

—S. 195—*Appeal, competency of—Order in appeal, efficacy of.*

An order passed by the Court of Appeal is in law the order which ought to have been passed by the Subordinate Court and will, therefore, have the same efficacy and operation as the order which ought to have been passed by the latter. A petition under S. 195, Cr. P. C., by way of appeal lies against the order of a District Judge granting sanction and passed in an appeal preferred from the order of a Subordinate Judge refusing sanction in respect of offences alleged to be committed before the Court of the Subordinate Judge. Under S. 195 (b), Cr. P. C., a petition by way of appeal

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lies to the High Court in every case in which a Civil or Criminal Court subordinate to it within the meaning of Sub-s. 7 (a) gives or refuses a sanction whether in respect of an offence committed before it or one committed before a Court subordinate to it, and in the latter case, whether it gives a sanction refused by the Subordinate Court or revokes a sanction accorded by such Court. *Palaniappa Chetti v. Annamalai Chetti*. 1 Cr. L. J. 321 : 14 M. L. J. 74 : I. L. R. 27 Mad. 223 : 2 Weir 208.

—S. 195—*Appeal from order sanctioning prosecution.*

An order under S. 195 sanctioning or refusing sanction to prosecute is appealable. *Muhammad Yusuf Ali v. Muhammad Yakub Ali*.

21 Cr. L. J. 642 : 57 I. C. 658 : 7 O. L. J. 371 : 23 O. C. 222 : A. I. R. 1920 Oudh 58.

—S. 195—*Appeal—Powers of Appellate Court—Remand, legality of.*

S. 195, Cr. P. C., merely enables an Appellate Court to grant sanction which has been refused, or to revoke sanction which has been granted; it has no power to remand an application for fresh decision. Where an order of remand is *ultra vires*, all subsequent proceedings in consequence thereof are a nullity. *Muhammad Ishaq v. Muqim-ud-Din*.

14 Cr. L. J. 178 : 19 I. C. 178 : 7 P. R. 1918 Cr : 207 P. L. R. 1913.

—S. 195—*Appeal—Sanction to prosecute, granted by Munsif—Appeal, forum of.*

For the purposes of S. 195 of the Cr. P. C., a Munsif is subordinate only to the Senior Sub-Judge and an appeal from Munsif's order refusing or granting sanction lies to the Senior Subordinate Judge and not to the District Judge. *Jawala Singh v. Madan Gopal*.

27 Cr. L. J. 75 : 91 I. C. 251 : 1 Lah. Cas. 7.

—S. 195—*Appeal—Sanction to prosecute—Second appeal.*

When sanction to prosecute has been granted by a Court, S. 195, Cr. P. C. only, one appeal from such order will lie under that section. *Kanhai Lal v. Chhadammi Lal*. 9 Cr. L. J. 63 : 1 I. C. 5 : 28 A. W. N. 290 : 6 A. L. J. 1 : 5 M. L. T. 55 : 31 All. 48.

—S. 195 (1) (a)—*Appeal.*

No appeal lies to the High Court against an order made by an Appellate Court in the exercise of its authority under S. 195 (1) (a), directing the institution of a complaint under S. 186, Penal Code. *Yusuf Ali Khan v. Lachmi Mani Dassi*. 132 I. C. 419 (1) : 1933 A. L. J. 366 : 53 All. 594 : I. R. 1931 All. 515 : A. I. R. 1931 All. 630 (1).

—S. 195 (3) *Appeal.*

Suit involving more than Rs. 5,000—Appeal from order under S. 195, lies to District Court. *Wadero Abdul Rahiman v. Sadhuram*.

32 Cr. L. J. 1012 : 133 I. C. 72 : 25 S. L. R. 196 : I. R. 1913 Sind 104 : A. I. R. 1931 Sind 163.

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———S. 195 (6)—*Appeal—Limitation Act, Art. 154—Application for sanction to prosecute—Proceedings under S. 195 (6), whether in nature of appeal—Limitation.*

Section 195 (6) gives no right of appeal as laid down in S. 404. Therefore the provisions of Article 154 of the Limitation Act, are not applicable to proceedings under S. 195 (6). It is a matter of revision and the Court should deal with it as if there was no limitation prescribed for the application. *Pochay Mitay v. Emperor.* 13 Cr. L. J. 599 : 16 I. C. 167 : 40 Cal. 239.

———S. 195 (6)—*Appeal—Power of Appellate Court, sanction to prosecute.*

An Appellate Court dealing with an application under S. 195, Cr. P. C., has no power to order a retrial by the first Court. *In re : Kamma Narayanappa.* 11 Cr. L. J. 699 : 8 I. C. 679.

———S. 195 (6)—*Appeal—Sanction to prosecute—Appeal.*

An application made under S. 195 (6), to have an order refusing or giving sanction set aside, being an application to the Court of Appeal, is in the nature of an appeal. It is immaterial whether it is called an appeal or application. *Hardeo Singh v. Hanuman Dat Narain.* 1 Cr. L. J. 7 : 24 A. W. N. 10 : 26 All. 244.

———S. 195 (6)—*Appeal—Sanction to prosecute—Sanction granted in appeal—Further appeal to High Court.*

No appeal lies to the High Court from an order of a District Judge granting sanction to prosecute under S. 195 (6) of the Cr. P. C. *Baran Barai v. Mata Prasad.* 15 Cr. L. J. 616 : 25 I. C. 528 : 12 A. L. J. 82 : 36 All. 469 : A. I. R. 1914 All. 395.

———S. 195, Cls. 6, 7—*Appeal—“Refuses or gives a sanction”—Appeal from order revoking a sanction—Appeal from order confirming a grant of sanction—Second appeal.*

The right of appeal conferred by S. 195 (6), Cr. P. C., as read with Sub-s. 7 is not restricted to a right of appeal to the Appellate Court to which the Court of first instance is immediately subordinate. An appeal lies to the High Court not only in cases where the Court of first instance refuses sanction and sanction is granted by the Court to which that Court is immediately subordinate, but also in cases where the Court of first instance grants sanction and the sanction is revoked by the Court to which that Court is immediately subordinate. *Muthusami Mundali v. Veeri Chetti.* 6 Cr. L. J. 102 : 17 M. L. J. 266 : 2 M. L. T. 238 : I. L. R. 30 Mad. 382.

———S. 195 (6), (7) (a)—*Appeal—Sanction to prosecute—Application to Subordinate Judge dismissal of—Appeal, whether lies to District Judge or High Court.*

An application for sanction to prosecute, in respect of an offence arising out of a case decided by a Subordinate Judge on appeal from a Munsif and in which a second appeal

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was pending in the High Court, was made to the Subordinate Judge, who dismissed it. A further application was made to the District Judge, who held that he had no jurisdiction to entertain it, and that the application should be made to the High Court : *Held*, that the Court of the District Judge being the Court to which the Court of the Sub-Judge was subordinate, the application had been rightly made to him. *Ganesh Datt Tewari v. Jittan Tamboli.* 20 Cr. L. J. 211 : 49 I. C. 771 : 17 A. L. J. 191 : 1 U. P. L. R. (A) 87 : A. I. R. 1919 All. 311.

———S. 195—*Applicability.*

Complaint to Police by accused—Report that case was false, placed before Magistrate—Notice to accused why complaint should not be dismissed—Police report accepted and accused prosecuted under S. 211, I. P. C. on Police report—Police held entitled to prefer complaint and it was not matter for Magistrate to take up under S. 195. *In re : Rangaswami Goundan.* 35 Cr. L. J. 698 : 148 I. C. 593 : 1933 M. W. N. 873 : 39 L. W. 204 : 66 M. L. J. 253 : 6 R. M. 501 : A. I. R. 1934 Mad. 175.

———S. 195—*Applicability—False charge, to whom to be made.*

A false charge must be made to an officer who has power to investigate and send it up for trial. *Government Advocate, Bihar v. Kumar Singh.* 39 Cr. L. J. 314 : 173 I. C. 432 : 16 Pat. 571 : 19 P. L. T. 51 : 10 R. P. 408 : 4 B. R. 274 : A. I. R. 1938 Pat. 83.

———S. 195—*Applicability—False complaint—Prosecution of abettor of complainant—Sanction, whether necessary.*

The provisions of S. 195 not only apply to a complainant in a false complaint but they also apply to the abettors and investigators of the complainant though not parties to the complaint, since the offence alleged against them is committed in relation to the proceedings in Court arising out of the complaint. *Syed Khan v. Nagoor.* 26 Cr. L. J. 262 : 84 I. C. 326 : 3 Bur. L. J. 141 : A. I. R. 1924 Rang. 369.

———S. 195—*Applicability—Forging signature on Vakalatnama—Accused not party to proceeding.*

The accused was charged with having forged complainant's name to a *Vakalatnama* authorizing a Vakil to appear for the complainant and others in an appeal pending in the High Court. An objection was taken that the Magistrate could not take cognizance of the offence without the sanction of the High Court as provided by S. 195, Cr. P. C. : *Held*, that S. 195, Cr. P. C. did not apply inasmuch as the accused was not a party to the appeal in the High Court. *Misri Lal v. Sham Sundar Lal.* 18 Cr. L. J. 563 : 39 I. C. 803 : A. I. R. 1917 All. 354.

———S. 195—*Applicability.*

If cognizance has been taken of an offence under S. 211, Penal Code, on the complaint

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of the Police Officer, before the informant has, by an application to the Magistrate, traversed the Police report, repeated his charge, and asked for a judicial investigation, S. 195 (1) (b) does not become applicable. *Daroga Mahlon v. Emperor*. 36 Cr. L. J. 200 :

152 I. C. 847 : 15 P. L. T. 756 :
13 Pat. 789 : A. I. R. 1934 Pat. 573.

—S. 195—Applicability.

Obiter.—The production of a document before an Insolvency Commissioner is sufficient to attract to the case the provisions of S. 195 (1) (c), Cr. P. C. *Beardsell & Co. v. Abdul Gunni Sahab*. 13 Cr. L. J. 241 :

14 I. C. 593 : 14 M. L. T. 391 :
1912 M. W. N. 536.

—S. 195, applicability of—Sanction for prosecution.

A District Judge has no jurisdiction to sanction a prosecution for perjury in respect of an affidavit sworn before him as District Registrar. To such a case, S. 195, Cr. P. C., has no application. *Dina Nath v. Nek Ram*. 24 Cr. L. J. 747 :

74 I. C. 751 : 21 A. L. J. 88 :
A. I. R. 1923 All. 175.

—S. 195—Applicability.

Per Brown, J.—Ss. 195 and 476 must be read closely together. *Guruswamy v. Ebrahim*. 26 Cr. L. J. 295 :

84 I. C. 439 : 2 Rang. 374 :
A. I. R. 1925 Rang. 28.

—S. 195—Applicability.

S. 195 has no application to a matter coming before a Collector in his administrative capacity. Where, therefore, an applicant for a *Patwariship* submitted a certificate as to his age, and criminal proceedings were taken against him on the ground that the certificate had been fabricated: *Held*, that S. 195 did not apply to the case, and that the proceedings were not bad because the sanction required by that section had not been obtained. *Shanti Lal v. Emperor*. 20 Cr. L. J. 798 :

53 I. C. 702 : 17 A. L. J. 1018 : 42 All. 130 :
A. I. R. 1919 All. 79.

—S. 195—Applicability—S. 195, whether applicable to persons not parties.

A Vakil cannot be regarded as a party to the proceedings in which he appears for a client so as to make S. 195, Cr. P. C., applicable to a prosecution against him. *In re : Ponnuswami Udayar*. 30 Cr. L. J. 469 :

115 I. C. 481 : 28 L. W. 769 :
I. R. 1929 Mad. 433 : A. I. R. 1929 Mad. 115.

—S. 195—Applicability.

S. 476 and S. 195 (b) apply not only when the offence is committed in a court of law but also when it is committed in relation to a proceeding in such court. *Durga Prasad v. Emperor*. 34 Cr. L. J. 686 :

144 I. C. 194 : I. R. 1933 All. 397 :
A. I. R. 1933 All. 318.

—S. 195—Applicability.

S. 195 (1) (a) applies to non-judicial

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authorities only, while cls. (b) and (c) apply to Courts, a special procedure being provided under Chap. XXXV of the Code in respect of the latter, including an appeal against the complaint. *Thakur Prasad v. Emperor*. 37 Cr. L. J. 104 (2) :

159 I. C. 503 : 2 B. R. 95 : 16 P. L. T. 808 :
8 R. P. 291 : A. I. R. 1936 Pat. 74.

—S. 195—Applicability.

The Assistant Registrar of Co-operative Societies acting under R. 14 is, a Court within the meaning of S. 195 of the Cr. P. C. *In re : Thadi Subbi Reddi*. 32 Cr. L. J. 219 :

129 I. C. 72 : 59 M. L. J. 229 : 32 L. W. 273 :
1930 M. W. N. 689 : I. R. 1931 Mad. 216 :
A. I. R. 1930 Mad. 869.

—S. 195—Applicability.

The procedure under S. 195 (c) is applicable not only in cases where a document has been given in evidence but also in cases where it has been produced, and the ambit of the word 'produced' in the said section is very wide. *Baju Jha v. Emperor*. 30 Cr. L. J. 236 :

113 I. C. 712 : 9 P. L. T. 800 :
I. R. 1929 Pat. 104 : A. I. R. 1929 Pat. 60.

—S. 195—Applicability.

The right to institute criminal proceedings subject to certain limitations contained in Ss. 195 to 199, is common to any person cognizant of the commission of the offence and does not exist merely in favour of the person injuriously affected by the offence. *Muhammad Ibrahim v. Shaik Dawood*. 23 Cr. L. J. 117 :

65 I. C. 549 : 40 M. L. J. 351 : 3 L. W. 371 :
1921 M. W. N. 227 : 44 Mad. 417 :
30 M. L. T. 349.

—S. 195—Applicability.

Witness correcting himself before leaving witness-box—Court should decline to take proceedings against him. *Ghanshamdas Pursumal v. Emperor*. 35 Cr. L. J. 519 (2) :

147 I. C. 1019 : 6 R. S. 171 :
A. I. R. 1933 Sind 412.

—S. 195 (1)—Applicability.

S. 159 (1) (b), applies also to offences "committed in relation to any proceeding in any Court." *Sawanta v. Emperor*. 33 Cr. L. J. 283 :

136 I. C. 376 : I. R. 1932 All. 200 :
A. I. R. 1932 All. 71.

—S. 195 (1) (a)—Applicability.

S. 195 (1) (a) must be read with S. 476, and S. 195 (1) (a) applies only to cases where an offence is committed by a party as such to a proceeding in any Court in respect of a document which has been produced or given in evidence in such proceedings. *Emperor v. Bishan Sahai Vidyarthi*. 39 Cr. L. J. 38 :

171 I. C. 994 : 1937 A. L. J. 1073 :
I. L. R. 1937 All. 779 : 10 R. A. 350 :
1937 A. W. R. 748 : A. I. R. 1937 All. 714.

—S. 195 (1) (b)—Applicability—Giving of "B" summary, whether brings offence within S. 195 (1) (b).

The mere fact a Magistrate gives a "B"

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summary does not bring the offence in relation to which that summary is given within the provisions of S. 195 (1) (b), for the giving of a "B" summary is merely an administrative and not a judicial act. *Raji w/o Khuda Baksh v. Allauddin M. Samo.* 40 Cr. L. J. 461 :

183 I. C. 650 : 11 R. S. 183 : 1939 Kar. 388 :
A. I. R. 1939 Sind 65.

———S. 195 (1) (b)—*Applicability—Prosecution for offence for making false charge which did not reach any Court of law.*

S. 195 (1) (b) does not apply to a prosecution for the offence of making a false charge which had not reached any Court of law. Where the Police after investigation find that the report made by the accused at the Police Station charging certain persons with an offence, is false and malicious and throw out the case, and the accused does not carry the case any further or file a complaint in any Court, his prosecution by the Police under S. 211, Penal Code, is not barred by S. 195 (1) (b). *The Kinn v. Ma E.*

40 Cr. L. J. 432 :
180 I. C. 906 : 11 R. Rang. 441 :
A. I. R. 1939 Rang. 148.

———S. 195 (1) (b)—*Applicability.*

The words in S. 195 (1) (b), Cr. P. C. "in relation to any proceedings in any Court" apply to the case of a false report or a false statement made in an investigation by the Police with the intention that there shall, in consequence of this, be a trial in the Criminal Court. *Ghulam Rasul v. Emperor.*

37 Cr. L. J. 426 (1) :
161 I. C. 288 : 37 P. L. R. 738 : 8 R. Lah. 706 :
A. I. R. 1936 Lah. 238.

———S. 195 (1) (b)—*Applicability.*

S. 195 (1) (b) does not relate to offences under S. 211, Penal Code, generally. It relates to offences under S. 211, when such offence is alleged to have been committed in or in relation to any proceedings in any Court. *Dharamdas Hiranand v. Emperor.*

40 Cr. L. J. 12 :
178 I. C. 218 : 11 R. S. 82 : 1939 Kar. 241 :
A. I. R. 1938 Sind 213.

———S. 195 (1) (c)—*Applicability—"Offence committed by a party", interpretation of—Abetment of forgery—Party to proceeding—Prosecution without sanction, legality.*

The expression "offence committed by a party" in S. 195 (1) (c) is loosely used for "offence alleged to have been committed by a party," and the provisions of the sub-section apply to the case of any person who, at the time when a Criminal Court is invited to take cognizance of the matter, can rightly be described as "a party to any proceeding in any Court" in which the document in question has been produced or given in evidence, that is to say, who is or has been a party to such proceeding. *Bhawani Das v. Emperor.*

17 Cr. L. J. 289 :
35 I. C. 161 : 14 A. L. J. 74 :
38 All. 169 : A. I. R. 1916 All. 299.

———S. 195 (1) (c)—*Applicability—Agent whether party.*

A recognised agent is not a "party" to the

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proceeding" within the meaning of S. 195 (c). *Fatima Bee Bee v. Raman Chetty.*

12 Cr. L. J. 87 :
8 I. C. 1202 : 3 Bur. L. T. 108 :

———S. 195 (1) (c)—*Applicability—"Party", meaning of—Whether includes guardian and next friend.*

The word 'party' in S. 195 (1) (c), Cr. P. C., is not used in extended sense. The guardian or next friend is not a party and S. 195 (1) (c) cannot apply unless one of the accused was a party to some proceeding in Court. *Emperor v. Mallappa Tejappa Bidikar.*

38 Cr. L. J. 149 :
166 I. C. 270 : 38 Bom. L. R. 964 :
9 R. B. 229 : A. I. R. 1937 Bom. 14.

———S. 195 (1) (c)—*Applicability.*

Quære.—Whether the limitation contained in S. 195 (c) in the words "a party to any proceeding in any Court", applies also to an order under S. 476 of the Code by reason of the words in the latter section, "any offence referred to in S. 195." *Ram Sarup v. Emperor.*

19 Cr. L. J. 236 :
43 I. C. 828 : A. I. R. 1918 Pat. 640.

———S. 195 (1) (c)—*Applicability—Relevant date is the date Court is invited to take cognizance of complaint.*

Under S. 195 (1) (c), Cr. P. C., relevant date which has to be considered is the date at which a Court is invited to take cognizance of the complaint. At that moment the Court has to ask itself whether it is debarred from taking cognizance by reason of the provisions of S. 195, and in cases falling under S. 463 or S. 471, Penal Code, the Court has to see whether the offence in respect of which it is asked to take cognizance is alleged to have been committed by a party to any proceeding in any Court and in respect of a document produced or given in evidence in such proceeding. It is immaterial that the offence had been committed by a person before the proceedings are taken and if at the time when the Court is asked to take cognizance of a complaint the accused is a party to proceedings, in a Court in which the document has been produced or used in evidence, then the bar contained in S. 195 (1) (c), applies. *Emperor v. Rachappa Yellappa*

37 Cr. L. J. 814 :
163 I. C. 279 : 38 Bom. L. R. 440 :
60 Bom. 756 : 8 R. B. 445 :
A. I. R. 1936 Bom. 221.

———S. 195 (1) (c)—*Applicability.*

S. 195 (c), Cr. P. C., only applies to parties and does not cover the case of witnesses. *Ganda Singh Kochar v. Emperor.*

29 Cr. L. J. 1061 :
112 I. C. 565 : A. I. R. 1929 Lah. 125.

———S. 195 (1) (a), (3)—*Magistrate acting under S. 195 (1) (a)—Applicability of Sub-s. (3).*

Where a Magistrate Acts under Cl. (a) of S. 195 (1) he acts not as a Court but as a public servant and Sub-s. (3) of S. 195 does not apply to such a case. *Maini Misir v. Emperor.*

28 Cr. L. J. 353 :
100 I. C. 961 : 6 Pat. 39 :
8 P. L. T. 488 : A. I. R. 1927 Pat. 111.

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———S. 195 (c)—*Applicability—Production of evidence and giving it in evidence, distinction between.*

S. 195 (c), Cr. P. C., applies to a document which is alleged to have been forged and which is produced in a Court of Justice. Under the section, the 'production' of a document in a Court is not the same thing as 'giving it in evidence.' A document produced in a Court means one which is produced for the purpose of being tendered in evidence or for some other purpose. *In re : Gopal Sidheshwar.*

6 Cr. L. J. 78 :
9 Bom. L. R. 735.

———S. 195—*Application—Application for leave to sue, whether judicial proceeding—Sanction refused by lower Court.*

An application was made in the small Cause Court, Calcutta, on behalf of the defendant, for sanction to prosecute the plaintiff, under S. 209, I. P. C. for having fraudulently and dishonestly and with intent to injure and annoy the defendant made a claim which he knew to be false and also under S. 193, I. P. C. for having, in an application for leave to institute a suit, knowingly and intentionally made a false statement when legally bound to state the truth. The Judge of the Small Cause Court refused the sanction, on the ground that the statements were not made in the course of a judicial proceeding and that there had been an undue and unreasonable delay in making the application. Defendant then applied to the High Court, and the learned Judge who heard the application came to the conclusion that the statement had been made in the course of a judicial proceeding, and that the delay had been explained away; and he made an order that the matter should be further investigated by the learned Judge of the Small Cause Court and that that judge should determine, upon the materials placed before the Court and having regard to his decision, whether or not sanction should be granted: *Held*, (1) that the order of the learned Judge of the High Court was a "judgment" within the meaning of Cl. 15 of the Letters Patent and that an appeal lay against that order under that clause; (2) that under S. 195 (6) the sole power given to the learned Judge of the High Court was to revoke a sanction given or to grant a sanction refused by the subordinate Court and that he had no power to remand the case for further enquiry and decision by the Small Cause Court. *Budhu Lal v. Chatter Gope.*

18 Cr. L. J. 497 :
39 I. C. 465 : 21 C. W. N. 269 :
5 C. L. J. 193 : 44 Cal. 816 :
A. I. R. 1918 Cal. 850.

———S. 195—*Application by whom valid—Sanction to prosecute—Application by person not party to suit.*

No Court should entertain an application for sanction to prosecute made under S. 195 by a person, not a public servant, who was not a

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party to the suit out of which the proceedings have arisen. *Prabh Dial v. Gurudil Singh.*

23 Cr. L. J. 510 :
68 I. C. 46 : 4 L. L. J. 89 :
A. I. R. 1922 Lah. 194.

———S. 195—*Application—Complaint against three persons in respect of same offence—Complaint against two alone—Fresh complaint against third,—Public interest.*

An application was made for a complaint against A and B and another unnamed person whose character and description were indicated, in respect of an offence of forgery. The Magistrate refused to make a complaint. The applicant appealed to the High Court and the High Court made a complaint against A and B. The complaint came for investigation before another Magistrate who after a lapse of some time directed the Public Prosecutor to apply to the successor of the Magistrate who had refused to make a complaint for a complaint to be made against the unnamed person: *Held*, that the succeeding Magistrate had power to make a fresh complaint. The first principle to be considered in such matters is that it is the public interest which is paramount in the matter. *Sujauddin v. Emperor.*

30 Cr. L. J. 1034 :
119 I. C. 381 : 33 C. W. N. 343 :
I. R. 1929 Cal. 797 : A. I. R. 1929 Cal. 242.

———S. 195—*Application—Duty of Superior Court—Superior Court, whether can take additional evidence.*

In considering an application under S. 195 (6), a superior Court is competent to take and consider additional evidence for the purpose of satisfying itself whether sanction should or should not be granted. *Jagrup Shukul v. Emperor.*

19 Cr. L. J. 4 :
42 I. C. 915 : 15 A. L. J. 844 : 40 All. 22 :
A. I. R. 1918 All. 332.

———S. 195—*Application—Judicial proceeding.*

Per Curiam.—An application for leave to sue is a stage in a judicial proceeding. *Budhu Lal v. Chotu Gope.*

18 Cr. L. J. 793 :
41 I. C. 313 : 25 C. L. J. 401 : 21 C. W. N. 654 :
A. I. R. 1917 Cal. 527.

———S. 195—*Application.*

In dealing with an application for sanction under S. 195 in appeal, a superior Court has inherent power to take such steps as may be necessary to enable it to discharge the duty imposed upon it, *e. g.*, to take further evidence in its discretion. *Budhu Lal v. Chattu Gope.*

18 Cr. L. J. 497 :
39 I. C. 465 : 21 C. W. N. 269 : 5 C. L. J. 193 :
44 Cal. 816 : A. I. R. 1918 Cal. 850.

———S. 195—*Application.*

Ordinarily an application for sanction to prosecute for giving false evidence should be made to the Court in which the alleged false evidence was given. *Aung Gyi v. Emperor.*

18 Cr. L. J. 97 (b) :
37 I. C. 305 : 9 Bur. L. T. 202 :
A. I. R. 1917 L. Bur. 24.

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———S. 195—*Application—Sanction for prosecution—Application for sanction, if necessary.*

A sanction to prosecute given under S. 195 implies an application for sanction and not a mere general and vague order. *Nga Kyaw Zan v. Nga Kyi Dan.* 17 Cr. L. J. 59 : 32 I. C. 651 : U. Bur. R. 1915 II 91.

———S. 195—*Application for sanction.*

Where there is no application for sanction, the proceeding is virtually a complaint and the procedure enjoined by S. 476 should be followed. *Emperor v. Jhamandas.*

12 Cr. L. J. 320 :
10 I. C. 616.

———S. 195—*Application—Sanction to prosecute, letter from Sub-Inspector of Police to Magistrate, whether application.*

Petitioner in his evidence before a Magistrate denied the fact of his examination by the Police. Thereupon a Sub-Inspector of Police wrote a letter to the Magistrate praying for sanction to prosecute petitioner for giving false evidence. A correspondence took place between the Magistrate and the Police, and notice was issued to the petitioner who filed a counter-petition. This counter-petition was also sent by Magistrate to Police for remarks, and on the receipt of the latter, the Magistrate granted the sanction asked for by the Police : *Held*, (1) that the letter of the Sub-Inspector to the Magistrate was an application within the meaning of S. 195, Cr. P. C. *In re : Nataraja Pathan.* 18 Cr. L. J. 277 : 38 I. C. 309 : A. I. R. 1918 Mad. 992.

———S. 195—*Application.*

Sanction to prosecute should not be accorded until there is an application for sanction before the Court. In cases where imputations are made against influential Police Officers, a District Magistrate should, if practicable, retain the cases in his own hands, and should adhere to the procedure laid down by law with more than ordinary strictness. The complainant himself should be examined without delay and should be required to produce his witnesses at the earliest possible opportunity. *Ali Muhammad v. Emperor.*

12 Cr. L. J. 539 :
12 I. C. 515 : 2 P. R. 1912 Cr. :
11 P. L. R. 1912.

———Ss. 195 (b), 476—*Application of.*

S. 476, Cr. P. C., must be read with S. 195 and is consequently restricted by the limitations contained in Cl. (4) of that section. *Tayabullah v. Emperor* 18 Cr. L. J. 13 :

36 I. C. 845 : 24 C. L. J. 134 :
20 C. W. N. 1265 : 43 Cal. 1152 :
A. I. R. 1917 Cal. 593.

———Ss. 195, 476—*Application—Procedure—Order under S. 476 infructuous—Order under S. 195 not illegal—Application under S. 195 presented by minor should be presented through next friend.*

After action has been taken under S. 476, Cr. P. C., and an order has been made which proves infructuous because not made in accordance with that section or because it is defective

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in form, there is no reason why an application properly made under S. 195 should not be entertained. The position would be different if the order under S. 476 was set aside on the merits. An application presented under S. 195, Cr. P. C. to a Civil Court, for sanction to prosecute a person, by a person who is an infant, ought to be presented on his behalf by a properly appointed next friend. The Court will not entertain an application which is not so presented. The objection goes to the root of the matter and may be taken successfully in the Appellate or the Revisional Court. *Rajendra Nath Das v. Mukta Rani Dasi.*

11 Cr. L. J. 327 :
6 I. C. 367.

———Ss. 195, 476, 190 (1) (a), 529—*Application—Penal Code (Act XLV of 1860), S. 193—Complaint instituted by stranger to proceedings—Magistrate erroneously taking cognizance of offence—Interference on revision.*

One B. presented complaint to the District Magistrate alleging that A had given false evidence as witness in a criminal trial in the Court of the Honorary Magistrate, 2nd Class, and praying that A might be punished for this offence. B was not a party to the case and apparently had no personal concern with the proceedings in Court. On this complaint, the District Magistrate ordered A's trial for giving false evidence and made the case over to a First Class Magistrate : *Held*, (1) that the District Magistrate's order could not be supported by S. 195 or S. 476, Cr. P. C. as (a) no application for sanction under S. 195 had been made and no such application was granted ; (b) A's statement was not made before the District Magistrate ; and it was brought under his notice not in the course of a judicial proceeding, but on the complaint presented to him by B ; (2) that as S. 195, Cr. P. C., had not been complied with, the complaint presented by B to the District Magistrate, with a view to his taking cognizance under S. 190 (1) (a), should have been summarily dismissed ; (3) although in view of S. 529, Cr. P. C., the mere fact that the District Magistrate has erroneously taken cognizance of an offence under S. 190 (1) (a) would not by itself be sufficient ground for interference on revision, yet as the case had not yet gone to trial, and it did not appear to be one in which sanction, if it had been applied for, could properly have been given, and as B's complaint was not instituted in the interest of justice, but apparently, it was merely intended to give trouble to an enemy, the irregularity became material, and the order for prosecution must be set aside. *Abdul Jamal v. Emperor.*

14 Cr. L. J. 107 :
18 I. C. 677 : 13 P. W. R. 1913 Cr. :
68 P. L. R. 1913.

———S. 195, Sub-s. (1), Cl. (A) and (B)—*Application—Sanction of Court—Application—Necessity of—Police report, whether sufficient application.*

A Police report is a sufficient application for the purpose of the law to justify the Magistrate in giving the sanction under S. 195, Cr. P. C. if an application is needed

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at all. Even if a Court ought not to proceed except upon an application when acting under S. 195 (1), (b), an application is not necessary in cases which come under S. 195 (1) (a), *Cr. P. C. Panchu Mandal v. Emperor*.

14 Cr. L. J. 292 :
19 I. C. 948 : 17 C. W. N. 976 :
41 Cal. 14.

—S. 195 (6)—Application.

Application under S. 195 (6), Cr. P. C. is in its nature an appeal. *Hardeo Singh v. Hanumandat Narain*.
1 Cr. L. J. 7 :
24 A. W. N. 10 : 26 All. 244.

—S. 195 (6)—Application—Sanction to prosecute—Application to Appellate Court, whether appeal.

Although an application to an Appellate Court under S. 195 (6), Cr. P. C. is akin to an appeal and is treated as an appeal it is not an appeal for the purposes of the Limitation Act. *Punna Lal v. Jamila Mal*.
22 Cr. L. J. 177 :
60 I. C. 33 : 1 Lah. 602.

—S. 195—Application for sanction—Cross-examination on affidavits.

On principle and as a general rule, no cross-examination should be allowed on affidavits made in support of an application for sanction to prosecute. If the affidavits disclose materials sufficient to raise a *prima facie* case, that is all that is needed at that stage. *Safurabai v. Abdullah*.

10 Cr. L. J. 539.
4 I. C. 273 : 11 Bom. L. R. 1164.

—S. 195—Application for sanction—Perjury committed before Munsif—Munsif transferred—Sanction, by whom to be granted.

An application for sanction to prosecute a witness in respect of a false statement alleged to have been made by him in a civil suit before a Munsif, who has been transferred from the district, is cognizable by the Subordinate Judge, First Class, to whom appeals lie from the Munsif's Court. *Dina Nath v. Muhammad Abdulla*.

22 Cr. L. J. 325 :
61 I. C. 53 : 2 Lah. 57 :
A. I. R. 1921 Lah. 28.

—S. 195 (7)—Application for sanction—Revision.

Where a suit was tried by a Subordinate Judge in the exercise of his Small Cause Court powers and subsequent to the dismissal of the suit, an application for sanction under S. 195, Cr. P. C., was made by the defendant to prosecute the plaintiff for perjury and the Subordinate Judge refused to grant the sanction: *Held*, that an application for revision from such an order lay to the Court of the District Judge. *Ram Dayal v. Dwarka*.

18 Cr. L. J. 899 :
42 I. C. 131 : 20 O. C. 223 :
4 O. L. J. 529 :
A. I. R. 1917 Oudh 122.

—S. 195—Application for sanction to prosecute, appeal from—Direction to take fresh**Cr. P. CODE (1898), S. 195**

evidence—Legality—Revision petition to the High Court, dismissal of—Right of appeal to the High Court—Letters Patent, 1865. S. 15—Judgment, meaning of.

When an application for sanction to prosecute comes before the District Judge on appeal from the District Munsif under S. 195, Cr. P. C. the District Judge has no jurisdiction to direct the District Munsif to take fresh evidence. The dismissal of the revision petition in this case by a single judge of the High Court (on the ground that the objection therein taken to the jurisdiction of the Lower Appellate Court to pass the order in question was unfounded) is a judgment within the meaning of S. 15, Letters Patent, and therefore appealable. *Rama Iyer v. Venkatachala*.

5 Cr. L. J. 288 :
2 M. L. T. 84 : 17 M. L. J. 123.

—S. 195—Application for sanction to prosecute—Made before amendment of Code—Application kept pending till after its amendment—Pendency of application, whether rejection of application—Jurisdiction of superior Court to order prosecution.

An application for sanction to prosecute, filed under S. 195 before the amendment of the Code in 1923, remained pending in the lower Court till sometime after the Code was amended. Then the District Court, to which the lower Court was subordinate, acting under S. 476-A ordered prosecution under S. 476 of the Code: *Held*, that, as the pendency of the application for sanction did not mean rejection of the application within the meaning of S. 476-A, the District Court was competent to order prosecution. *Ramdas Vishnudas v. Emperor*.

25 Cr. L. J. 1287 :
82 I. C. 359 : 26 Bom. L. R. 713 :
A. I. R. 1924 Bom. 511.

—S. 195 (7) (b)—Case, meaning of.

The word 'case' in S. 195 (7) (b), Cr. P. C. may mean either the original case, out of which arose the case or proceeding in which the offence is said to have been committed, or the actual proceeding in which the offence is said to have been committed. It must be construed with reference to the context in which it appears. There being a remote connection with the original suit and an immediate connection with the execution proceeding, the case in connection with which the offence in question is alleged to have been committed, is the execution proceeding. *Ajodhia Parshad v. Ram Lal*.

13 Cr. L. J. 44 :
13 I. C. 284 : 9 A. L. J. 124 :
34 All. 197.

—S. 195—Complaint, absence of.

Absence of complaint under S. 195 is fatal to prosecution. *Kali Charan v. Emperor*.

35 Cr. L. J. 789 :
148 I. C. 784 : 11 O. W. N. 473 :
6 R. O. 434 (2) : A. I. R. 1934 Oudh 186.

—S. 195—Complaint, absence of—Defect, curing of.

The entire absence of a complaint without which an offence cannot be taken cognizance

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of under the law is not a defect curable by S. 537. *Mohim Chandra Nath v. Emperor*.

30 Cr. L. J. 658 :
116 I. C. 638 : 33 C. W. N. 285 :
49 C. L. J. 342 : I. R. 1929 Cal. 494 :
56 Cal. 824 : A. I. R. 1929 Cal. 172.

—S. 195—*Complaint against witnesses, etc.*

One complaint by Court against party to proceedings, witnesses and writer of a receipt. Court has no jurisdiction so far as witnesses and writer are concerned. *Ghansham Dass v. Emperor*.

151 I. C. 697 : 7 R. Pesh. 32 :
A. I. R. 1934 Pesh. 81 (2).

—S. 195—*Complaint—Avoiding law by filing complaint under S. 500, I. P. C.*

The litigant who elects to allege that statements made in an affidavit are false, and on that allegation to present a complaint under S. 500, Penal Code, cannot be regarded as evading the law, even though it might have been open to him to wait until the civil suit had been decided and then to invite the Civil Court to take action against the affdavit for the offence of perjury and there is no infraction or evasion of the law patent upon the face of the proceedings to justify quashing of proceedings. *Kalumal Gelomal v. Kissumal Issardas*.

36 Cr. L. J. 881 :
156 I. C. 219 : 7 R. S. 228 :
A. I. R. 1935 Sind 81.

—S. 195—*Complaint.*

Complaint before Magistrate, found on inquiry to be false—Magistrate cannot direct Sub-Inspector to file complaint under Ss. 182, 211, Penal Code. Order held not complaint within S. 195. *Bachelal v. Emperor*.

37 Cr. L. J. 324 :
160 I. C. 797 : 16 P. L. T. 807 :
2 B. R. 241 : 8 R. P. 383 :
A. I. R. 1936 Pat. 56.

—S. 195—*Complaint by Court.*

A and M entered into a conspiracy to injure a rival in business by getting him adjudicated insolvent. In pursuance of this conspiracy, A and M procured the forgery of certain warrants for the attachment of immovable property belonging to the rival. M thereafter filed an application against the rival to get him adjudicated an insolvent. After an inquiry by the Insolvency Court the application to adjudicate was dismissed and the Insolvency Court made a complaint against A and M charging them with an offence punishable under S. 120-B read with Ss. 466 and 109 of the Penal Code. On this complaint the Magistrate, to whom the case was made over for disposal, framed charges against A and M under S. 120-B of the Penal Code. On appeal, the High Court set aside the complaint so far as it related to A on the ground that the Insolvency Judge had no jurisdiction to lay a complaint against A who was no party to the insolvency proceedings before him. The Counsel for the complaint thereupon drafted and presented a complaint against A in the same terms as the one which had been laid by

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the Insolvency Judge. On this complaint the Magistrate took proceedings against A and a joint trial of both A and M proceeded. During the course of the trial, objection was taken to the jurisdiction of the Magistrate to proceed against A in the absence of any complaint or consent such as was required by S. 196-A of the Cr. P. C. The Magistrate thereupon framed alternative charges under Ss. 466 and 109 of the Penal Code against both accused : *Held*, (1) that A not having been a party to the proceedings before the Insolvency Judge, he was not a person who came within the purview of S. 195 (1) (c) and that, therefore, as regards him the proviso to Sub-s. (2) of S. 196-A of the Code did not do away with the necessity for the sanction of the Local Government to the initiation of proceedings against him; (2) that as regards A, therefore, the Magistrate had acted entirely without jurisdiction and the whole of the proceedings against him were void and illegal; (3) that the Magistrate having acted without jurisdiction against A, the defect in the proceedings could not be cured by framing an alternative charge which required no complaint or consent; (4) that the charge originally framed by the Magistrate against M was a charge which was not set out in the complaint made by the Insolvency Judge and that it was a charge which fell under Sub-s. (1) of S. 196-A of the Cr. P. C. of which the Magistrate could not take cognizance without a complaint by the Governor-General-in-Council or by the Local Government; (5) that, therefore, the proceedings of the Magistrate as against M after the framing of the charge, were without jurisdiction and the alternative charge subsequently framed by the Magistrate could not be allowed to stand. *Abdul Rahim v. Emperor*.

26 Cr. L. J. 1329 :
89 I. C. 305 : 3 Rang. 95 :
A. I. R. 1925 Rang. 296.

—S. 195—*Complaint by Court.*

After a forged document has been produced in a Court, a criminal case cannot be started in respect of such document under S. 463, Penal Code, except on the written complaint of the Court as provided in S. 195 (1) (c). *Kanhaiya Lal v. Bhagwan Das*.

26 Cr. L. J. 1485 :
89 I. C. 1053 : 23 A. L. J. 956 :
48 All. 60 : A. I. R. 1926 All. 30.

—S. 195—*Complaint by Court—Allegation that Subordinate Judge committed offences under Ss. 465 and 466 during trial of case before him.*

Where it is alleged that the Subordinate Judge before whom a suit was proceeding, has himself abetted an offence under S. 193, I.P.C., and has also committed offences under Ss. 465 and 466, I. P. C., no complaint, by the Court is necessary so far as offences under Ss. 465 and 466 are concerned as he could not be said to be a party to the proceedings before the Court. *Behari Lal v. Sheikh Abdul Qadir Hamyari*.

41 Cr. L. J. 843 :
190 I. C. 178 : 13 R. L. 140 :
A. I. R. 1940 Lah. 292.

—S. 195—*Complaint by Court.*

Even where the use as genuine of a forged

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document under S. 471, Penal Code, is prior to the proceedings before the Court, the complaint of the Court before which that document was filed or used is necessary under S. 195. *In re : Thadi Subbi Reddi.*

32 Cr. L. J. 219 :
129 I. C. 72 : 59 M. L. J. 229 :
32 L. W. 273 : 1930 M. W. N. 689 :
I. R. 1931 Mad. 216 :
A. I. R. 1930 Mad. 869.

—S. 195—Complaint by Court—False charge—Complaint made in Court—Subsequent statement to Police—Prosecution for making false charge.

The accused filed a complaint in Court against certain persons charging them with dacoity. After his complaint he was sent for by the Police and made a statement to a Police Officer saying that he had filed a complaint in Court and that certain persons had committed dacoity in his house. The Police upon investigation found that the complaint was false and a superior Police Officer charged him with false accusation and the accused was put on his trial for an offence under S. 211 of the Penal Code : *Held*, that the accused having filed his complaint in Court before he made a statement to the Police Officer, Police Officer was not competent to proceed against the accused and that the accused could not be tried for the offence charged without a complaint by the Court before whom he has filed his own complaint. *Ghaslwan Singh v. Emperor.*

27 Cr. L. J. 1014 :
96 I. C. 870 : 24 A. L. J. 816 :
A. I. R. 1926 All. 613.

—S. 195—Complaint by Court—False charge to Police—Prosecution—Sanction, whether necessary.

Accused made a report to the Police against seven persons, five of whom were sent up for trial in a Magistrate's Court. The other two were not sent up, and the charge against accused was that he had brought a false case against them. The Public Prosecutor filed a complaint against the accused to that effect, and the latter was committed for trial by the Magistrate : *Held*, (1), that the offence, under S. 211 of the Penal Code, if any, committed by the accused, was committed by him in relation to a proceeding in Court, and that as the sanction for the Court was not obtained and there was no complaint by it, the Committing Magistrate had no power to take cognizance of the offence. *Emperor v. Gurditta.*

18 Cr. L. J. 548 :
38 I. C. 692 : 19 P. R. 1917 Cr. :
20 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 338.

—S. 195—Complaint by Court—Information to Police followed by complaint to Magistrate—Judicial investigation—Charge found false—Prosecution under S. 211, I. P. C.—Sanction of Court.

Where information of an offence laid before the Police is followed by a complaint to the Court based on the same allegations and making the same charge as that contained in the information to the Police, and the complaint on

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being investigated by the Court is found to be false, no prosecution will lie against the complainant for an offence under S. 211, Penal Code, except with the sanction or on the complaint of the Court which made the said investigation. *Brown, P. A. v. Ananda Lal Mullick.*

18 Cr. L. J. 25 :
36 I. C. 857 : 20 C. W. N. 1347 :
25 C. L. J. 59 : 44 Cal. 650 :
A. I. R. 1917 Cal. 596.

—S. 195—Complaint by Court—Offence committed by party after termination of proceedings in respect of document produced during proceedings—Complaint of Court whether necessary.

There were some criminal proceedings between A and B. After the termination of the proceedings a document which had been produced on behalf of A was taken out by a person who was identified as A by a Pleader. A filed an application before a Magistrate stating that B and others had taken away the document forging the signature of A in the receipt. The Magistrate took cognizance of the offence and issued warrants against the accused under Ss. 417, 419, 420 and 109, Penal Code : *Held*, (1) that the Magistrate had jurisdiction to take cognizance of the case without a complaint under S. 195 inasmuch as the offences were not committed by the parties to a proceeding while the said proceedings were pending in Court but long after the proceedings had come to a termination ; (2) that the allegations made by A were such as must be enquired into. *Kartick Chandra Biswas v. Emperor.*

31 Cr. L. J. 1205 :
127 I. C. 267 : 51 C. L. J. 51 :
A. I. R. 1930 Cal. 278.

—S. 195—Complaint by Court—Offence of disobeying order under S. 144, Cr. P. C.—Prosecution—Complaint, necessity of.

Where an offence under S. 188, Penal Code, is committed by disobedience of orders of the Sub-Magistrate issued under S. 144, Cr. P. C., no cognizance can be taken of this case without a proper complaint by that Magistrate as enacted by S. 195, and in any case, the very Sub-Magistrate cannot hear and decide the case himself. *In re : Vcrappa Moopan.*

40 Cr. L. J. 752 :
183 I. C. 240 : 49 L. W. 474 :
1939 M. W. N. 340 :
1939 I. M. L. J. 573 :
12 R. M. 263 : A. I. R. 1939 Mad. 996.

—S. 195—Complaint by Court—Penal Code, Ss. 193, 467—Facts disclosing offences under Ss. 193, 467—Private complaint for forgery without reference to Court, whether legal.

Where the facts disclose an offence under S. 193, Penal Code, committed in relation to a proceeding in Court, under S. 195, Cr. P. C., no Court can take cognizance of such an offence otherwise than in the manner prescribed, and it makes no difference that the complainant, evidently to evade that provision, has elected to name the offence of forgery in his petition. In such a case the specific offence of fabricating

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false evidence should be given a preference over the more general offence of forgery. *Perianna Muthirian v. Vengu Ayyar*.

30 Cr. L. J. 322 :
114 I. C. 360 : 28 L. W. 687 :
1929 M. W. N. 196 : I. R. 1929 Mad. 280 :
56 M. L. J. 208 : A. I. R. 1929 Mad. 21.

———S. 195—*Complaint by Court—Perjury committed in summary trial—Sanction, whether ought to be granted.*

Where, during the course of a summary trial, the Court is of opinion that perjury has been committed, it should take action itself instead of placing in the hands of a private person the right of vindicating the law. *Thakur Das v. Abdullah*.

20 Cr. L. J. 46 :
48 I. C. 686 : 16 A. L. J. 992 :
A. I. R. 1918 All. 67.

———S. 195—*Complaint of Court.*

Under the amended Cr. P. C. want of a regular complaint by a public servant or a Court in respect of an offence referred to under S. 195 is fatal to a prosecution. *Ameraj Singh v. Emperor*.

26 Cr. L. J. 751 :
86 I. C. 287 : 23 A. L. J. 35 :
A. I. R. 1925 All. 306.

———S. 195—*Complaint by Court.*

Where an information given to the Police is followed by a complaint made in Court, a prosecution under S. 211, Penal Code, in respect of the information or complaint can only be instituted on a complaint being made by the Court to whom the original complaint was made. *Muhammad Yassin v. Emperor*.

26 Cr. L. J. 889 :
86 I. C. 825 : 6 P. L. T. 457 : 4 Pat. 323 :
A. I. R. 1925 Pat. 483.

———S. 195—*Complaint by Court.*

Where in such a case proceedings are instituted on the complaint of the Police Officer to whom the information was given and thereupon the Court makes an order summoning the accused person on a charge under S. 211, Penal Code, the order summoning the accused does not amount to a complaint by the Court within meaning of S. 195. *Muhammad Yassin v. Emperor*.

26 Cr. L. J. 889 :
86 I. C. 825 : 6 P. L. T. 457 : 4 Pat. 323 :
A. I. R. 1925 Pat. 483.

———S. 195—*Complaint by Court—Validity of—Complaint disallowed by one Court—Fraudulent decree obtained from another Court—Court, which can start proceedings.*

Where a person after having a claim disallowed in one Court, obtains an *ex parte* decree in respect of the same from another Court, the institution of the second suit, and the obtaining of decree by fraudulent means, cannot be held to be an offence committed in relation to proceedings in the first Court so as to enable it to take action under S. 195. The action to be regular should be taken by the second Court, or by the Court to which both the Courts are subordinate. *Vishnu Ram v. Emperor*.

26 Cr. L. J. 1588 :
90 I. C. 660 : 6 Lah. 445 : 7 L. L. J. 341 :
A. I. R. 1925 Lah. 524.

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———Ss. 195, 476—*Complaint by Court, when to be made.*

It is the duty of a Court, as also that of a Police Officer aware of the commission of a cognizable offence, to make a complaint in every case that comes to its notice of an offence which cannot be tried except on the complaint of a Court, unless the offence is trivial or the evidence available is not sufficient to make a conviction probable. *Mrityunjay Prasad v. Ramrao*.

27 Cr. L. J. 1010 :
96 I. C. 866 : A. I. R. 1926 Nag. 485.

———S. 195 (1)—*Complaint by Court—Penal Code (Act XLV of 1860), Ss. 182, 211—Complaint to Magistrate—Report by Police that complaint is false—Complaint by Police for prosecution of complainant—Legality of Proceedings—Complaint by Magistrate, necessity of—Prosecution before disposal of original complaint, legality of—Complaint under Ss. 182 and 211, Penal Code—Notice to show cause.*

The petitioner made a complaint to a Magistrate of offences falling within the purview of S. 211, Penal Code. The complaint was forwarded by the Magistrate to a Police Officer. The latter returned the same with a report that it was false and malicious and preferred a complaint against the petitioner of an offence under S. 211, Penal Code. The Magistrate directed the Police Officer to submit a report for prosecution under S. 182, Penal Code, and on receipt of the report, issued summons to the petitioner under S. 182 : *Held*, (1) that the Magistrate had no jurisdiction to prosecute the petitioner either under S. 182 or S. 211, Penal Code, on the complaint of the Police Officer as S. 195 (1) was a bar to his taking cognizance of the case except on the complaint of the Magistrate himself; (2) that it was, at all events, improper if not illegal, to prosecute the petitioner before the final disposal of the complaint made by the petitioner either under S. 203, Cr. P. C., or otherwise. There is no law which renders it obligatory on a Magistrate, before starting a prosecution under S. 182 or S. 211, Penal Code, to allow an opportunity to the person who is to be prosecuted to prove the truth of the information or charge in respect of which it is proposed to prosecute him. *Jokhi Mian v. Mahmud Dafadar*.

30 Cr. L. J. 545 :
115 I. C. 882 : 10 P. L. T. 77 :
I. R. 1929 Pat. 258 :
A. I. R. 1929 Pat. 92.

———S. 195 (1) (b)—*Complaint by Court—False and defamatory statement made by accused in his deposition as witness—Offence falls under S. 193, Penal Code—Evasion of S. 195 by filing complaint under S. 500, I. P. C.*

Where a defamatory statement was made by the accused in his deposition as a witness and the finding is that the statement was deliberately false, the offence committed by the accused falls under S. 193, Penal Code, which cannot be taken cognizance of without a complaint by the Court and parties cannot

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be allowed to evade the provisions of S. 195 (1) (b), by filing a complaint under another provision of the Penal Code. *Ganapathi Asari v. Kuppuswami Asari*.

40 Cr. L. J. 757 :
183 I. C. 179 (1) : 1939 M. W. N. 320 :

49 L. W. 456 : 1939 1 M. L. J. 614 :

12 R. M. 250 :
A. I. R. 1939 Mad. 493.

—S. 195 (1) (b)—*Complaint by Court—Penal Code, Ss. 193, 500—Offence falling under S. 193—Provisions of S. 195 (1) (b), evasion of.*

Parties cannot be allowed to evade the provisions of S. 195 (1) (b) by filing a complaint under another provision of the Penal Code. *A* charged *B* with theft of certain documents and records from a certain Academy, and in the affidavit filed in support of the application for a search warrant and the sworn statement, *A* alleged that some of the articles had been secreted in the house of *C*. A search warrant was issued and *C*'s house was searched. Nothing was found and *B* was ultimately discharged. *C* filed complaint of defamation which was founded on the allegations in the affidavit and sworn statement: *Held*, that the offence committed would fall under S. 193, Penal Code, which could not be taken cognizance of without a complaint by the Court. *Shanmugasundaram Pillai v. Manicka Mudaliar*.

40 Cr. L. J. 542 :
181 I. C. 86 : 49 L. W. 102 :

1939 M. W. N. 192 (1) :

1939 1 M. L. J. 412 :

11 R. M. 770 :

A. I. R. 1939 Mad. 368.

—S. 195 (1) (b)—*Complaint by Court—Penal Code (Act XLV of 1860), S. 211—Complaint to Police that certain named person had cut and taken away complainant's trees—No prosecution by Police—Complainant filing complaint in Court—Police filing complaint under S. 211, Penal Code, against him—Prosecution under S. 211, if legal.*

It is undesirable, that where a case has been taken into Court, it should thereafter be open to the Police to evade the provisions of S. 195 of the Cr. P. C., by filing a complaint under S. 211, Penal Code, on the complaint by a Police Officer; the wording of S. 195 (1) (b) is quite wide enough, to require that in such circumstances the Court itself shall make a complaint. A person made a report to the Police that certain named persons had cut and taken away some of his trees. The Police did not prosecute these persons, and the complainant thereafter filed a complaint of theft in Court. Subsequently the Police filed a complaint against the complainant under S. 211 Penal Code: *Held*, that the complaint under S. 211, Penal Code, was a complaint of an offence alleged to have been committed in or in relation to a proceeding in a Court. Hence prosecution under S. 211, Penal Code, could not proceed

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without a complaint of the Court. *Sarup Singh v. Emperor*.

40 Cr. L. J. 638 :

181 I. C. 928 : 1939 N. L. J. 210 :

11 R. N. 494 :

A. I. R. 1939 Nag. 226.

—S. 195 (1) (b) (c)—*Complaint by Court against abettor—Penal Code S. 211—Offence under S. 211—Complaint against abettors not parties to proceedings.*

The Court may make a complaint against a person under S. 476, Cr. P. C., for an offence under S. 211, Penal Code, if it is of opinion that the proceeding before the Court was caused to be started by that person, though he was not a party to the proceeding before it. *Obiter*.—A different consideration may arise in respect of an offence mentioned in Cl. (c) of S. 195 (1). *Akhla Kulla Chaudhury v. Emperor*.

31 Cr. L. J. 1145 :

127 I. C. 65 : 52 C. L. J. 149 :

A. I. R. 1930 Cal. 671.

—S. 195 (1) (c)—*Complaint by Court—By whom valid—Offence committed before Collector in appeal—District Magistrate, whether can order prosecution.*

A District Magistrate *qua* District Magistrate has no jurisdiction to take cognizance of an offence under S. 471, Penal Code, committed by a party to a proceeding in the Revenue Court of the Collector in respect of a document given in evidence in the course of an appeal. *Ram Sahai v. Emperor*.

19 Cr. L. J. 201 :

43 I. C. 617 : 16 A. L. J. 68 : 40 All. 144 :

A. I. R. 1918 All. 329.

—S. 195 (1) (c)—*Complaint by Court—Prosecution for forgery.*

A prosecution for forgery cannot be entertained except upon the complaint of the Court before which the forged document was produced in evidence. *Khairati Ram v. Malarea Ram*.

26 Cr. L. J. 537 :

85 I. C. 377 : 5 Lah. 550 :

A. I. R. 1925 Lah. 266.

—S. 195 (1) (c)—*Complaint by Court—Prosecution under Ss. 419, 465, I. P. C.—Charge framed under S. 419—Production of false documents in Court—Fresh prosecution under S. 465 without complaint.*

A and *B* were proceeded against under Ss. 419 and 465, Penal Code, on the allegation that they had cheated a Headmaster into giving a certificate for admission into an Examination Hall and *B* had written answer books posing as *C*. When the stage for framing charge arrived, the Magistrate framed a charge under S. 419 and left it to the prosecution to take separate proceedings under S. 465. The accused were finally acquitted on the charge under S. 419. The Prosecuting Inspector thereupon filed a complaint under S. 465. The Magistrate framed a charge but transferred the case to another Magistrate as he had already expressed an opinion in the former case: *Held*, that the prosecution could not proceed without a complaint by the former Magistrate before

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whom the answer books were produced.
Keshab Chander v. Emperor. 31 Cr. L. J. 778 :
 125 I. C. 181 : 12 L. L. J. 1 :
 A. I. R. 1930 Lah. 225.

———**S. 195—Complaint—Complaint by public officer—Sanction by superior, whether necessary—Failure to examine complainant, effect of—Conviction by officer concerned in his public capacity.**

Where a Cantonment Magistrate convicted the accused for obstructing the bailiff of the Cantonment Small Cause Court in the execution of a warrant issued by the Magistrate in his capacity of the Small Cause Court Judge and no sanction for prosecution was obtained nor was the complainant examined: *Held*, (1) that failure to examine the complainant was not a sufficient reason for setting aside the proceedings: (2) that it was open to the bailiff, a public officer, to file a complaint without any sanction: (3) that in issuing the warrant as a Small Cause Court Judge, the Magistrate was concerned in the matter only in his public capacity and was, therefore, neither a party nor "personally interested" in the case within the meaning of S. 556, Cr. P. C. *Muso v. Emperor.* 15 Cr. L. J. 649 :
 25 I. C. 977 : 8 S. L. R. 41 :
 A. I. R. 1914 Sind 19.

———**S. 195—Complaint—Contents of.**

A complaint under S. 195 read with S. 476 should disclose the court before which and the occasion on which the offence is alleged to have been committed. *Hira Lal v. Emperor.* 33 Cr. L. J. 860 :
 139 I. C. 543 : 13 P. L. T. 370 :
 I. R. 1932 Pat. 245 :
 A. I. R. 1932 Pat. 243.

———**S. 195—Complaint—Execution of decree concealing payments—Prosecution—Necessity of complaint.**

A person against whom a decree had been passed, alleged certain payments in kind to the decree-holder who fraudulently concealing the facts from the Court obtained from it further execution of the decree and a warrant of arrest against him: *Held*, that the offence was primarily an offence relating to the administration of justice. The main offence disclosed upon the facts was an offence under S. 210, Penal Code, and a written complaint by the Court as required by S. 195, Cr. P. C., was necessary. *Bhimomal v. Jalo.* 37 Cr. L. J. 1007 :
 164 I. C. 797 : 29 S. L. R. 356 :
 A. I. R. 1936 Sind 123.

———**S. 195—Limitation—Complaint.**

A complaint requiring sanction under S. 195, Cr. P. C., is within time if filed within six months of the order of the Appellate Court, though not within six months of the order of the lower Court. *Public Prosecutor v. Raver Unitohri.* 15 Cr. L. J. 409 :
 24 I. C. 145 : 26 M. L. J. 511 :
 15 M. L. T. 403 : A. I. R. 1914 Mad. 50.

———**S. 195—Complaint by Public Prosecutor—Validity of.**

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A complaint by the Public Prosecutor is not equivalent to a complaint by the Court, and that it is doubtful whether the latter can delegate the duty of filing such a complaint. *Emperor v. Gurditta.* 18 Cr. L. J. 548 :
 38 I. C. 692 : 19 P. R. 1907 Cr. :
 20 P. W. R. 1917 Cr. : A. I. R. 1917 Lah. 338.

———**S. 195—Complaint by Public servant.**

A Magistrate has no jurisdiction to take cognizance of an offence under S. 173, Penal Code, except on the complaint in writing of the public servant concerned. *Sri Narain Singh v. Emperor.* 26 Cr. L. J. 446 :
 85 I. C. 62 : 22 A. L. J. 1005 : 47 All. 114 :
 A. I. R. 1924 All. 129.

———**S. 195—Complaint by Public servant.**

The essence of an offence under S. 182, Penal Code, is not the falseness of the information, as it is the essence of an offence under S. 211 of the Code, but the contempt of the lawful authority of the public servant, and unless and until the public servant concerned chooses to move in the matter, the Court has no authority to do so *suo motu*, by whatever process it reaches that result. *In re : Muthu Goundan.* 26 Cr. L. J. 962 :
 87 I. C. 418 : 1925 M. W. N. 108 :
 21 L. W. 661 : A. I. R. 1925 Mad. 400.

———**S. 195—Complaint by Public Servant.**

When the Cr. P. C. provides that the Court shall not take cognizance of a certain offence without complaint from a public servant, it is open to a Magistrate to ignore this provision by the device of instituting the case with reference to some offence, of which he is entitled to take cognizance, and then convicting the accused for the prohibited offence with the aid of S. 238. *Sri Narain Singh v. Emperor.* 26 Cr. L. J. 446 :
 85 I. C. 62 : 22 A. L. J. 1005 :
 47 All. 114 : A. I. R. 1924 All. 129.

———**S. 195—Complaint by Public servant.**

Where, therefore, a charge against an accused person is altered from one under S. 211, Penal Code, into one under S. 182, a conviction under the latter section is bad in the absence of a complaint by the public servant concerned. *In re : Muthu Goundan.* 26 Cr. L. J. 962 :
 87 I. C. 418 : 1925 M. W. N. 108 :
 21 L. W. 661 : A. I. R. 1925 Mad. 400.

———**S. 195 (1) (a), (6), (7)—Complaint by Public servant—Information given to District Magistrate of person being in possession of fire-arms without license—Issue of search-warrant by Magistrate—Act whether judicial or executive—Information found to be false—Sanction for prosecution for giving false information to public servant—Appeal, forum of.**

A Magistrate directing the issue of a warrant to search premises, on information received that the owner or occupant thereof is in possession of fire-arms without a license, acts as a Court and not merely as a public servant, whether he purports to act under the Cr. P. C., or under S. 25 of the Arms Act. Where a District Magistrate accords sanction for the prosecution of an informant on the ground

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that his information proved to be false, he acts judicially and his order is appealable to the Sessions Judge under S. 195 (7). Every Magistrate acting judicially is a Criminal Court. A Magistrate to whom, as a Criminal Court, a report is made in order that he might take action as a Criminal Court, receives that report as a Court. *In re : Gaddam Penchulu Reddi.*

20 Cr. L. J. 90 :
48 I. C. 890 : 35 M. L. J. 686 :
1918 M. W. N. 908 : 42 Mad. 96 : 9 L. W. 237 :
A. I. R. 1919 Mad. 620.

————S. 195—*Complaint—Complaint, filed before sanction—Legality.*

A sanction to prosecute obtained after filling a complaint for an offence specified in S. 195, Cr. P. C., is bad in law, and a conviction based on such a complaint cannot be maintained. *Raja Ram v. Emperor.*

17 Cr. L. J. 405 :
35 I. C. 965 : 33 P. W. R. 1916 Cr :
A. I. R. 1916 Lah. 22.

————S. 195—*Complaint.*

Even where the use as genuine of a forged document under S. 471, Penal Code, is prior to the proceedings before the Court the complaint of the Court before which that document was filed or used is (?) *In re : Thadi Subbi Reddi.*

32 Cr. L. J. 219 :
129 I. C. 72 : 59 M. L. J. 229 :
32 L. W. 273 : 1930 M. W. N. 689 :
I. R. 1931 Mad. 216 :
A. I. R. 1930 Mad. 869.

————S. 195—*Complaint—Explosives Act.*

Failure to comply with S. 8, Explosives Act—Complaint under S. 176, Penal Code, by Prosecuting Inspector—It is not filed in compliance with S. 195. *Mahadeo v. Emperor.*

37 Cr. L. J. 180 :
159 I. C. 932 : 31 N. L. R. 41 Sup. :
8 R. N. 146 : A. I. R. 1935 Nag. 241 :

————S. 195—*Complaint, forum of.*

Allegation substantially amounting to complaint can form basis for prosecution, although defective in form. *Abdul Rahman v. Emperor.*

33 Cr. L. J. 948 :
140 I. C. 184 : 1932 A. L. J. 155 :
I. R. 1932 All. 633 : A. I. R. 1932 All. 190.

————S. 195—*Complaint, necessity of.*

Cognizance by Magistrate under S. 190 (1) (c) upon his own knowledge or suspicion that an offence had been committed would not be sufficient in law. *Mosafir Singh v. Emperor.*

36 Cr. L. J. 904 :
156 I. C. 310 : 16 P. L. T. 440 :
7 R. P. 713 : A. I. R. 1935 Pat. 356.

————S. 195—*Complaint, necessity of.*

Criminal Courts are in the absence of complaint by Court, barred from taking cognizance of forgery committed in relation to proceedings in Court by a party to proceedings. *Manug Po Thin v. Ma Ma.*

33 Cr. L. J. 919 :
140 I. C. 44 : I. R. 1932 Rang. 208 :
A. I. R. 1932 Rang. 139.

————S. 195—*Complaint, necessity of.*

Forged document produced in court in prose-

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cution founded on it—Sessions Judge, can take cognizance without complaint of Committing Magistrate. *Sanjiv Ratnappa v. Emperor.*

34 Cr. L. J. 357 :
142 I. C. 386 (2) : 34 Bom. L. R. 1090 :
56 Bom. 488 : I. R. 1933 Bom. 237 :
A. I. R. 1932 Bom. 545.

————S. 195—*Complaint, necessity of.*

Obiter dictum.—A Magistrate should not take cognizance of such a case, without the complaint of the public servant to whom the false information was given, simply on the sanction of the Inspector of Police. *Isser v. Emperor.*

11 Cr. L. J. 354 :
6 I. C. 415.

————S. 195—*Complaint, necessity of.*

Offences under Ss. 467 and 471, Penal Code, cannot be taken cognizance of except on a complaint in accordance with the provisions of S. 195. *Hayat Khan v. Emperor.*

33 Cr. L. J. 452 (2) :
137 I. C. 341 : 26 S. L. R. 73 :
I. R. 1932 Sind 77 : A. I. R. 1932 Sind 90.

————S. 195—*Complaint, necessity of.*

Where a complaint alleges that during the execution of a decree certain offences took place but none of the sections of the Penal Code on which the complaint is based is referred to in S. 195, it is not necessary to move the Court which passed the decree to file a complaint. *Raghubar Dayal Gupta v. Khushchar Prasad.*

36 Cr. L. J. 594 :
154 I. C. 857 : 1935 O. W. N. 370 :
7 R. O. 514 : A. I. R. 1935 Oudh 331.

————Ss. 195, 537—*Sanction—Complaint, necessity of.*

Where, therefore, the want of sanction for prosecution of a complaint is at once brought to the attention of the Court, it is the duty of the Magistrate to refuse to take cognizance of the complaint on the ground that he cannot do so by reason of the terms of S. 195 of the Code. *Zahir Singh v. Emperor.*

16 Cr. L. J. 310 :
28 I. C. 646 : 13 A. L. J. 345 :
37 All. 283 : A. I. R. 1915 All. 110.

————S. 195—(1)—*Complaint—Necessity of.*

Complaint by Police Officer under Ss. 182 and 211, Penal Code—Magistrate taking cognizance under S. 182 only—Trial and conviction under S. 211 without a complaint of the Magistrate before whom the informant made the application is illegal. *Subhag Ahir v. Emperor.*

33 Cr. L. J. 153 :
135 I. C. 520 : 12 P. L. T. 905 :
11 P. T. 155 : I. R. 1932 Pat. 40 :
A. I. R. 1932 Pat. 152.

————S. 195 (1) (b)—*Complaint—Necessity of.*

A complaint under S. 195 (1) (b), Cr. P. C., is not necessary for a conviction under S. 193 of the Penal Code, where the fabrication of the evidence is not done with the intention of that false evidence being used in a Court of Law but only with the

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intention of its influencing the Police in their investigation. *Emperor v. Ismail Khadirsab.*

29 Cr. L. J. 403 :

108 I. C. 501 : 52 Bom. 385 :

30 Bom. L. R. 330 : A. I. R. 1928 Bom. 130.

—S. 195—Complaint.

Offences not within Sub-s. (1), Cl. (c)—Complaint by Court is not necessary—Witness not being party, S. 476 does not apply. *Provat Ranjan Barat v. Uma Sankar Banerjee.*

32 Cr. L. J. 883 :

132 I. C. 241 : 58 Cal. 727 :

35 C. W. N. 98 : I. R. 1931 Cal. 561 :

A. I. R. 1931 Cal. 438.

—S. 195—Complaint—Panchayat Court.

Suit in Panchayat Court on forged pro-note—Prosecution of plaintiff and attestors without complaint of Panchayat Court is not maintainable. *In re : Appadurai Nainar.*

37 Cr. L. J. 159 :

159 I. C. 853 (b) : 59 Mad. 165 :

1935 M. W. N. 946 (2) : 69 M. L. J. 812 :

8 R. M. 565 : A. I. R. 1936 Mad. 89.

—S. 195—Complaint partially requiring sanction—Procedure.

No complaint, the institution of which requires sanction under S. 195, can be entertained unless that sanction exists. But when a complaint combines such a complaint with a complaint which does not require sanction, the Court must investigate the complaint which does not require sanction while refusing to investigate the complaint which requires it. *Tarsu Beg v. Muhammad Yar Khan.*

25 Cr. L. J. 688 :

81 I. C. 176 : 21 A. L. J. 915 :

A. I. R. 1924 All. 296.

—S. 195—Complaint—Particulars required in.

A complaint ought to contain particulars of the offence with which a man is charged. Therefore, no inquiry should be started on a complaint which does not give sufficient particulars of the offence with which the accused is charged. *Baljeppalli Seshayya v. Baljeppalli Subharayadi.*

26 Cr. L. J. 1589 (a) :

90 I. C. 661 : 1925 M. W. N. 470 :

A. I. R. 1925 Mad. 1157.

—S. 195—Complaint—Particulars required in.

In respect of a complaint under S. 193, Penal Code, the false statement should be set out in detail. It should not be left to the Trying Court to find out what statements are false and what statements are not false. *Baljeppalli Seshayya v. Baljeppalli Subbarayadi.*

26 Cr. L. J. 1589 (a) :

90 I. C. 661 : 1925 M. W. N. 470 :

A. I. R. 1925 Mad. 1157.

—S. 195—Complaint—Sanction granted to one person—Right of third person to institute complaint on the sanction.

It is open to a Court to entertain a complaint on a sanction granted to a party other than the complainant under S. 195, Cr. P. C., and it does not matter whether the sanction is accorded to a particular person or is couched in general terms. *In re : Mallipaddi Gopaya.*

13 Cr. L. J. 206 :

14 I. C. 206.

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—S. 195—Complaint—Tahsildar proposing to lodge complaint under S. 186, Penal Code—Sub-Divisional Officer asking complaint to be lodged under S. 183, Penal Code—Papers forwarded to Naib-Tahsildar for necessary action—Proper complaint.

The alleged offence was that when a warrant for arrears of rent was about to be served on the accused, he detected the presence of the person about to serve the warrant and shut himself up in his house. On this the Tahsildar made the following report to the Sub-Divisional Officer: "The defaulter by his closing the door has done an overt act to obstruct a public servant in discharge of a public function. I, therefore, propose to lodge a complaint under S. 186, Penal Code, in the Court of Naib-Tahsildar (Mr. J). Submitted to Sub-Divisional Officer for favour of approval as this concerns the general working of the *taluka*. "On this the Sub-Divisional Officer endorsed: "A complaint may be lodged under S. 183, Penal Code," and returned the paper to the Tahsildar, who then added to it "forwarded to Naib-Tahsildar (Mr. J.) for favour of further action": *Held*, that the communications between the Tahsildar, and the Sub-Divisional Officer did not constitute a complaint in writing made by a public officer to a Court having jurisdiction to try the case within the meaning of S. 195. *Syed Habib v. Emperor.*

39 Cr. L. J. 58 :

172 I. C. 51 : 10 R. N. 152 :

A. I. R. 1938 Nag. 106.

—S. 195—Complaint, what is.

Report by *kurk Amin* to Tahsildar of offence under Penal Code (XLV of 1860), S. 186—Tahsildar endorsing it and submitting it for necessary action to Sub-Divisional Officer—Endorsement, amounts to complaint. *Lachman Singh v. Emperor.*

34 Cr. L. J. 614 :

143 I. C. 686 : 10 O. W. N. 553 :

I. R. 1933 Oudh 189 : A. I. R. 1933 Oudh 281.

—S. 195 (1) (a)—Complaint, what is.

On a report of a Sub-Inspector of Police that certain persons had sacrificed a cow against the order passed by a Sub-Divisional Magistrate under S. 144, Cr. P. C., prohibiting such sacrifice within certain area, with a suggestion that cases under S. 188, I. P. C., should be started against those persons; the Sub-Divisional Magistrate sent the reports to the District Magistrate that those persons be prosecuted. The District Magistrate passed an order sanctioning the prosecution and making the case over to a particular Magistrate and returned the records to the Sub-Divisional Magistrate who then sent the cases to the Magistrate named: *Held*, that the reports sent to District Magistrate were not complaints under S. 195 (1) (a). The mere fact that the Sub-Divisional Magistrate while giving evidence before the trying Magistrate several months after, called them complaints did not make them complaints. *Babu v. Emperor.*

41 Cr. L. J. 228 :

185 I. C. 745 : 1940 O. L. R. 43 :

1940 O. W. N. 118 : 15 Luck. 344 :

12 R. O. 278 : A. I. R. 1940 Oudh 241.

—Ss. 195 (1), 403, 537—Complaint not

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by proper person—Acquittal—Subsequent trial properly instituted—Plea of acquittal, whether valid.

A Magistrate has no jurisdiction to try a case falling within S. 195 (1) (a) of the Cr. P. C. when there is no complaint in writing of the public servant concerned or of his superior as required by the section. When a person is tried and acquitted of an offence under S. 195 (1) (a) on the ground that there was no complaint in writing of the public servant concerned or his superior, he cannot, in a subsequent trial properly instituted, raise a plea of previous acquittal under S. 403 of the Cr. P. C. *Fakir Mahomed v. Emperor*.

27 Cr. L. J. 1105 :
97 I. C. 417 : A. I. R. 1927 Sind 10.

———S. 195 (1) (b)—*Complaint by private party.*

Complaint by private person under S. 193, Penal Code, is not cognizable by Court and conviction based on such complaint is not protected by Ss. 537 and 532 and should be set aside. *In re : Ravanappa Reddi*.

33 Cr. L. J. 361 :
136 I. C. 779 : 35 L. W. 180 :
1931 M. W. N. 1314 : 55 Mad. 343 :
62 M. L. J. 735 : I. R. 1932 Mad. 315 :
A. I. R. 1932 Mad. 253.

———S. 195 (a)—*Complaint—Sanction to prosecute—Competent Court.*

The accused was convicted of the offence under S. 183, Penal Code, by a Magistrate of the 1st Class for resisting the taking of property in an execution case in the Munsiff's Court. The attachment was made by the Naib-Sheriff attached to the *Tahsil*, and on the report of the *Tahsildar*, the District Judge being of opinion that a criminal prosecution should be instituted, ordered the papers to be sent to the Deputy Commissioner for proper orders to be passed in the matter. The trying Magistrate took cognizance of the case on the order of the Deputy Commissioner and convicted the accused. It was contended for him that there was no complaint or legal sanction against him and the conviction was, therefore, bad in law : *Held*, that order of the District Judge operated as a complaint and the conviction was not illegal. *Emperor v. Nihala and Mukha*.

1 Cr. L. J. 36 :
5 P. L. R. 7.

† ———S. 195 (1) (a)—*Complaint by process-server.*

A process-server in Central Provinces is subordinate to a Nazir, District Judge or Judicial Commissioner and not to a Sub-Judge, and a complaint of an offence punishable under S. 186, Penal Code, in which the former is concerned, can be filed under S. 195 (1) (a), Cr. P. C. only by him or any one of the persons to whom he is subordinate and not by the Subordinate Judge or by any other Judge, even an Additional Judicial Commissioner who is no more an executive superior of the process-server than the Subordinate Judge. *Mrityunjay Prasad v. Ramrao*.

27 Cr. L. J. 1010 :
96 I. C. 866 : A. I. R. 1926 Nag. 485.

———S. 195—*Complaint—Communication by*

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Sub-Inspector to District Superintendent of Police that certain person committed offence and praying for his prosecution forwarded to Magistrate—Whether complaint.

Per Sulaiman, C. J. and Rachhpal Singh, J. (*Bennet, J. — Contra*). The communication made by the Sub-Inspector to the Superintendent of Police to the effect that a certain person has committed an offence under the Penal Code, and praying for his permission for filing a complaint against him, which is forwarded by the latter to the Magistrate does not amount to a complaint within the meaning of S. 195. *Lakhan v. Emperor*.

38 Cr. L. J. 57 :
165 I. C. 769 : 1936 A. L. J. 1064 :
9 R. A. 312 : I. L. R. 1937 All. 162 :
1936 A. W. R. 905 : A. I. R. 1936 All. 788.

———S. 195 (1) (a)—*Complaint—Offence committed before Commissioner appointed by Court.*

A Court which has appointed a Commissioner to examine accounts is competent to make a complaint under S. 195 (1) (a), Cr. P. C. in respect of an offence committed by a person before the Commissioner under S. 179 of the Penal Code. *Nana Khanderao Ghadge v. Emperor*.

28 Cr. L. J. 1021 :
106 I. C. 109 : 29 Bom. L. R. 1476 :
I. L. T. 40 Bom. 12 : A. I. R. 1927 Bom. 647.

———S. 195 (1) (a)—*Complaint under—Application for withdrawal of—Forum.*

An application for withdrawal of a complaint under S. 195 (1) (a) made by a Sub-Divisional Magistrate should be made to the District Magistrate and not to the Sessions Judge. *Maini Misir v. Emperor*.

28 Cr. L. J. 353 :
100 I. C. 961 : 6 Pat. 39 :
8 P. L. T. 488 : A. I. R. 1927 Pat. 111.

———S. 195 (1) (a)—*Complaint—Information given to public servant—Successor, if can make complaint.*

The complaint prescribed in S. 195 (1) (a), is a public duty and responsibility, and must not be mistaken for a personal privilege, and a successor-in-office of the public servant to whom information was given can make the complaint under S. 182, Penal Code. *Government Advocate, Bihar v. Kumar Singh*.

39 Cr. L. J. 314 :
173 I. C. 432 : 16 Pat. 571 :
19 P. L. T. 51 : 10 R. P. 408 :
4 B. R. 274 : A. I. R. 1938 Pat. 83.

———S. 195 (1) (b)—*Complaint.*

Contradictory statements before Committing Magistrate and Sessions Court—Complaint by Sessions Court is competent. *In re : Marwadi Ganesh Mull*.

33 Cr. L. J. 48 :
134 I. C. 1137 (a) : 34 L. W. 377 :
1931 M. W. N. 1061 : 61 M. L. J. 914 :
55 Mad. 178 : I. R. 1932 Mad. 1 (1) :
A. I. R. 1931 Mad. 778.

———S. 195 (1) (c)—*Complaint.*

Complaint stating facts disclosing minor and graver offence—Prosecution should be for

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graver offence. *K. Dholiah v. Sub-Inspector of Police, Wellington Station.*

32 Cr. L. J. 1215 :
134 I. C. 813 : 34 L. W. 329 :
1931 M. W. N. 513 : 61 M. L. J. 770 :
54 Mad. 1018 : I. R. 1931 Mad. 861 :
A. I. R. 1931 Mad. 702.

———S. 195 (1) (b)—*Complaint—Complaint to Police—Subsequent complaint to Magistrate on same facts—Merger—Prosecution for false charge—Complaint by Magistrate, whether necessary—Committal before filing of complaint to Magistrate, validity of.*

The accused made a complaint to the Police which was found to be false and he was committed for trial to the Sessions Court for an offence under S. 211 of the Penal Code. Subsequently he made a similar complaint to a Magistrate and contended that the committal proceedings should be quashed as there was no complaint in writing by the Magistrate within the meaning of S. 195 of the Cr. P. C. : *Held*, that the principle, that where a complainant makes a complaint to the Police and subsequently makes a similar complaint to the Magistrate, the complaint to the Police merges in the complaint to the Magistrate and the complainant cannot be prosecuted for having made a false accusation without a complaint by the Magistrate, was not applicable to the case inasmuch as there was no complaint to the Magistrate at the time of the committal order, and that the committal order was, therefore, perfectly valid. *Emperor v. Ukha Mahadu Barase.*

29 Cr. L. J. 225 :
107 I. C. 51 : 29 Bom. L. R. 1390 :
A. I. R. 1928 Bom. 22.

———S. 195, (1) (b)—*Complaint—If necessary—False report to Police—Subsequent complaint in Court—Prosecution under S. 211, Penal Code.*

A person who prefers a false charge to the Police, and subsequently lodges a complaint in Court, which is dismissed, can be prosecuted for the offence under S. 211, Penal Code, without any complaint from the Court which dealt with his complaint. In such cases the offence under S. 211 is complete when the false report is made to the Police, and it cannot be said to have been committed in relation to any proceedings in Court, simply because a complaint was subsequently filed. *Prag Datt Tiwari v. Emperor.*

29 Cr. L. J. 938 :
111 I. C. 858 : 1929 A. L. J. 68 :
A. I. R. 1928 All. 765.

———S. 195 (1) (b) — *Complaint — Proper authority.*

Under S. 195 (1) (b), Cr. P. C., the complaint can only be made by the Court before whom the offence is alleged to have been committed, and not the particular public servant concerned who made the enquiry. *Ram Ajodhya Singh v. Emperor.*

28 Cr. L. J. 643 :
103 I. C. 99 : 8 P. L. T. 674 :
A. I. R. 1927 Pat. 327.

———S. 195 (1) (b)—*Complaint—Several persons charged with commission of offence but only some proceeded against—Complaint under S. 211 by persons not tried, competency of—Complaint in writing by Court, necessity of.*

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Where a report is made to the Police charging several persons with an offence and some of them only are challaned and tried, a complaint under S. 211, Penal Code, against the maker of the report by a person not *challaned* and tried is competent. It is not necessary that the proceedings should be initiated by a complaint in writing by the Court which tried the case against the rest of the persons charged. *Muhammada v. Emperor.*

29 Cr. L. J. 605 :
109 I. C. 685 : 10 L. L. J. 218 :
9 Lah. 408 : 29 P. L. R. 415 :
A. I. R. 1928 Lah. 259.

———S. 195 (1) (c)—*Complaint—Complaint against person not party to suit—Court, jurisdiction of.*

For offences mentioned in S. 195 (c), the Court has jurisdiction to file a complaint only against parties to the suit. *Mg. Shree Phwe v. Ma Me Hmoke.*

26 Cr. L. J. 500 :
85 I. C. 244 : 3 Bur. L. J. 344 :
3 Rang. 48 : A. I. R. 1925 Rang. 195.

———S. 195 (1) (c)—*Complaint, when necessary.*

A complaint is necessary under S. 195 (1) (c), Cr. P. C., only if the offence is committed in connection with proceedings pending in a Court and not before an Executive Officer. *Faqir Singh v. Emperor.*

29 Cr. L. J. 1028 :
112 I. C. 356 : A. I. R. 1928 Lah. 759 (b).

———S. 195 (b)—*Complaint, definition of—Letter of District Judge.*

A document was tampered with during the pendency of a suit before a Munsif. The Munsif reported the fact to the District Judge who wrote to the District Magistrate to take action in the matter : *Held*, that the letter of the District Judge to the District Magistrate fell within the definition of a complaint under S. 195 (b), Cr. P. C. *Debi Prosad v. Emperor.*

13 Cr. L. J. 829 :
17 I. C. 573 : 10 A. L. J. 361 : 35 All. 8.

———S. 195 (c)—*Complaint.*

A Court cannot take cognizance of an offence under S. 467, Penal Code, without a complaint as required by S. 195 (c), Cr. P. C. *Ram Samujh v. Emperor.*

27 Cr. L. J. 969 :
96 I. C. 521 : 3 O. W. N. 614 :
A. I. R. 1926 Oudh 485.

———S. 195 (c)—*Complaint—Execution proceedings—Receipt produced by judgment-debtor but returned by Court—Prosecution for forgery—Necessity of complaint.*

Where the judgment-debtor produces a receipt in execution proceedings but the judge returns it on the ground that it was out of time, the document must be deemed to have been "produced" in Court within the meaning of S. 195 (c) of the Cr. P. C., and a complaint by the Judge is necessary in order to give jurisdiction to the Court to try the accused for an offence under S. 467, Penal Code. *Gulabchand Rupji v. Emperor.*

27 Cr. L. J. 251 :
92 I. C. 427 : 27 Bom. L. R. 1029 :
49 Bom. 799 : A. I. R. 1925 Bom. 467.

———S. 195—*Construction—Order sanctioning prosecution, interpretation of.*

Where an application for the grant of sanction

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to prosecute for perjury sets out the statements complained of, the order granting sanction must be deemed to have been passed with respect to the statements alleged in the application. *Kashmiri Lal v. Kishen Dei*.

26 Cr. L. J. 90 :
83 I. C. 650 : A. I. R. 1924 All. 563.

—S. 195—Costs.

In an inquiry for the purpose of S. 195, Cr. P. C., is there is no authority for granting costs. *Tha Win v. Nga San*.

14 Cr. L. J. 422 :
20 I. C. 406 : U. B. R. 1913 I, 166.

—S. 195—‘Costs.’

It is improper to award costs to a person who applies for sanction under S. 195, Cr. P. C. *Krishna Proshad v. Rabindra Nath*.

13 Cr. L. J. 6 :
13 I. C. 99.

—S. 195—‘Costs.’

Proceeding of a Civil Court under S. 195, Cr. P. C., is to be treated as of a criminal nature, and no costs should be awarded in such proceedings. *Nallapparaju Venkataramaraju v. Mediseti Achayya*.

17 Cr. L. J. 184 (a) :
33 I. C. 824 : A. I. R. 1917 Mad. 158.

—S. 195—Costs—Proceeding for sanction taken in Civil Court—Court, whether has power to give costs.

The powers under the C. P. C. as to cost cannot be imported into a criminal proceeding. A proceeding for sanction under S. 195 though taken in a Civil Court, relates to a criminal matter and the Court has no power to give costs as there is no provision in the Cr. P. C. for awarding costs in such a matter. *Bhola Naji Khanka v. Purna Chandra Banerjee*.

23 Cr. L. J. 458 :
67 I. C. 730 : 25 C. W. N. 661.

—S. 195—‘Costs’—Sanction to prosecute refused.

It is not competent to a Court to make an order as to costs in proceedings under S. 195, Cr. P. C. *Bishen Das v. Rahmat Khan*.

16 Cr. L. J. 282 :
28 I. C. 329 : 5 P. R. 1915 Cr. :
A. I. R. 1915 Lah. 440.

—S. 195—Complaint—Court competent to file.

Where an offence is committed by a party to a proceeding in a civil suit in respect of a document given in evidence in such suit, no Criminal Court can take cognizance except on the written complaint of the said Civil Court under S. 195, Cl. (1) (c). *Montajaddi v. Emperor*.

34 Cr. L. J. 526 (2) :
143 I. C. 15 : I. R. 1933 Cal. 342 :
A. I. R. 1933 Cal. 481.

—S. 195—Court—Competent to file complaint.

Attempt to fabricate false evidence in one Court—Case heard by another—Prosecution for attempt—Complaint of Court which heard case and suit of Court in which attempt to fab-

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ricate was made is necessary. *Hasam Ajam Bhakhara v. Emperor*.

35 Cr. L. J. 848 :
148 I. C. 1011 : 36 Bom. L. R. 221 :
6 R. B. 326 : A. I. R. 1934 Bom. 185.

—S. 195 (1) (b)—Complaint—Court competent to file.

An offence of abetment of perjury was committed during an enquiry into a murder case before a First Class Magistrate. An application for the grant of sanction to prosecute the accused was made to the Magistrate, but before the application could be disposed of, the Magistrate was transferred and was succeeded by a Second Class Magistrate who had not the power to commit to the Court of Session. Before giving over charge, the First Class Magistrate sent the papers to the District Magistrate, who granted the sanction required: *Held*, that the District Magistrate had jurisdiction to dispose of the application, inasmuch as he was the successor of the First Class Magistrate to the extent that he had power to commit to the Court of Session, and was “such Court” referred to in S. 195 (1) (b). *In re : Ramrao N. Bellary*.

19 Cr. L. J. 332 :
44 I. C. 348 : 20 Bom. L. R. 117 :
42 Bom. 190 : A. I. R. 1918 Bom. 244.

—S. 195—Court competent to grant sanction.

It is necessary that a Court granting sanction for prosecution under S. 193, Penal Code, in the case of contradictory statements should be empowered to sanction prosecution in respect of each of the statement said to be contradictory of each other. *Reddi Rami Reddi v. Public Prosecutor of Kurnool*.

15 Cr. L. J. 612 :
25 I. C. 524 : 1914 M. W. N. 793 :
27 M. L. J. 586 : A. I. R. 1915 Mad. 508.

—S. 195 (1) (a)—Court competent to grant sanction.

A District Magistrate has no power to grant sanction for prosecution under S. 195 (1) (a), Cr. P. C. in respect of an offence under S. 182 of the Penal Code for giving false information to the Police. *Khazan Singh v. Kirpa Singh*.

24 Cr. L. J. 683 :
73 I. C. 779 : 4 Lah. 130 : 5 L. J. 372 :
A. I. R. 1923 Lah. 341.

—S. 195—Court competent to grant sanction.

A Sessions Judge has power to grant sanction for perjury in respect of statements made by a witness before a Committing Magistrate, though appeals do not lie to him from the latter's Court within the meaning of S. 195 (b), Cr. P. C. *Narayana Nadan v. Palaniappa Nadan*.

18 Cr. L. J. 143 :
37 I. C. 495 : 1917 M. W. N. 141 :
5 L. W. 218 : A. I. R. 1918 Mad. 1200.

—S. 195—Court competent to grant sanction.

An additional Sessions Judge is competent to grant sanction to prosecute in a matter arising out of a trial before a Magistrate having first class powers, inasmuch as an appeal would ordinarily lie from the Court of the

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latter to the Court of the former. *Kusum Sao v. Janak Lal*. 20 Cr. L. J. 603 : 52 I. C. 219 : 1919 Pat. 250 : 4 P. L. J. 374 : A. I. R. 1919 Pat. 362.

———S. 195 (1) (b)—*Court competent to grant sanction.*

During the pendency of a Sessions case a witness was examined on commission under S. 503, Cr. P. C. Subsequently the Deputy Magistrate who examined the witness on Commission, being applied to, granted sanction for the prosecution of the witness, under S. 193, I. P. C. : *Held*, that the proper authority to grant sanction for the prosecution of the witness was the Sessions Court and not the Deputy Magistrate, who acted only as Commissioner. *Saadat Ali v. Emperor*. 6 Cr. L. J. 160 : 11 C. W. N. 909.

———S. 195—*Court competent to make complaint.*

If a case or proceeding has been before various Courts and an offence is alleged to have been committed in that proceeding or case falling under the various sections prescribed in S. 195, Cr. P. C., then all the Courts have jurisdiction to make the complaint though, normally speaking, the proper Court to make the complaint is the Court which finally tried and determined the suit. If therefore a suit in the course of which an offence is committed is subsequently transferred to another Court, the transferee Court is competent, to make a complaint under S. 195, Cr. P. C. 122 Ind. Cas. 627 (1), relied on. *Bhari Lal v. Abdul Qadir Hamyari*. 41 Cr. L. J. 843 : 190 I. C. 178 : 13 R. L. 140 : A. I. R. 1940 Lah. 292.

———S. 195—‘Court’—*Debt to Settlement Tribunals, if Courts within meaning of S. 195.*

Debt Settlement Tribunals set up under Bengal Agricultural Debtors Act are not courts as defined in S. 195, nor are they Courts within the ordinary meaning of the word. 41 Cr. L. J. 951 :

190 I. C. 448 : 44 C. W. N. 763 : I. L. R. 1940 : 2 Cal. 158 : 13 R. C. 186. A. I. R. 1940 Cal. 454.

———S. 195—*Court, discretion of.*

The Court has a wide discretion in the matter of granting or withholding sanction, but that discretion should be used with caution and discernment to further the ends of justice and not to permit the use of the penal law to satisfy private ends or personal spite. Where it appears that there is considerable ill-feeling between the parties and there are grounds for believing that there is a likelihood of a misuse of the law, sanction ought not to be granted. *Kalwa Gope v. Antonini*.

20 Cr. L. J. 541 : 51 I. C. 781 : 1919 Pat. 286 : A. I. R. 1919 Pat. 547.

———S. 195—*Court giving sanction—Competency to hear appeal against conviction.*

A Court which sanctions or directs a prosecution is not thereby rendered incompetent

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to try the offence or to hear an appeal against the conviction for it. *Sessions Judge, Bhandara v. Pandia*.

25 Cr. L. J. 171 : 76 I. C. 395 : A. I. R. 1924 Nag. 23.

———S. 195—‘Court’, meaning of.

Although a Commissioner for the examination of a witness under S. 503, Cr. P. C., may be a Court within the meaning of that section for the purpose of issuing process against the witness and for recording his evidence, still it is not a Court within the meaning of S. 195, Sub-s. (1), Cl. (b). The word ‘Court’ in S. 195, Sub-s. (1), Cl. (b), Cr. P. C. must mean the Court whose duty it is to consider evidence and to decide whether it is true or false. *Saadat Ali v. Emperor*. 6 Cr. L. J. 160 : 11 C. W. N. 909.

———S. 195—‘Court’, meaning of.

An Election Commissioner hearing a dispute regarding an election held under the Madras Local Boards Act is a ‘Civii Court’ within the meaning of Ss. 476 and 195 and can make a complaint under S. 476 in respect of an offence committed in or in relation to a proceeding before him. *Y. Mahabaleswarappa v. M. Gopal-swami Madaliar*. 36 Cr. L. J. 895 :

156 I. C. 311 : 1935 M. W. N. 152 : 41 L. W. 503 : 99 M. L. J. 589 : 58 Mad. 954 : 7 R. M. 679 : A. I. R. 1935 Mad. 673.

———S. 195—‘Court’, meaning of.

Commissioners appointed under the Public Servants Inquiries Act, of 1850, to enquire into the conduct of a public servant are a ‘Court’ within the meaning of S. 195. *M. M. Khan v. Emperor*. 32 Cr. L. J. 1252 :

134 I. C. 818 : 12 Lah. 391 : 32 P. L. R. 939 : I. R. 1931 Lah. 1010 : A. I. R. 1931 Lah. 662.

———S. 195—‘Court’, meaning of.

‘Court’ is used in a wide sense in Ss. 195 and 476, Cr. P. C. *Y. Mahabaleswarappa v. M. Gopal-swami Madaliar*. 36 Cr. L. J. 895 :

156 I. C. 311 : 1935 M. W. N. 152 : 41 L. W. 503 : 69 M. L. J. 589 : 58 Mad. 954 : 7 R. M. 679 : A. I. R. 1935 Mad. 673.

———S. 195—‘Court’, meaning of.

It includes a tribunal empowered to deal with particular matter and authorised to receive evidence bearing on that matter. *Bibhuti Bhusan v. Khem Chand*.

35 Cr. L. J. 946 : 149 I. C. 363 : 38 C. W. N. 578 : 61 Cal. 792 : 6 R. C. 568 : A. I. R. 1934 Cal. 457.

———S. 195—‘Court’, meaning of.

The Assistant Registrar of Co-operative Societies acting under R. 14 of Rules under S. 43, Co-operative Societies Act is a Court within the meaning of S. 195 of the Cr. P. C. *In re : Thadi Subbi Reddi*.

32 Cr. L. J. 219 : 129 I. C. 72 : 59 M. L. J. 229 : 32 L. W. 273 : 1930 M. W. N. 689 : I. R. 1931 Mad. 216 : A. I. R. 1930 Mad. 869.

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———S. 195—'Court,' meaning of.

The Court contemplated by Ss. 195 and 476, Cr. P. C., is the Court before which the offence, the inquiry of which is contemplated, is committed. *In re : Maneklal Garbaddas.*

28 Cr. L. J. 49 :
99 I. C. 81 : 28 Bom. L. R. 1296 :
A. I. R. 1927 Bom. 47.

———S. 195—'Court,' meaning of.

The expression "Court" in S. 195, Cr. P. C., is of a wider scope than the expression "Civil, Revenue or Criminal Court" in S. 476, Cr. P. C. *Kanhaiya Lal v. Bhagwandas.*

26 Cr. L. J. 1485 :
89 I. C. 1053 : 23 A. L. J. 956 :
48 All. 60 : A. I. R. 1926 All. 30.

———S. 195—"Court", meaning of—Tribunal constituted under Calcutta Improvement Act—Sanction to prosecute.

The word "Court" in S. 195, Cr. P. C., has a wider meaning than a Court of Justice as defined in the Penal Code. It may include a Tribunal empowered to deal with a particular matter and authorised to receive evidence bearing on that matter in order to enable it to arrive at a determination. The Tribunal constituted under the Calcutta Improvement Act, 1911, is a "Court" within the meaning of S. 195, Cr. P. C. Therefore, a person who has given false evidence before the Tribunal cannot be prosecuted for perjury without its sanction. *Nando Lal Ganguli v. Khetra Mohan Ghose.*

19 Cr. L. J. 315 :
44 I. C. 331 : 27 C. L. J. 463 :
45 Cal. 585 : A. I. R. 1918 Cal. 932.

———S. 195 (2)—'Court,' meaning of.

Governor-in-Council is not Court. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Daulatram.*

33 Cr. L. J. 685 :
138 I. C. 705 : 59 Cal. 1233 :
36 C. W. N. 505 : 55 C. L. J. 349 :
I. R. 1932 Cal. 504 :
A. I. R. 1932 Cal. 390.

———S. 195 (2)—'Court', meaning of.

Although the word used in S. 195, Sub-s. (2) is "includes", the Courts which can make a complaint under that section are restricted to the Courts which are detailed in S. 476, Cr. P. C. *Galstaun v. Banku Behary Dhar.*

28 Cr. L. J. 809 :
104 I. C. 249 : 31 C. W. N. 825 :
A. I. R. 1927 Cal. 621.

———S. 195 (2)—'Court,' meaning of.

Officer following judicial procedure in investigation—He does not thereby become Court. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Daulat Ram Mudi.*

33 Cr. L. J. 685 :
138 I. C. 705 : 59 Cal. 1233 :
55 C. L. J. 349 :
36 C. W. N. 505 : I. R. 1932 Cal. 504 :
A. I. R. 1932 Cal. 390.

———S. 195, Cl. (1) (b)—'Court' meaning of.

The term 'Court' as used in S. 195, Cl. (1) (b) is not confined to the Judge who tried the case or the appeal as the case may be, but also means and includes the successor-in-office of such Judge ; a sanction for prosecution granted

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under this section by such successor is valid in law and is not defective for want of jurisdiction. *In re : Lalat Mohan Pal.*

5 Cr. L. J. 186 :
5 C. L. J. 176.

———S. 195 (3)—'Court,' meaning of—Criminal complaint by N against H after obtaining medical certificate from M, in Naib-Tahsildar's Court—H applying to District Magistrate for taking action against M for giving false certificate—Matter referred to Additional District Magistrate for disposal—He ordering complaint to be made against M—Legality of order.

One N brought a criminal complaint against H in the Court of a Naib-Tahsildar after obtaining a medical certificate of injuries from Dr. M. Complaint was then dismissed in default. H then applied in the Court of the District Magistrate, that action should be taken under Ss. 193 and 467, Penal Code, against N and Dr. M for giving false certificate and the matter was referred to the Additional District Magistrate for disposal. The Additional District Magistrate ordered the complaint to be made against Dr. M only under Ss. 193 and 465, Penal Code. On appeal, the Sessions Judge maintained the order under S. 193 but held there was no case under S. 465 : *Held*, that the words "Courts to which appeals ordinarily lie" in S. 195 (3), Cr. P. C. meant in the present case the Court of the District Magistrate and not the Additional District Magistrate. The complaint was, therefore, lodged without jurisdiction. If the District Magistrate had directed the Additional District Magistrate to make an enquiry and report to him and had then adopted that report and made the complaint himself, the procedure would have been quite legal. *Nazar Mohammad v. Harnam Singh.*

40 Cr. L. J. 140 :
178 I. C. 795 : I. L. R. 1938 Lah. 188 :
40 P. L. R. 951 : 11 R. L. 502 :
A. I. R. 1938 Lah. 641.

———S. 195—Transfer—Court—Court complaint to prosecute.

Though there is a class of Courts called Courts of Subordinate Judges, there is no Court of a Subordinate Judge as a permanent Court with a perpetual succession of Judges, and on the transfer of a Sub-Judge from a District, the Court of the Sub-Judge who takes over the pending work is not identical with the Court of the Sub-Judge who has been transferred. *Muhammad Ishaq v. Muqim-ud din.*

14 Cr. L. J. 178 :
19 I. C. 178 : 7 P. R. 1913 Cr. :
207 P. L. R. 1913.

———S. 195—Court whether includes Debt Settlement Boards.

Agents of the Local Government vested with certain legal powers for a definite purpose cannot be regarded as "Courts" even within the wide meaning with which that expression is used in S. 195. *Hari Charan Kundu v. Kaushi Charan Dey.*

41 Cr. L. J. 662 :
188 I. C. 686 : 44 C. W. N. 530 :
I. L. R. 1940 2 Cal. 14 : 13 R. C. 44 :
A. I. R. 1940 Cal. 286.

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———S. 195 (1) (c)—*Court whether includes Court in Native State.*

The word "Court" in Cl. (c) of Sub-s. (1) of S. 195 does not include a Court in a Native State. *In re : Mulji Bhai Hira Bhai Patel.*

26 Cr. L. J. 1456 :
89 I. C. 976 : 27 Bom. L. R. 1063 :
49 Bom. 860 : A. I. R. 1925 Bom. 535.

———S. 195 (7) (c)—*"Court of original jurisdiction," meaning of.*

In Burma, a District Court has jurisdiction to hear and determine any suit or original proceeding without restriction as regards value, and is the principal Court of original jurisdiction within the meaning of S. 195 (7) (c), Cr. P. C. *L. B. Iyavoo Raja v. Thayammal.*

18 Cr. L. J. 977 :
42 I. C. 593 : A. I. R. 1917 L. Bur. 85.

———S. 195 (7)—*Court—Original jurisdiction, meaning of.*

In Oudh the Court of the District Judge is the principal Court of original jurisdiction within the meaning of S. 195 (7), Cr. P. C., *Ram Dayal v. Dwarka.*

18 Cr. L. J. 899 :
42 I. C. 131 : 20 O. C. 229 : 4 O. L. J. 529 :
A. I. R. 1917 Oudh 122.

———S. 195 (2), (3)—*Court—Debt Conciliation Board, whether Court under S. 195—Appeal, competency of.*

The Debt Conciliation Board is a Court within the meaning of S. 195 and hence the Board has power to pass an order under S. 195. The Board, however, is neither a Civil nor a Revenue Court and no appeal lies from its order refusing to make a complaint under S. 195. *Babulal v. Kisansao.*

41 Cr. L. J. 376 :
186 I. C. 708 : 1940 N. L. J. 23 :
12 R. N. 266 : A. I. R. 1940 Nag. 184.

———S. 195—*Death of applicant—Sanction to prosecute.*

In the case of an application for sanction to prosecute for an offence under S. 193 of Penal Code, if the applicant dies, sanction cannot be granted to his legal representative. *Ghulam Mohammad v. Ahamadullah Begam.*

24 Cr. L. J. 2 :
71 I. C. 49 : 16 L. W. 881 :
1922 M. W. N. 810 : 44 M. L. J. 66 :
32 M. L. T. 102 : 46 Mad. 88 :
A. I. R. 1923 Mad. 206.

———S. 195 as amended in 1923—*Defect in Procedure—Information to Police—Complaint by Police against informant under S. 211, Penal Code—Subsequent complaint by informant to Magistrate—Jurisdiction of Magistrate to proceed with complaint against informant.*

The petitioner lodged an information before the Police. The Sub-Inspector reported that the case was false and made a complaint against the petitioner under S. 241, Penal Code, to the Sub-Divisional Magistrate. The petitioner impugned the Police report and subsequently presented a petition requesting that his complaint may be disposed of before process was ordered against him on the Sub-Inspector's complaint. The Magistrate summoned the petitioner under S. 211, Penal

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Code. The petitioner applied to the High Court for quashing the proceedings: *Held*, that inasmuch as there was nothing in law to prevent the Sub-Inspector from making a complaint under S. 211, Penal Code, or to prevent the Court from taking cognizance of it on such complaint, and the jurisdiction of the Magistrate to proceed with the complaint was not taken away by the subsequent complaint by the petitioner, the procedure adopted was not illegal. When a Magistrate has properly taken cognizance of an offence, anything that happens subsequently cannot bring into operation of S. 195 (1) (b), so as to deprive him of his jurisdiction to proceed with the complaint in accordance with law. *Parmanand Bramchari v. Emperor.*

30 Cr. L. J. 354 :
116 I. C. 46 : I. R. 1929 Pat. 286 :
10 P. L. T. 618 : A. I. R. 1930 Pat. 30.

———S. 195—*Defect in procedure—Defect of procedure or form in granting sanction, effect of.*

A defect of procedure or form in granting a sanction cannot convert the sanction into a complaint. *In re : Sangappa Gadigeppa.*

16 Cr. L. J. 107 :
27 I. C. 155 : 16 B. L. R. 947 :
A. I. R. 1914 Bom. 230.

———S. 195—*Delay—Application for prosecution made after expiry of limitation for second appeal—Effect.*

The mere fact that an application under S. 195 to prosecute a defendant is not made immediately after the decree of the first Court, but after the decision of an appeal against that decree and on expiry of the period for filling a second appeal, is not fatal to the grant of the application, it being undesirable to take criminal proceedings in relation to a matter which is still the subject of civil litigation. *Nathu Ram v. Barey.*

21 Cr. L. J. 235 :
55 I. C. 107 : A. I. R. 1921 Nag. 81.

———S. 195—*Delay—Application made after four months.*

An application for sanction to prosecute ought to be made promptly. A delay of four months is too long. *Sagarman v. Emperor.*

15 Cr. L. J. 698 :
26 I. C. 146 : A. I. R. 1914 All. 446.

———S. 195—*Delay—Delay, ground for refusal.*

Application for sanction to prosecute ought to be made promptly or the delay should be satisfactorily accounted for. Where there was a delay for nearly one year in applying for sanction, and the delay was not accounted for, *Held*, that the application ought to have been refused. *Dharamdas Kamar v. Sogore Santra.*

4 Cr. L. J. 454 :
11 C. W. N. 119.

———S. 195—*Delay—Effect of—Sanction for prosecution granted by successor of Judge who heard case—Delay, effect of.*

On the application of the defendant in a Small Cause Court suit, the successor-in-office of the Judge who had decreed the suit granted, after an inordinate delay, sanction for the

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prosecution of the plaintiff for perjury in respect of a false statement in his deposition. This sanction was affirmed on appeal to the District Judge : *Held*, that as the Court record of the deposition was not read over to the plaintiff and he was not cross-examined on the statement, and as the sanction was granted after a long delay by a Judge who did not try the case, the sanction should be revoked. When a person wants to prosecute criminally, he must not be dilatory. *Prem Chand v. Sonalan Saha*. 19 Cr. L. J. 508 : 45 I. C. 268 : A. I. R. 1918 Cal. 120.

———S. 195—*Delay—Effect of—Sanction to prosecute—Delay in applying for sanction, effect of.*

Where an application for sanction to prosecute is made after great delay, the Court may well exercise its discretion in refusing the application. *Ram Baksh v. Chhote*.

15 Cr. L. J. 577 : 25 I. C. 329 : A. I. R. 1914 Oudh 148.

———S. 195—*Delay—Effect of.*

When a person, holding a sanction to prosecute, brings his complaint before a Magistrate within six months from the date of sanction, the subsequent delay of the Court does not affect the cognizance of the case. *Pribhu Dial v. Emperor*. 14 Cr. L. J. 183 : 19 I. C. 183 : 52 P. L. R. 1913 : 4 P. R. 1913 Cr.

———S. 195—*Delay, effect of.*

Where there is great delay in applying for sanction to prosecute for perjury, and where the Magistrate would have to determine the question by merely weighing the evidence on both sides, sanction ought not to be granted. *Padarath Singh v. Ratan Singh*.

21 Cr. L. J. 145 : 54 I. C. 673 : 5 P. L. J. 23 : 1920 Pat. 140 : 1 P. L. T. 458 : A. I. R. 1920 Pat. 419.

———S. 195—*Delay—Not desirable.*

Obiter.—It is not advisable in such criminal matters to delay the disposal of the case simply to wait the return of one of the two Judges to duty who ordered notice to issue to respondent to show cause against extension. *Secretary of State v. Sankara Pandiam Pillai*. 15 Cr. L. J. 359 : 23 I. C. 727 : 1914 M. W. N. 347 : A. I. R. 1914 Mad 370.

———S. 195—*Delay.*

Per *Spencer, J.*—Appellate Courts may refuse sanction where there is delay in applying for it. *Bapu v. Bapu* (F. B.) 13 Cr. L. J. 209 : 14 I. C. 305 : 11 M. L. T. 367 : 1912 M. W. N. 499 : 22 M. L. J. 419.

———S. 195—*Delay—Sanction for prosecution—Delay in proceedings, effect of.*

An application for sanction to prosecute should be disposed of with as little delay as possible. A delay of several months in the disposal of such an application is wholly without justification. *Makhan Lal v. Sarojendra Nath*. 21 Cr. L. J. 831 (b) : 58 I. C. 831 : 24 C. W. N. 743 : 47 Cal. 741 : A. I. R. 1920 Cal. 394.

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———S. 195—*Delay—Refusal to prosecute.*

Where application for sanction is made after considerable delay, and no satisfactory explanation is offered for the delay, it is a good ground for refusing sanction. *Narayanan Chettiar v. Kadiraya Goundan*.

24 Cr. L. J. 337 : 72 I. C. 337 : 44 M. L. J. 320 : 17 L. W. 311 : 1923 M. W. N. 223 : A. I. R. 1923 Mad. 504.

———S. 195—*Delay—Sanction to prosecute, application for—Delay, when not fatal.*

If on an application made to a Presidency Small Cause Court for sanction to prosecute persons who obtained leave to sue, it is found by the Court that leave was improperly obtained on false allegations; sanction should be given to the Crown to prosecute the persons concerned, even though there has been considerable delay in making the application, when such delay is explained and when by such delay, those persons are not likely to be prejudiced. *Chattu Gope v. Budhu Lal*.

17 Cr. L. J. 504 : 36 I. C. 472 : 43 Cal. 597 : A. I. R. 1916 Cal. 103.

———S. 195 (6)—*Delay—Sanction to prosecute—Period of sanction, expiry of—Order directing prosecution under S. 476, legality of.*

Sanction to prosecute was granted by a Munsif. On appeal to the District Judge it transpired that more than six months had elapsed since the date of the sanction; the District Judge accordingly revoked the sanction but directed the prosecution of the accused under S. 476, Cr. P. C. On revision to the High Court : *Held*, that the order of the District Judge was illegal and must be set aside. S. 476 must be read consistently with S. 195 of the Code. *Lalji Tewari v. Emperor*.

21 Cr. L. J. 190 : 54 I. C. 894 : 1 P. L. T. 147 : 1920 Pat. 125 : 5 P. L. J. 52 : A. I. R. 1920 Pat. 428.

———S. 195—*Delay in applying—Delay in applying for sanction, effect of.*

Ordinarily delay on the part of a private prosecutor obtaining sanction in respect of offences against public justice is material as bearing upon the question of *bona fides*, but where Government is in fact the real prosecutor, the question of *bona fides* disappears. *Jujeshwar Pershad v. Ragho Misser*.

19 Cr. L. J. 146 : 43 I. C. 434 : 2 P. L. J. 688 : 4 P. L. W. 143 : A. I. R. 1918 Pat. 190.

———S. 195—*Delay in applying—Limitation—Delay in making application, effect of.*

There is no limitation for making an application for sanction to prosecute, but no time should be lost in instituting a proceeding of this nature as delay tends to prejudice the person against whom proceedings are to be

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taken. *Abdul Qadir v. Muhammad Ibrahim Khan*. 25 Cr. L. J. 119 :

76 I. C. 183 : A. I. R. 1924 Lah. 569.

————S. 195—*Delay in applying for sanction, effect of.*

Generally a delay by a private person to apply for sanction to prosecute in the interests of public justice indicates want of *bona fides* or culpable negligence or laches. But where the real applicant is the Government and enquiries have to be made from various departments before any application for sanction can be preferred, a delay of seven months does not point to want of *bona fides* or to wilful negligence. A party, whatever his position, is not to be excused for wilful negligence in matters of sanction. *Government Advocate and Public Prosecutor v. Maharaj Singh*.

19 Cr. L. J. 149 :

43 I. C. 437 : 2 P. L. J. 692 :

5 P. L. W. 181.

A. I. R. 1918 Pat. 195.

————S. 195—*Deposition by witness when complete.*

No statement made by a witness in a deposition can be regarded as complete until the deposition is finished and corrected, if necessary, till then the witnesses can qualify or correct any statement. *Maharaj Prasad v. Emperor*.

24 Cr. L. J. 77 :

74 I. C. 443 : 21 A. L. J. 673 :

A. I. R. 1924 All. 83.

————S. 195—*Dismissal in default.*

A Court has no jurisdiction to dismiss for default an application for sanction to prosecute. *Rup Narain v. Maha Dayal*.

16 Cr. L. J. 288 :

28 I. C. 336 : 4 P. R. 1915 Cr. :

22 P. L. R. 1916 :

A. I. R. 1914 Lah. 576.

————S. 195—*Dismissal in default application, propriety of—Sanction to prosecute.*

An application under S. 195, Cr. P. C., for sanction to prosecute must be proceeded with on the merits and cannot be dismissed in default if the applicant is absent on any of the dates fixed for the hearing. *Dhanpat v. Kesho Kam*.

17 Cr. L. J. 417 :

35 I. C. 977 : 34 P. W. R. 1916 Cr. :

A. I. R. 1916 Lah. 104.

————S. 195—*Dismissal in default—Restoration—Revision—C. P. C. (Act V of 1908), S. 115.*

A court cannot dismiss for default and non-payment of process fees, an application made under S. 195, C. P. C. Where a Court restores to its file an application so dismissed, the High Court will not interfere in revision. *Marudappa Gounden v. Bomman Gounden*.

15 Cr. L. J. 71 :

22 I. C. 423 : A. I. R. 1914 Mad. 159.

————S. 195—*Dismissal in default—Sanction to prosecute once availed of—Fresh sanction—Fresh complaint—Case of non-compoundable offence “struck off” for complainant’s absence.*

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Where a complaint of an offence under S. 211, Penal Code, was ordered to be “struck off” for the complainant’s absence, but Magistrate took cognizance of the case on a fresh complaint by the same complainant : *Held*, (1) that the Magistrate had no authority to pass an order striking off the case : (2) that the order striking off the case was not tantamount to an order of discharge under S. 259, Cr. P. C. inasmuch as this section relates only to compoundable cases while an offence under S. 211, Penal Code, cannot be lawfully compounded; (3) that once a sanction to prosecute is availed of and a complaint instituted on its strength, a fresh complaint on the basis of the same sanction is incompetent, inasmuch as one sanction covers only one complaint : (4) that the Magistrate had no jurisdiction in the case after he had “struck off” the case. *Ramphal v. Emperor*.

15 Cr. L. J. 230 :

23 I. C. 182 : 17 O. C. 18 :

A. I. R. 1914 Oudh 264.

————S. 195—*Duty of Court.*

All Courts should be careful when a complaint of a defamation is filed in respect of proceedings in a Civil Court to see whether the provisions of S. 209, Penal Code, read with S. 195 (b), have not been evaded. *Katimal Gelamal v. Kissumal Issardas*.

36 Cr. L. J. 881 :

156 I. C. 219 : 7 R. S. 228 :

A. I. R. 1935 Sind 81.

————S. 195—*Duty of Court—Expression of opinion.*

A Court in sanctioning a prosecution arising out of the trial of a civil case before it should not be supposed to be discharging that which is the task of the Committing Magistrate at a later stage and usurping his functions by explicitly or tacitly pronouncing that there is a *prima facie* case. A Court which allows sanction does no more than say that, on the materials before it, it is not apparent that a prosecution would be against the public interests or a mere indulgence of private spite. On the other hand, a Court which refuses sanction does no more than express the opinion that public interest would not be served by such a prosecution and it is not debarred from acting upon that view even where there is a strong *prima facie* case. A Court before whom an application for the grant of a sanction is made is invested with wide discretion with the exercise of which an Appellate Court should be extremely slow to interfere. *Munuswamy Mudaliar v. Rajaratnam Pillai*. 24 Cr. L. J. 340:

72 I. C. 340 : 16 L. W. 505 :

45 Mad. 928 : 44 M. L. J. 774 :

A. I. R. 1923 Mad. 136.

————S. 195—*Duty of Court.*

In dealing with an application for sanction to prosecute, the Court to which the application is made ought to proceed with caution and discernment, and be guided by two principles, namely : (1) whether there is a *prima facie* case against the person for whose prosecution sanction is asked, and (2) whether the real object of

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the applicant is not to satisfy his private ends or personal spite. *Kusum Sao v. Janak Lal*.

20 Cr. L. J. 603 :

52 I. C. 219 : 1919 Pat. 250 : 4 P. L. J. 374 :

A. I. R. 1919 Pat. 362.

———S. 195—Duty of Court—Grant of sanction to prosecute—Practice.

A Court will not invariably give sanction to prosecute to a private individual even where there is a *prima facie* case of technical perjury. It will weigh other considerations as well and will be reluctant to give sanction which may be used as an engine of oppression, intended to stifle an appeal. Where there is an appeal pending, such applications by the party appealed against are open to that kind of suspicion. *Safurabai v. Abdullah*.

10 Cr. L. J. 539 :

4 I. C. 273 : 11 Bom. L. R. 1164.

———S. 195—Duty of Court—Sanction, abuse of.

No one should be permitted to use the penal law to satisfy his own private ends or personal spite, and if there is a *prima facie* ground for thinking that a charge is prompted by improper motives and is false and vexatious, the necessary elements to justify the grant of a sanction to prosecute are not made out. *Brij Kumar v. Manna Lal Misra*. 24 Cr. L. J. 217 :

71 I. C. 681 : 25 O. C. 153 : 9 O. L. J. 662 :

A. I. R. 1922 Oudh 18.

———S. 195—Duty of Court—Sanction for prosecution.

A Court, in granting sanction under S. 195, Cr. P. C., should not confine enquiry to the question whether a *prima facie* case exists for prosecution. It should also decide whether it is a fit case for prosecution in the interests of justice and purity of judicial proceedings. *Aiyasami Iyer v. Aiyasami Iyer*.

18 Cr. L. J. 636 :

39 I. C. 1004 : 6 L. W. 241 : 22 M. L. T. 298 :

33 M. L. J. 545 : A. I. R. 1918 Mad. 627.

———S. 195—Duty of Court—Sanction proceedings—Proof necessary for granting sanction—Function of the Court granting sanction.

It is not the function of the Court that accords sanction for a prosecution to require the same strictness of proof that Courts are wont to demand before they pronounce an accused person guilty. The object of the provisions of S. 195, is merely to prevent prosecutions by private persons on their own motion and to secure there being a *prima facie* ground for prosecution by requiring the sanction of the Court. Apart from the existence of a *prima facie* case in cases where sanction to prosecute is applied for, the Court should see if there are good grounds for thinking that a prosecution is necessary in the interest of justice. *Veeraraghavaswami Naidu v. Bhagavatulla Viswanadham*.

12 Cr. L. J. 446 :

11 I. C. 790 : 10 M. L. T. 117 :

1911 2 M. W. N. 172.

———S. 195—Duty of Court—Sanction to prosecute—Grounds for sanctioning prosecution for giving false evidence—Evidence recorded in original case—Further preliminary inquiry.

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A prosecuted B for criminal breach of trust. After A and the witnesses produced by him had been examined by the Magistrate, B. was discharged. On the application of B, sanction to prosecute A, and one of his witnesses for giving false evidence was granted by the Magistrate, although the record as it stood only showed that their evidence might or might not have been false: *Held*, that sanction for a prosecution for giving false evidence should not be granted unless there are good and reasonable grounds for considering that the prosecution will be successful: *Held*, further, that in deciding whether there are such grounds, the Magistrate is not restricted to the consideration of the evidence recorded in the original case, but should, if necessary, hold a full inquiry. The proceedings were returned for such an inquiry. *Tuck See v. Hain Kee*.

7 Cr. L. J. 945 :

4 L. B. R. 234.

———S. 195—Duty of Court—Sanction to prosecute.

In giving sanction for the prosecution of a person for an offence, the Court should state the offence in respect of which the prosecution is sanctioned and also specify the Court where it was committed. *Sheo Ghulam Sahu v. Kheyali Thakur*.

20 Cr. L. J. 132 :

49 I. C. 164 : 1918 Pat. 366 :

A. I. R. 1919 Pat 416.

———S. 195—Duty of Court—Sanction for giving false evidence—Prosecution, desirability of.

In giving sanction to prosecute for giving false evidence, the Courts should not merely see that there is a good prospect of conviction, but should also consider whether the circumstances are such as to render a prosecution desirable in the public interest. *In re : Nattava Parankusam*.

16 Cr. L. J. 167 :

27 I. C. 551 : 37 Mad. 564 :

A. I. R. 1915 Mad. 614.

———S. 195 (1) (6)—Duty of Court, grant of sanction.

Sanction should not be accorded for prosecution on the ground of contradictory statements, unless there is a direct contradiction, especially when they are immediately corrected and explained. *Narayan Nadan v. Palanippa Nadan*.

18 Cr. L. J. 143 :

37 I. C. 495 : 1917 M. W. N. 141 :

5 L. W. 218 : A. I. R. 1918 Mad. 1200.

———S. 195 (1) (b)—Duty of Court.

Where at the trial for an offence of forgery of a will of a dead man, an objection is raised as to the jurisdiction of the Magistrate to try the case on the ground that the complaint of the offence alleged in respect of the said will made without sanction under S. 195 (1) (b), Cr. P. C. of the Courts where it was already used and acted upon was barred, the objection goes to the root of the case and it should not be reserved for consideration till the entire evidence is recorded. *Banalamudi Parandhamayya v. Nagabhusanam*.

40 Cr. L. J. 798 :

183 I. C. 268 : 49 L. W. 545 :

12 R. M. 251 (1) : 1939 M. W. N. 888 (1) :

A. I. R. 1939 Mad. 579.

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———S. 195—*Duty of Magistrate.*

Private individual seeking to conduct Crown case should obtain permission of Court. Magistrate should exercise discretion after considering all circumstances. In trial of grave offences, the duty is on Police Officer and the Magistrate and not on private individual to see that the Crown case is properly conducted. *Kabul v. Emperor.*

35 Cr. L. J. 320 :
147 I. C. 131 : 27 S. L. R. 331 : 6 R. S. 132 :
A. I. R. 1933 Sind 345.

———S. 195—*Effect of amendment—Retrospective effect.*

Alterations by a new Act in the form of procedure are always retrospective, unless there is some good reason why they should not be. But if the new Act touches a right in existence at the passing of the Act, it cannot be held to act retrospectively unless a clear intention to that effect is manifested. *Ramakrishna Iyer v. Sithai Ammal (F. B.)*

27 Cr. L. J. 91 :
91 I. C. 395 : 49 M. L. J. 223 :
1925 M. W. N. 684 : 48 Mad. 620 :
22 L. W. 879 : A. I. R. 1925 Mad. 911.

———S. 195—*Evidence—Penal Code, Ss. 193, 204, 471—Sanction to prosecute—Decree, whether bar to prosecution.*

The existence of a decree not set aside is no bar to a prosecution under Ss. 193, 204, 471 and cognate sections of the Penal Code. *Dulloo Singh v. Deputy Inspector-General of Police, C. I. D., Bengal.*

23 Cr. L. J. 138 :
66 I. C. 570 : 49 Cal. 551 :
A. I. R. 1922 Cal. 412.

———S. 195—*Evidence—"Produced or given in evidence," whether refers to original or copy.*

The words "produced or given in evidence" in S. 195, refer to the production of the original and not to the production of a copy. *Girdhari Lal v. Emperor.*

26 Cr. L. J. 929 :
86 I. C. 993 : 2 O. W. N. 174 :
12 O. L. J. 194 : 2 O. C. 1 :
A. I. R. 1925 Oudh 413.

———S. 195 (1) (b)—*Evidence—Materials for granting sanction.*

In cases falling under Cl. (b) and (c) of Sub-s. (1) of S. 195 sanction can be granted only on materials which can be regarded as legal evidence according to the provisions of the Evidence Act. This rule is equally applicable, whether the investigation under S. 202 is made by the Police Officer or by the Magistrate himself. Sanction granted merely on a Police report is illegal. *Bapu v. Bapu. (F. B.)*

13 Cr. L. J. 209 :
14 I. C. 305 : 11 M. L. T. 367 :
1912 M. W. N. 499 : 22 M. L. J. 419.

———S. 195 (1) (b) (c)—*Evidence compelling prosecution witnesses merely to repeat in Sessions Court evidence given before Committing Magistrate's Court on pain of being prosecuted for perjury—Practice condemned.*

It is in the interest of the Crown and of justice that prosecution witnesses should be free to tell the truth to the Court of Session irrespective of whatever evidence

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they may have given in the Court of the Committing Magistrate. It is for the trial Judge to believe or not to believe the evidence given before him which was at variance with that given by the same witnesses of the Committing Magistrate's Court. To compel prosecution witnesses merely to repeat in the Court of Session the evidence they gave before the Committing Magistrate on pain of being prosecuted would be to deprive the Court of Session of an opportunity of getting at the true facts of the case and would not be conducive to the interests of justice. *Pragi v. Emperor.*

37 Cr. L. J. 885 :
164 I. C. 107 : 1936 O. L. R. 429 :
9 R. O. 34 (2) : 1936 O. W. N. 763 :
A. I. R. 1936 Oudh 373.

———S. 195 (1) (b)—*False charge—Complaint by Police officer—Government Circular—Meaning of—If case be made over to another Magistrate, that Magistrate to have jurisdiction to decide case finally and order sanction for prosecution.*

The Government Circular, directing that when a Police officer is charged with a serious offence, the offence should be inquired into at once on the spot by a Magistrate of the First Class, means that an experienced First Class Magistrate should himself hold the inquiry, and if he is to depute it to another First Class Magistrate, the latter officer should, from the first, have seizin of the case and should investigate it and decide it finally. An order for the prosecution of the complainant for bringing a false case should be given by this latter officer; the former officer who deposes the case to the latter officer has no power to grant the sanction. *Maniruddin Sarkar v. Abdul Rauf.*

13 Cr. L. J. 482 :
15 I. C. 482 : 40 Cal. 41.

———Ss. 195, 200—*False information to Police—False complaint on same facts to Magistrate—Complaint not proceeded with—Sanction of Magistrate, whether necessary for prosecution of complainant.*

When a false information is given to the Police and at the same time a complaint is made to a Magistrate on the same facts and the same charge, a complaint in writing by such Magistrate under S. 195 is essential, for the prosecution of the complainant even though the Magistrate may have taken no further proceedings on the complaint presented to him subsequent to the information to the Police. Under such circumstances a trial without such sanction is bad. *Chuhermal v. Emperor.*

30 Cr. L. J. 732 :
117 I. C. 147 : I. R. 1929 Sind 131 :
A. I. R. 1929 Sind 132.

———S. 195 (1) (b)—*False information to Police—Penal Code S. 211—False information given to Police—Order of Magistrate to remove case from Police file—Sanction.*

Where the information given to the Police was reported to be false and the Magistrate, in consequence, ordered the Police to remove the case from their file: *Held*, that in order

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to initiate proceedings under S. 211, I. P. C., against the informant, the sanction of the Magistrate was not necessary. *Bhimaraja Venkateswarulu v. Moova Bapula*.

13 Cr. L. J. 480 :
15 I. C. 320.

—S. 195—Forgery.

S. 463 of the Penal Code is used in the comprehensive sense in S. 195 (1) (c) of the Cr. P. C., so as to embrace all species of forgery and includes a case falling under S. 467, Penal Code. *Kharaiti Ram v. Malawa Ram*.

26 Cr. L. J. 537 :
85 I. C. 377 : 5 Lah. 550 :
A. I. R. 1925 Lah. 266.

—Ss. 195 (1) (c), 476—Forgery committed by several persons—One of them party to proceedings in Court in which document is produced.

When an offence of forgery is committed by more than one person, one at least being a party to the proceedings in which the document is produced, such participants in the forgery as are not parties to the proceedings and may be prosecuted otherwise than under the provisions of Ss. 195 and 476, Cr. P. C. *In re : Ponnuswami Udayar*.

30 Cr. L. J. 469 :
115 I. C. 481 : 28 L. W. 769 :
I. R. 1929 Mad. 433 :
A. I. R. 1929 Mad. 115.

—S. 195 (6)—‘Given,’ meaning of.

The word “given” used in S. 195 (6), Cr. P. C. means “confirmed by a superior Court.” *Public Prosecutor v. Raver Unilthi*.

15 Cr. L. J. 409 :
24 I. C. 145 : 26 M. L. J. 511 :
15 M. L. T. 403 :
A. I. R. 1914 Mad. 50.

—S. 195—Grant of sanction—Civil Court.

A Munsif has jurisdiction to grant sanction under S. 195 in respect of an offence committed before his predecessor in office. *Dharamdas Kamar v. Sagore Santra*.

4 Cr. L. J. 454 :
11 C. W. N. 119.

—S. 195—Grant of sanction—Preliminary enquiry, necessity—Notice—Principles governing grant of sanction.

Under S. 195, preliminary inquiry is unnecessary. Want of notice to an accused does not invalidate a grant of sanction under S. 195. When granting sanction, a Magistrate should not substitute the judgment of the Police for his own judgment and accord sanction merely upon a Police report. S. 195 does not state that the authority giving sanction should act only upon legal evidence, and there is no warrant in the Code for the proposition that if other improbabilities based on evidence which would not be admissible at the trial of the person against whom sanction has been given, are also referred to by the authority giving sanction, the grant of sanction becomes illegal and ought to be revoked. *In re : Narayana Nadan*.

15 Cr. L. J. 271 :
23 I. C. 479 : 1 L. W. 381 :
26 M. L. J. 486 :
A. I. R. 1915 Mad. 229.

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—S. 195—Grant of sanction—Requirements of.

No sanction should be granted unless there is a reasonable probability of conviction. Great care and caution are required before the Criminal law is set in motion, and there must be a reasonable foundation for the charge in respect of which prosecution is directed. *Jadunandan Singh v. Emperor*.

11 Cr. L. J. 37 :
4 I. C. 710 : 20 C. L. J. 564.

—S. 195—Grant of sanction—Sanction under I. P. C. refused by the First Court but granted by Appellate Court—Value of the First Court’s order.

The view of the Court which passes the order on which proceedings for sanction are taken is most valuable and should not be lightly set aside. *Hira v. Gopi*.

4 Cr. L. J. 494 :
1 P. W. R. Cr. 28.

—S. 195—High Court—Interference by—Sanction to prosecute—Jurisdiction—High Court, power of interference of, scope of.

Under S. 195 (6) of the Cr. P. Code, the High Court has power to interfere with the order of a lower Court upon the merits of the case; its powers are not confined to those under S. 115, C. P. C. or those under Ss. 435 or 439, Cr. P. C., according as the case in hand is a civil or a criminal case. The High Court has power to go into the evidence and decide whether the order of the lower Court granting or refusing sanction is a proper one or not. *Maung Po Aung v. Emperor*.

19 Cr. L. J. 68 :
43 I. C. 100 : 10 Bur. L. T. 161 :
A. I. R. 1918 L. Bur. 90.

—S. 195 (6)—High Court—Interference by.

Under S. 195, Sub-s. (6) the High Court has the power to interfere with the order of a District Judge, affirming the sanction granted by a Munsif and not revoking it. *Girja Shankur Roy v. Benode Sheikh*.

5 Cr. L. J. 188 :
5 C. L. J. 222.

—S. 195 (1) (6)—High Court, powers of.

S. 195 (1) (6) does not take away power of the High Court to order prosecution relating to offences committed in subordinate Courts. *Sawanta v. Emperor*.

33 Cr. L. J. 283 :
136 I. C. 376 : I. R. 1932 All. 200 :
A. I. R. 1932 All. 71.

—S. 195—“In relation to any proceedings”, meaning of.

The words “in relation to any proceedings” in S. 195 (a) (b) are wide enough to cover a complaint made to a Court on which no proceeding may have been commenced by the Magistrate. *Chuhermal v. Emperor*.

30 Cr. L. J. 732 :
117 I. C. 117 : I. R. 1929 Sind 131 :
A. I. R. 1929 Sind 132.

—S. 195—Irregularity—False statement, non-specification of, in charge.

In every case, whether under S. 195 or S. 476, Cr. P. C., the particular statement, where the offence refers to a statement, should be set out in the charge, so that

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the accused person should not be taken by surprise and should know clearly what is the statement which he is required to meet. But there is no specific provision of the law requiring such statement to be set out in the charge, and the non-specification of the statement in the charge, does not amount to a material irregularity. *Chotey Lal v. Emperor*.

18 Cr. L. J. 608 ;
39 I. C. 848 : 15 A. L. J. 345 : 39 All. 367 :
A. I. R. 1917 All. 329.

—S. 195—Jurisdiction.

A Court to whom an application for the grant of a sanction is made, has no jurisdiction to direct the respondent to produce a document for the sole purpose of considering whether or not a prosecution should be launched upon it. *Munuswamy Mudaliar v. Rajaratnam Pillai*.

24 Cr. L. J. 340 :
72 I. C. 340 : 16 L. W. 505 :
45 Mad. 928 : 44 M. L. J. 774 :
A. I. R. 1923 Mad. 136.

—S. 195—Jurisdiction—Application by wrong person—Jurisdiction of Court Appeal—Revision.

A process-server attaching property on behalf of decree-holder was obstructed and the Court was moved by the decree-holder to proceed under S. 183, Penal Code: *Held*, that the application being by decree-holder and not process-server under S. 195 (a), Cr. P. C., was not proper and the Court had no jurisdiction to entertain it: *Held*, also, that the District Judge had no jurisdiction to entertain appeal under S. 476-B, Revision to High Court was the proper remedy. *Bajrang Marwari v. Durga Prasad Sao*.

38 Cr. L. J. 292 (2) ;
166 I. C. 870 : 9 R. P. 350 :
3 B. R. 226 :
A. I. R. 1937 Pat. 31.

—S. 195—Jurisdiction—Court competent to grant sanction.

A bond was produced in the Court of a Munsif with an endorsement which was held to be a forgery. On appeal, the Additional Judge agreed with the Munsif. On an application being made to him, the Additional Judge sanctioned the prosecution of the party producing the bond under Ss. 193 and 471, Penal Code: *Held*, that the Additional Judge had jurisdiction to grant sanction, as (a) the bond was given in evidence in the appeal pending in his Court, and (b) the false evidence was given in a proceeding pending in the stage of appeal in his Court. *Bhadosar Tewari v. Kamta Prasad*.

14 Cr. L. J. 47 :
18 I. C. 271 : 11 A. L. J. 11 :
35 All. 90.

—S. 195—Jurisdiction—Execution proceeding—Sanction to prosecute for offences—Appeal to District Judge.

An application was made to a Judge of the Court of Small Causes for sanction to prosecute the applicant in respect of offences

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under Ss. 195, 467 and 471 Penal Code, committed in an execution proceeding before him. The application was rejected. The matter was taken up to the District Judge under S. 195 (6), Cr. P. C. In that Court the application was registered as a criminal appeal: *Held*, that the application should not have been registered as a criminal appeal as it was a matter in which the Sessions Judge had no jurisdiction. *Mohammad Yasin v. Cheda Lal*.

16 Cr. L. J. 524 :
29 I. C. 540 : 13 A. L. J. 709 :
A. I. R. 1915 All. 217.

—S. 195—Jurisdiction—Failure to try other issues.

Where a Judge refuses to try "other issues" which he is competent to try, he declines to exercise jurisdiction vested in him by law. *Dalip Singh v. Nawal*.

18 Cr. L. J. 303 :
38 I. C. 335 : 15 A. L. J. 161 :
39 All. 297 :
A. I. R. 1917 All. 214.

—S. 195—Jurisdiction.

A plaintiff obtained a decree on the original side of the High Court. His Counsel orally applied to the Court for sanction to prosecute one of the defendants under Ss. 193, 199 and 200, Penal Code, for having made a false affidavit, and the Court said: "very well." The office refused to draw up the order without formal papers being put in. Therefore, subsequently a petition was presented to the Court and order was drawn up. The defendant obtained this Rule upon the plaintiff to show cause why the sanction should not be revoked: *Held*, that the established practice of the Court was to grant sanction under S. 195, Cr. P. C., only on a formal petition being put in upon which an order could be passed, and that, therefore, the second learned Judge had jurisdiction to pass the order made by him on the second occasion when a formal petition was put in. *Thaddeus v. Janki Nath Sahu*.

14 Cr. L. J. 572 :
21 I. C. 172 : 40 Cal. 423.

—Ss. 195, 476—Jurisdiction—One complaint against party, witnesses and writer of receipt—Jurisdiction against witnesses and writer.

Where a Civil Court filed a complaint under Ss. 195-476, Cr. P. C., against the party to the proceedings and the witnesses and the writer of a receipt: *Held*, that the Court could not be cloaked with two capacities with reference to one and the same complaint, firstly that of a private person with respect of the two witnesses and the writer, and secondly, that of a Court *qua* the party. A common sense view of the matter would be that the Judge acted as a Court under the impression that he had jurisdiction to make a complaint under S. 476 read with S. 195, Cr. P. C., against all the accused, while in fact he was not competent to do so, so far as the two witnesses and the writer of the document were concerned.

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His order was manifestly without jurisdiction and could only be set aside on revision. *Ghansham Das v. Emperor*.

151 I. C. 691 :
7 R. Pesh. 32 :
A. I. R. 1934 Pesh. 81 (2).

—S. 195—*Jurisdiction to revoke sanction*
—*Prima facie case*.

The District Magistrate after hearing an appeal against an order of conviction acquitted the appellant and sanctioned prosecution of the complainant under S. 211, Penal Code. The sanction did not state particulars required by S. 195, Cr. P. C. The complainant applied to the Sessions Court to revoke sanction. The Additional Sessions Judge who heard the application amended the sanction and brought it into accordance with law : *Held*, that the Sessions Court had no jurisdiction to hear the application to revoke the sanction : *Held*, also, that before granting sanction for prosecution under S. 211, Penal Code, the Court should be satisfied that (a) the charge was really false; (b) that there is reasonable probability that this can be established, and (c) that a prosecution is desirable in the interest of justice. *Budh Ram v. Emperor*.

3 Cr. L. J. 121 :
6 P. L. R. 627 : 56 P. R. Cr. 1905.

—S. 195 (6), (7)—*Jurisdiction to revoke sanction—Subordinate Judge empowered to entertain appeals, whether Court—Jurisdiction—Sanction, revocation of—Penal Code (Act XLV of 1860), S. 209—Madras Civil Courts Act (III of 1873), S. 8.*

Where, by a notification issued under the Madras Civil Courts Act (III of 1873), Government empowers all Subordinate Judges in the Madras Presidency, situated in a place different from that of the District Court, to receive appeals direct and not by transfer from the District Court, such Subordinate Judges are Courts to which appeals "ordinarily lie" from the subordinate Courts within the meaning of S. 195 (7), Cr. P. C., and such Subordinate Judges have jurisdiction to revoke on appeal the sanction to prosecute for an offence under S. 209, Penal Code, granted by a subordinate Court. *Boddu Ramayya v. Chitturi Surayya*.

16 Cr. L. J. 439 :
29 I. C. 71 : 28 M. L. J. 486 :
17 M. L. T. 446 : A. I. R. 1916 Mad. 1105.

—Ss. 195, 476—*Jurisdiction—Prosecution under S. 476, order for—Offence 'brought to notice in the course of a judicial proceeding.'*

L. instituted a suit in the Small Cause Court in the District of Darbhanga for recovery of a sum of money against B. and obtained an *ex parte* decree. He got the decree transferred for execution to the Chapra District. B. brought a suit in the Munsif's Court at Chapra to set aside the decree, on the ground of fraud. The Munsif decreed the suit. B. then applied to the Munsif for sanction to prosecute L. The Munsif refused sanction. On appeal, the District Judge at Chapra directed the prosecution of L. under S. 476, Cr. P. C. : *Held*, that as offences in respect of which sanction was sought under S. 195 were brought to the notice of the District

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Judge at Chapra in the course of a judicial proceeding, he had jurisdiction to direct the prosecution. *Lachmi Singh v. Brij Mohan Lal*.

18 Cr. L. J. 142 :
37 I. C. 494 : 1 P. L. J. 586 :
A. I. R. 1917 Pat. 690.

—Ss. 195 (1) (a), (b), (c), 476—*Jurisdiction—Offence covered by Cl. (a) before Civil Court—Court's jurisdiction to take action under S. 476, make preliminary inquiry and record finding—Irregularity, whether cured by S. 537.*

Under the provisions of S. 476, Cr. P. C., as amended, a Civil Court has only authority to make a preliminary inquiry and record a finding in the case of an offence covered by S. 195 (1), Cls. (b) and (c) but not Cl. (a). In the case of an offence covered by Cl. (a) the presiding officer of a Civil Court is in the position of an ordinary public servant and exercises no quasi-judicial function of any kind, while in the case of an offence covered by Cls. (b) and (c), he is in the position of a Presiding Officer of a Court and exercises quasi-judicial functions. Where, therefore, it is stated before a Munsif that certain persons had resisted a Civil Court attachment and it is alleged that they had committed offences punishable under Ss. 183 and 186 of the Penal Code, the Munsif has no jurisdiction to take action under the provisions of S. 476, Cr. P. C. and he has no authority to make a preliminary inquiry and record a finding. If he takes action under S. 476, he starts proceedings without jurisdiction. The provisions under S. 476 are not condoned as the law is now. *Dore Sah v. Emperor*.

28 Cr. L. J. 601 :
103 I. C. 409 : 4 O. W. N. 640 : 2 Luck. 646 :
A. I. R. 1927 Oudh 326.

—S. 195 (1) (b)—*Jurisdiction—"Such Court", meaning of—Court abolished but re-established—Sanction in respect of offence committed before abolition.*

A Court once abolished but re-established two years later with its territorial limits somewhat curtailed, is not "such Court" within the meaning of S. 195 (1) (b), Cr. P. C. and the latter Court has no jurisdiction to grant sanction for prosecution in respect of an offence committed before the former. *In re : Appu Atla*.

16 Cr. L. J. 787 :
31 I. C. 643 : A. I. R. 1916 Mad. 1007.

—S. 195 (6)—*Jurisdiction—Sanction to prosecute—Superior Court Jurisdiction to re-consider whole case.*

A Court of superior jurisdiction whose jurisdiction is invoked under S. 195 (6), Cr. P. C. should re-consider the entire matter on the merits and while allowing all reasonable weight to the opinion of the Court below, it should nevertheless re-consider the question of the propriety of the order of sanction on its merits upon a complete review of the entire facts. *Ram Raja Dal v. Sheo Dayal*.

16 Cr. L. J. 489 :
29 I. C. 329 : 13 A. L. J. 685 : 37 All. 439 :
A. I. R. 1915 All. 146.

—S. 195, Cls. (6) (7)—*Jurisdiction of Sub-Judge to hear appeal—Sanction to prosecute*

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—Refusal of sanction by Munsif—Appeal to the District Judge—Transfer of appeal to Sub-Judge.

As the District Judge is the only Court to which appeals from the orders of a Munsif ordinarily lie within the meaning of S. 195 (7), Cr. P. C., a Subordinate Judge has no jurisdiction to hear an appeal from an order of a Munsif granting or refusing a sanction for prosecution, although the appeal having been at first filed in the District Court was transferred by the District Judge to the Sub-Judge for disposal under S. 22 of the Bengal Civil Courts Act. *Ram Charan Chandra v. Tirupulla Sheikh.*

13 Cr. L. J. 191 :
13 I. C. 1007 : 16 C. W. N. 645 :
39 Cal 774.

—————S. 195, Cls. (b) and (c)—*Jurisdiction—“In relation to any proceeding”—Sanction—Prosecution for forgery and using forged document in proceeding before arbitrator.*

A Court cannot take cognizance of a prosecution in respect of an offence committed in proceedings before an arbitrator to whom a reference had been made, by a Court, without the sanction of such Court, where the document in respect of which the offence has been committed was filed with the award and formed part of the record of the suit. *Puttiah v. Veerasamy.*

6 Cr. L. J. 331 :
2 M. L. T. 496 : 17 M. L. J. 420.

—————S. 195 (c)—*Jurisdiction—Sanction to prosecute—Superior and subordinate Courts—Jurisdiction to entertain application.*

Ordinarily, an application for sanction to prosecute under S. 195 (c), Cr. P. C., in respect of an offence alleged to have been committed by a party to a proceeding in a Court in respect of a document produced or given in evidence in such proceeding should be made in the first instance, to the Court in which the proceeding was taken, but this does not mean that the superior Court to which that Court is subordinate, has no jurisdiction to entertain such an application, the two Courts in this respect have *prima facie* concurrent jurisdiction. *Narendra Lal v. Akhoy Kandar.*

22 Cr. L. J. 338 :
61 I. C. 162.

—————S. 195 (1) (c)—*Jurisdiction of District Judge—Sanction to prosecute for producing false receipt.*

Where the defendant in a case produced a certain receipt in answer to the plaintiff's claim, but this receipt being found to have been fraudulently altered, the District Judge who heard and decided the appeal granted sanction to prosecute the defendant under S. 471, I. P. C.: *Held*, that the District Judge, was fully authorised to entertain the application for sanction to prosecute the defendant for an offence alleged to have been committed by him in respect of a document produced in evidence in that suit. *Miran Bakhsh v. Beli Ram.*

17 Cr. L. J. 238 (b) :
34 I. C. 654 : 67 P. L. R. 1916 :
A. I. R. 1916 Lah. 236.

—————S. 195 (7), (b), (c)—*Jurisdiction—Perjury committed in execution proceedings*

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in a rent decree—Sanction to prosecute—Jurisdiction of District Judge.

In the course of execution proceedings of a rent decree passed under the Agra Tenancy Act of 1901, R. made a statement which was false. An application was made to the Assistant Collector for sanction to prosecute. The Assistant Collector rejected the application. The applicant then appealed to the District Judge who dismissed the appeal on the ground that he had no jurisdiction in the matter: *Held*, that the District Judge was right in dismissing the appeal as he had no jurisdiction in the matter: *Ajodhia Parshad v. Ram Lal.*

13 Cr. L. J. 44 :
13 I. C. 284 : 9 A. L. J. 124 : 34 All. 197.

—————S. 195, Cl. (b)—*Jurisdiction of Magistrate—Penal Code (Act XLV of 1860), S. 211—Making false report to Police—Grant of B summary is not sanction—Sanction not required.*

A Magistrate gave the Police B summary in regard to the accusation made by a complainant. The complainant was thereupon prosecuted under S. 211, Penal Code, before the same Magistrate for giving a false report constituting the said accusation. The Magistrate inquired into the offence and convicted him: *Held*, (1) that the Magistrate was competent to try the accused. The giving of a B summary was by no means tantamount to the grant of a Magisterial sanction for the prosecution of the original complainant, inasmuch as a B summary was not an order passed under the Cr. P. C. at all, but was a mere administrative order made by the Magistrate for the purpose of facilitating Police work and Police statistics; (2) that the offence in this case was constituted by the maliciously false report which the accused submitted to the Police, and that offence was not committed in, or in relation to, any proceeding in any Court, and, therefore, no sanction was needed for the prosecution of the accused. *Emperor v. Chandabhai.*

13 Cr. L. J. 904 :
17 I. C. 1000 : 14 Bom. L. R. 1160.

—————S. 195 (1) (a)—*Jurisdiction of Magistrate—Charge to Police Officer of theft outside his jurisdiction—Offender forwarded to proper officer—Charge found to be false—Complaint by latter officer for prosecution of informant.*

The accused made a statement to the Head Constable at Mokameh Railway Police Station charging a person with theft at Barh town. The Head Constable forwarded the alleged offender to the Sub-Inspector of Barh. The latter, on investigation, found the charge to be false and made a complaint to a Magistrate for prosecuting the accused under Ss. 211 and 182 of the Penal Code: *Held*, (1) that the Magistrate had no jurisdiction to take cognizance of the case under S. 182 of the Penal Code on the complaint of the Sub-Inspector of Barh inasmuch as the latter was neither the public servant to whom the false information was given, nor an officer to whom the Head Constable at Mokameh to whom the informa-

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tion was given subordinate. *In the matter of : Barhamdeo Singh v. Emperor.*

28 Cr. L. J. 902 :
105 I. C. 230 : 9 P. L. T. 151 :
A. I. R. 1928 Pat. 102.

———S. 195 (1) (a)—*Jurisdiction to take cognizance—Complaint by officer subordinate to officer concerned—Court, if can take cognizance.*

The complaint contemplated by S. 195 (1) (a), Cr. P. C., must be filed by the officer concerned or by some officer to whom such officer is subordinate, and if filed by some officer who is himself subordinate to such officer concerned, he has no jurisdiction to take cognizance of it. *Sher Mohamad v. Emperor.*

41 Cr. L. J. 368 :
186 I. C. 703 : I. L. R. 1940 Lah. 396 :
42 P. L. R. 771 : 12 R. L. 430 :
A. I. R. 1940 Lah. 15.

———S. 195 (6)—*Limitation—Extension of time—Jurisdiction of High Court.*

The words used in S. 195 (6), Cr. P. C., are wide enough to give the High Court jurisdiction to extend the time mentioned in that sub-section though the period of six months has expired and the sanction is no longer in force. The High Court, when considering an application for extension of the period of sanction ought to be very careful not to extend the time unless it is clearly shown that "good cause" for extending the time exists within the meaning of the section. *Ram Saran Singh v. Chander Mohan Saha.*

24 Cr. L. J. 94 :
71 I. C. 222.

———S. 195 (6)—*Power of High Court—Limitation—Extension of time.*

The High Court has power to extend the time of a sanction to prosecute, even after the expiry of the six months for which it remains current. *Krishna Kering & Co. v. J. R. Miller.*

17 Cr. L. J. 377 :
35 I. C. 809 : 18 Bom. L. R. 686 :
A. I. R. 1916 Bom. 178.

———S. 195 (6)—*Limitation for prosecution—Extension of time—Powers of High Court.*

A High Court has a power, under S. 195, Cl. (6), Cr. P. C. to extend the time for the institution of a complaint of perjury when more than six months have elapsed from the date of the order according sanction. Where delay in instituting such a complaint is due to the act of the person against whom the complaint had to be made, it is not open to him to object to the extension of time, when applied for. *Secretary of State v. Sankara Pandiam Pillai.*

15 Cr. L. J. 359 :
23 I. C. 727 : 1914 M. W. N. 347 :
A. I. R. 1914 Mad. 370.

———S. 195—*Miscellaneous—Collector ordering prosecution—Sanction.*

A Collector ordering the prosecution of a person for an offence under S. 182, Penal Code, for making false allegations against one of his subordinates in a written petition puts himself in the position of a prosecutor and is disqualified from performing the judicial function of deciding whether to grant a sanction or not.

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His order is a mere executive order. *Dodumal v. Emperor.*

17 Cr. L. J. 305 :
35 I. C. 481 : 10 S. L. R. 65 :
A. I. R. 1916 Sind 94.

———S. 195 — *Miscellaneous — False statements set out in application and charge—Prejudice to accused—Defect in sanction—Effect.*

Where the statements alleged to be false, were set out in full detail in the application for sanction, and were also specified in the charge subsequently framed, there is no reason to suppose that the accused had not full opportunity of knowing what were the specific statements made by him which were alleged by the prosecution to be false. A conviction of perjury cannot be set aside on account of a defect in the sanction, unless it is established that there has, in fact, been a failure of justice. *Rakhal Chandra v. Emperor.*

10 Cr. L. J. 150 :
2 I. C. 697 : 9 C. L. J. 690.

———S. 195—*Notice.*

A person against whom a complaint is proposed to be made under S. 211, Penal Code, is no more entitled to an opportunity to show cause why a complaint should not be made, than any other person against whom a complaint is made. *Parma Nand Brahmchari v. Emperor.*

30 Cr. L. J. 354 :
116 I. C. 46 : I. R. 1929 Pat. 286 :
10 P. L. T. 618 : A. I. R. 1930 Pat. 30.

———S. 195—*Notice.*

A, first lodged one complaint and subsequently lodged another. He was never examined specifically in respect of the first complaint. But while being examined with reference to this second complaint, he incidentally made certain statements with reference to the first complaint : *Held*, that there was no proper examination of A, in respect of his first complaint. A notice calling upon a complainant to show cause why he should not be prosecuted for preferring a false charge ought not to issue until it has been finally decided that the complaint must be dismissed as false. *Ali Muhammad v. Emperor.*

12 Cr. L. J. 539 :
12 I. C. 515 : 2 P. R. 1912 Cr :
11 P. L. R. 1912.

———S. 195—*Notice—Absence of.*

An order granting sanction for the prosecution of the accused under S. 211, Penal Code, is not bad merely because notice to show cause was not issued to the accused before the sanction was accorded. *Jamal-ud-Din v. Mohamad Ismail.*

19 Cr. L. J. 121 (a) :
43 I. C. 409 : 11 P. W. R. 1918 Cr. :
54 P. L. R. 1918 : A. I. R. 1918 Lah. 140.

———S. 195—*Notice.*

Before granting sanction under S. 195, it is advisable to give notice to the accused, although the issue of such a notice is not provided for in the Code. *Maula Bakhsh v. Lal Chand.*

18 Cr. L. J. 121 :
37 I. C. 473 : 23 P. R. 1916 Cr. :
A. I. R. 1917 Lah. 277.

———S. 195—*Notice—Necessity of—Sanction to prosecute—Enquiry—Court, duty of.*

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No enquiry has been prescribed formally for a proceeding under S. 195, nor has any notice been imperatively laid down to be served upon the party affected by an order under that section, yet it is a recognised principle that in the circumstances of each case it must be seen whether notice should be given and whether an enquiry should be held into the commission of the offence. *Bharma Datta Thakur v. Nanoo Lal Thakur*.

19 Cr. L. J. 109 :
43 I. C. 313 : 3 P. L. W. 346 :
A. I. R. 1917 Pat. 89.

———S. 195—Notice—Particulars.

An order under S. 476 requiring the accused to show cause why he should not be prosecuted, should carry out the requirements of S. 195. An order which omits to specify the Court, or the place and the occasion on which the offence was committed, but merely calls upon the accused to show cause why he should not be prosecuted for perjury, is not a good order and is liable to be set aside. *Ram Sahai v. Emperor*.

21 Cr. L. J. 400 :
55 I. C. 1008 : 18 A. L. J. 381 :
2 U. P. L. R. (A) 145 :
A. I. R. 1920 All. 217 (1).

———S. 195—Notice—Proceedings, nature of—Notice, whether necessary—Absence of notice, effect of.

Proceedings under S. 195 are of a judicial character, and no order should be passed in such proceedings without giving notice to the party in those proceedings to whose prejudice the Court decides to pass an order, and an omission to give such notice is a defect of procedure resulting in a failure of justice, and consequently the defect is not curable by S. 537 of the Code. *Muhammad Yusuf Ali v. Muhammad Yakub Ali*.

21 Cr. L. J. 642 :
57 I. C. 658 : 7 O. L. J. 371 :
23 O. C. 222 : A. I. R. 1920 Oudh 58.

———S. 195—Notice—Revision.

Before sanction to prosecute under S. 195, Cr. P. C., a notice should be issued to him asking him to show cause against the grant of sanction. Such notice may not be legally necessary but it is desirable it should be given. The omission to give notice, taken into consideration with other circumstances; for instance, the fact that the sanction is vague or is in excess of the Magistrate's power, is a sufficient ground for setting aside, on revision, an order granting the sanction. *Charan Das v. Rodu*.

24 Cr. L. J. 506 :
72 I. C. 970 : A. I. R. 1923 Lah. 36.

———S. 195—Notice.

Sanction to prosecute may be granted without the issue of notice and is not vitiated by the absence of such notice, but notice should ordinarily be issued, and in a case of non-attendance, where a person may be prevented from attending by illness or any other sufficient cause, it is desirable that the notice should issue. *Nga San Chein v. So Okaram*.

17 Cr. L. J. 82 :
32 I. C. 674 : U. B. R. 1915 II, 83 :
A. I. R. 1916 U. Bur. 13.

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———S. 195—Notice.

The issue of a notice is not essential to the validity of a sanction given under S. 195, even though if such notice is issued, the opposite party may be able to show that he and the applicant are on bad terms. *Nathu Ram v. Barey*.

21 Cr. L. J. 235 :
55 I. C. 107 : A. I. R. 1921 Nag. 81

———S. 195—Notice.

There is no statutory obligation upon any Judge to issue notice to the person proposed to be charged, before sanction for his prosecution is granted. *Angnoo Singh v. Emperor*.

24 Cr. L. J. 257 :
71 I. C. 865 : 20 A. L. J. 881 :
45 All. 109 : A. I. R. 1923 All. 35.

———S. 195—Notice to accused, whether necessary—Failure to give notice, effect of—Proceedings, validity of.

Although the issue of a notice to the accused is not legally essential to validate a sanction granted under S. 195, nevertheless in common moral propriety it is desirable, as a matter of practice and prudence and in common fairness, that a person who is sought to be prosecuted should have notice of the fact that an application has been made for his prosecution, and such person should be permitted to show cause against the grant of sanction for his prosecution, but an omission to give such notice is not an illegality which would wholly vitiate an order granting sanction. *Sukhdeo Missir v. Monoolal Sahu*.

20 Cr. L. J. 616 :
52 I. C. 280 : A. I. R. 1919 Pat. 522.

———S. 195—Notice.

When application is made to another Court, it is incumbent on such Court to send notice to the opposite party to show cause. *Aung Gyi v. Emperor*.

18 Cr. L. J. 97 (b) :
37 I. C. 305 : 9 Bur. L. T. 202 :
A. I. R. 1917 L. Bur. 24.

———S. 195 (b)—Notice.

A Court, acting under S. 195 (b), is competent to, and in a proper case, should give notice and make inquiry before granting sanction, but the law does not compel the giving of notice or the holding of any inquiry before granting sanction. *Gopal v. Emperor*.

16 Cr. L. J. 289 :
28 I. C. 513 : 11 N. L. R. 36 :
A. I. R. 1915 Nag. 58.

———S. 195 (6)—Notice—Application for revocation of sanction notice to opposite party.

An application for the revocation of a sanction granted by the lower Court should not be disposed of *ex parte* without giving notice to the person obtaining sanction of the District Magistrate. *Katan v. Nga Tin*.

15 Cr. L. J. 571 :
25 I. C. 323 : 7 Bur. L. T. 205 :
A. I. R. 1914 U. Bur. 11.

———S. 195 (6)—Notice—Sessions Judge granting sanction refused by Magistrate—Notice.

Where a trying Magistrate refused sanction to prosecute for perjury, &c., but the Sessions

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Judge granted it without issuing notice to the person for whose prosecution the sanction was sought: *Held*, that the Sessions Judge should have called upon the person against whom the sanction was applied for to show cause before granting sanction. *Raghubir Singh v. Jogeshwar Tewary*.

1 Cr. L. J. 632 :
8 C. W. N. 643.

———S. 195—*Object—Offence of forgery committed in relation to proceedings before Court, forming part of same transaction with offence which Court is inquiring—Court, if can itself inquire into offence of forgery and commit case to Sessions, if necessary.*

The purpose of S. 195, is not, that one Court should keep check upon another, because if that were so, the Court itself would not be entrusted with the making of a complaint as it is under the provisions of the section. The purpose of the section is to provide, *inter alia*, that an offence of forgery, for instance, shall be inquired into upon a complaint of a Court before which the forged document was produced and not upon the complaint of a private individual. It is the Court before whom the forged document is produced which is to decide whether there should be or should not be an inquiry in the first instance, and as a Court is entrusted by the Legislature, with this discretion and with this power, it is entitled itself to inquire into an alleged offence committed in relation to proceedings before it, when that alleged offence is part of the same transaction, with the offences of which the Court has already taken cognizance and the Magistrate can, in such a case, convert the proceedings before him into one for committal to the Court of Sessions. *Jashanmal J. Gulrajani v. Emperor*.

40 Cr. L. J. 818 (b) :
183 I. C. 619 : 12 R. S. 64 :
1940 Kar. 95 : A. I. R. 1939 Sind 232.

———S. 195 (1)—*Object—Court, competent to make order.*

The object of S. 195 (1) (a), is that the person best qualified to decide whether a complaint should or should not be made, should have the power to make a complaint. Whether a complaint should or should not be made depends on circumstances existing at the time when it has to be decided whether a complaint should or should not be made and it is, therefore, the person who is then on the spot who can decide and not the person who originally passed the order and having been transferred subsequently may be, in some other district, where he cannot possibly say whether a complaint should or should not be made. *King-Emperor v. Chhedi Singh*.

40 Cr. L. J. 508 :
180 I. C. 769 : 1939 O. W. N. 337 :
1939 O. L. R. 206 : 11 R. O. 260 :
A. I. R. 1939 Oudh 160.

———S. 195—*Object of—Evasions of provisions not to be tolerated—Test.*

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The Courts should not tolerate evasion of the provisions of S. 195, Cr. P. C., or of the intention of the legislature, but, the Court must be careful not to extend the provisions of the section which restricts the right of a subject to have recourse to the Courts. The principle to be followed in cases of this kind is not whether the complaint discloses other facts which constitute offences for which no complaint of the Court is necessary as well as facts for which a complaint of the Court is necessary, but whether there is or is not an evasion of the provisions of S. 195, Cr. P. C., and the test whether there is evasion or not is whether the facts disclose primarily and essentially an offence for which the complaint of the Court is required. *Sadhuram Chimandas v. Chimandas Budhuram*.

38 Cr. L. J. 742 :
169 I. C. 112 : 9 R. S. 277 :
A. I. R. 1937 Sind 81.

———S. 195—*Object of.*

The object of S. 195, Cr. P. C. is to prevent litigants being harassed by criminal proceedings when the subject-matter in the contemplated criminal proceedings has been enquired into or is about to be enquired into. *Zumberlal v. Malori*.

18 Cr. L. J. 1001 :
42 I. C. 729 : A. I. R. 1917 Nag. 198.

———S. 195—*Object of—Provisions, if can be evaded by placing the offence under another section.*

The purpose of S. 195, Cr. P. C., is to keep within the control of the Courts in the public interest offences committed in relation to their proceedings, and it would be an evasion of that section to allow an aggrieved party, merely by placing the offence under another section, to escape its provisions. *Bhimomal v. Jalo*.

37 Cr. L. J. 1007 :
164 I. C. 797 : 29 S. L. R. 356 :
9 R. S. 55 : A. I. R. 1936 Sind 123.

———S. 195 (1) (b)—*Object of.*

S. 195 (1) (b), Cr. P. C. aims at providing that where, prior to the institution of a criminal prosecution, a properly constituted judicial tribunal has placed itself in a position to determine whether the facts constituting the offence really exist, the Criminal Court should decline cognizance unless that the tribunal has, in effect, certified that in its opinion the complaint is one worthy of investigation. That safeguard should not be limited to cases where the offence is committed *pendente lite* but should extend also to fabrication of false evidence in advance. *In re : Parameswara Nambudri*.

16 Cr. L. J. 721 :
31 I. C. 161 : 18 P. L. T. 322 :
A. I. R. 1916 Mad. 72.

———S. 195 (6), (7) (c)—*Object of—Interpretation.*

The apparent intention of the Legislature in inserting Cl. (c) of Sub-s. 7 of S. 195, Cr. P. C. was to substitute the control of the District Judge as the "principal Court of original jurisdiction" in respect of all suits of a civil nature for that of the Sessions Judge. The provisions

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of this clause govern the procedure in respect of sanctions granted or refused by Courts of Small Causes. Courts must read Sub-s. (7) along with Sub-s. (6) and must endeavour to place a reasonable construction on all the words of the Statute. The "such appeals" spoken of in clauses (a) and (b) are the appeals which "ordinarily lie." The use of the word "only" in Sub-s. (7) does not operate so as to take away altogether the subordination imposed upon any Court by Sub-s. (6) but merely to limit that subordination to one single Court, whereas it might otherwise have extended to two or more. The words "that is to say" must be interpreted loosely as equivalent to "I will make my meaning clear by the following explanations." The effect is that the subordination of a Court of Small Causes to the local High Court, which would otherwise be imposed by Sub-s. (6), is "for the purposes of this section" done away with, but the subordination of the Court of Small Causes to the District Judge as "the principal Court of original jurisdiction" in suits of a civil nature "within the local limits of whose jurisdiction" the said Court of Small Causes "is situate" remains and is affirmed. *Chidda Lal v. Bhajan Lal*.

18 Cr. L. J. 935 :

42 I. C. 167 : 15 A. L. J. 721 :

39 All. 657 : A. I. R. 1917 All. 405.

———S. 195—Object and scope—Private prosecution.

The principal underlying S. 195 is plainly this. Where an act amounts to the offence of contempt of the lawful authority of public servants or to an offence against public justice, such as giving false evidence or to an offence relating to documents actually used in a Court, private prosecutions are barred absolutely and only the Court in relation to which the offence was committed may initiate proceedings. *Ramasawmi Ayyangar v. K. V. Panduranga Mudaliar*.

39 Cr. L. J. 1.

171 I. C. 943 : 1937 M. W. N. 1070 :

1937 2 M. L. J. 757 : 46 L. W. 704 :

10 R. M. 414 : A. I. R. 1938 Mad. 173.

———S. 195—'Offence', meaning of.

In S. 195 (1) (c), Cr. P. C. the word 'offence' is designedly used in a somewhat abstract manner. It is the 'offence' itself, not any particular offender's offence which the section aims at; and that is in accordance with S. 40, Penal Code, where 'offence' is defined as the thing made punishable by the Code. The clause deals with the case where there is a substantive offence committed by a party to a suit. If that condition is realized, then the clause enacts that no Court can take cognizance of such offence. *In re : Narayan Dhonddev Risbud*.

11 Cr. L. J. 368 :

6 I. C. 529 : 12 Bom. L. R. 383.

———S. 195—Order of sanction, contents of.

No sanction is necessary under S. 195, Cr. P. C. for a prosecution under S. 467 or S. 476, Penal Code. An application for sanction must set out in detail, the statements alleged to be false. The order of sanction, however, need not state specifically what false evidence was given or fabricated, and a sanction might be a perfectly

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proper sanction without setting out the actual words in which it is alleged the offence was committed. But it is certainly in accordance with the requirements of justice that the order of sanction should not be a vague order leaving the accused in doubt as to the charge which he will be expected to meet, and in the case of a long deposition, containing statements alleged to be false, it is particularly desirable that some indication should be given of the portions of the deposition so alleged to be false. Proceedings, with a view to the prosecution of a witness for giving false evidence, should not be taken until a conclusion has been come to by the Magistrate or Judge conducting the trial in which the false evidence is supposed to be given upon the evidence given therein. *Thawin v. Nga San*.

14 Cr. L. J. 422 :

20 I. C. 406 : U. B. R. 1913 I, 166.

———S. 195 (7) (a)—'Ordinarily', meaning of.

S. 195 (7) (a), Cr. P. C. defines the word 'ordinarily' for all cases where appeals from a lower Court lie to more than one higher Court. *Ram Krishnapuri v. Mohan Lal*.

13 Cr. L. J. 498 :

15 I. C. 642 : 8 N. L. R. 57.

———S. 195 (7) (c)—Original jurisdiction, meaning of.

The words "original jurisdiction" in S. 195 (7) (c), Cr. P. C. mean "original jurisdiction over the class to which the case in question belongs." *Sukhdeo Singh v. District Magistrate of Muzaffarpur*.

18 Cr. L. J. 370 :

38 I. C. 754 : 2 P. L. J. 1 : 3 P. L. W. 333 :

A. I. R. 1916 Pat. 53.

———S. 195 (6)—Period of sanction, starting point—Sanction to prosecute—Extension of.

The period of six months referred to in S. 195 (6), Cr. P. C. begins to run from the date on which the sanction to prosecute is given by the Court to which the application for sanction was made. *Ram Saran Singh v. Chandra Mohan Saha*.

24 Cr. L. J. 94 :

71 I. C. 222.

———S. 195—Power of Court.

Where a document was judicially before the Court and was produced in a proceeding in Court within the meaning of S. 195 (c), Cr. P. C. it was competent to the Court to exercise its powers under S. 195. *Muthuravaru Seshiah v. Gatram Ramiah*.

13 Cr. L. J. 19 :

13 I. C. 211 : 1911 M. W. N. 526.

———S. 195—Powers of court.

Suit on pro-note before Panchayat Court—Report of Panchayat to Collector—Report leaving the matter to Collector—Paper sent to Magistrate for inquiry—Magistrate is not competent to take cognizance of case. *Emperor v. Chaiyan*.

35 Cr. L. J. 1050 :

149 I. C. 1239 : 1934 A. L. J. 339 :

6 R. A. 1026 : 4 A. W. R. 519 :

A. I. R. 1934 All. 216.

———Ss. 195, 476—Power of Court to make complaint.

An official to whom the function of granting copies is delegated by the Court really exercises

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them on behalf of the Court and, therefore, an application made to that official must also be deemed to have been made to the Court. An offence committed in connection with an application for copies of the judgment and decree in case, being an offence committed in connection with proceedings in a Court, a complaint under Ss. 195 and 476, Cr. P. C., from the Court is necessary for the prosecution of the offender and the only Court competent to file such a complaint is the Court to which the application is made or a Court to which such Court is subordinate. *Faqir Singh v. Emperor*.

29 Cr. L. J. 1028 :
112 I. C. 356 : A. I. R. 1928 Lah. 759 (b) .

—S. 195 (1), (a), (7)—*Power of District Magistrate—Police Act (V of 1861), S. 4.*

The District Magistrate is invested with general control over, and direction of, the administration of the police in his district. He is, therefore, competent to sanction prosecution for a false complaint to a Police officer. *Shibbu v. Emperor*.

11 Cr. L. J. 252 :
5 I. C. 829 : 6 P. R. 1910 Cr. :
10 P. W. R. 1910 Cr.

—S. 195 (b)—*Power of District Magistrate—Report to police not followed up by complaint to Court.*

S. 195 (b), Cr. P. C. does not apply to a case where a person makes a report to the *thana* but does not follow it up by a complaint to Court. By making a report, no offence is committed in or in relation to any proceeding. Under S. 211, Penal Code, it is not necessary that the person charged should be given notice of the charge made against him and the District Magistrate does not act without jurisdiction if no notice is given in passing an order to institute a case under that section. *Tabarak Zaman Khan v. Emperor*.

6 Cr. L. J. 396 :
4 A. L. J. 790 : 27 A. W. N. 288 :
I. L. R. 30 All. 52.

—S. 195—*Power of High Court—Grant of sanction.*

Under S. 195 (6), Cr. P. C., the High Court has power to grant or revoke a sanction given or refused by a subordinate Civil Court. *Lachman Das v. Sohan Lal*.

1 Cr. L. J. 333 :
1 A. L. J. 186.

—S. 195 (6), (7)—*Power of High Court—Appeal against order of District Court granting sanction.*

An appeal lies to the High Court against an order of the District Judge granting sanction under S. 195 (6), (7), Cr. P. C. Where such order has revoked, the sanction granted by the Munsiff for prosecution under certain sections of the Penal Code but granted sanction to prosecute under other sections, it is competent to the High Court on appeal, therefrom, not only to revoke the sanction granted but also to grant the sanction refused. *Kannambath Imbichi Nair v. Manathanath Ramar Nair*.

4 Cr. L. J. 164 :
I. L. R. 29 Mad. 122.

—S. 195—*Power of Magistrate—Sanction—Cognizance of a cause by the Magistrate.*

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Where on complaint, a sanction is subsequently obtained, any action taken, by Magistrate before the grant of the sanction is illegal but that does not prevent the Magistrate from taking cognizance of the complaint after the sanction has been obtained. *In re : Manjnath Shivnath*.

9 Cr. L. J. 183 :
10 Bom. L. R. 1053.

—S. 195—*Power of Magistrate.*

Where a person is charged with several offences, some of which are not triable by any Magistrate for want of sanction, there is no objection to the Magistrate proceeding with the trial of such offences as may be separately charged and in respect of which no sanction is necessary, even though he may not be competent to try all the offences, if sanction has been in fact obtained in respect of the other two. *Kristna Pillai v. Krishna Konan*.

7 Cr. L. J. 6 :
17 M. L. J. 559 : 31 Mad. 43 :
3 M. L. T. 113.

—S. 195 (1) (b)—*Power of Magistrate—Disqualification of Magistrate to take cognizance of offence when information addressed to Police.*

That S. 195 (1) (b), Cr. P. C., does not deal with or refer to such offences under S. 211, Penal Code, as are not committed in, or in relation to any proceeding in any Court. Therefore, where a false charge is made to the Police and on the Police report, the Magistrate directs prosecution of the informer, he is not disqualified from taking cognizance of the case himself. *Karim Bakhsh v. Emperor*.

2 Cr. L. J. 67 :
6 P. L. R. 278.

—S. 195—*Prima facie case—Sanction proceedings.*

Before granting sanction to prosecute under S. 195, Cr. P. C., the Judge ought to satisfy himself whether there is a *prima facie* case against the person as to whom sanction to prosecute is asked. The question whether the applicant is guilty cannot be decided in sanction proceedings where the question is not whether guilt is proved (before trial), but whether there are *prima facie* grounds for removing a bar to the institution of Criminal proceedings in which the question of guilt can be determined. *In re : Raoji Sakharam*.

2 Cr. L. J. 611 :
7 Bom. L. R. 732.

—S. 195—*Prima facie case—Sanction granted by Judge who did not hear case, whether bad.*

Where there is a *prima facie* strong case for granting sanction, the fact that such sanction is granted by a Judge who did not hear the case is no ground for revoking the sanction or for holding that the sanction is bad. *Naihu Ram v. Barey*.

21 Cr. L. J. 235 :
55 I. C. 107 : A. I. R. 1921 Nag. 81.

—S. 195—*Prima facie case—Sanction to prosecute—Conditional sanction, illegal.*

No sanction to prosecute can be granted of provisional character in case certain conditions are satisfied in future. It is the duty of the Magistrate before granting sanction, to

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satisfy himself that there was, *at the time of the order*, a *prima facie* case against the person whose prosecution is to be *sanctioned*. *In re : Muneyya*.

15 Cr. L. J. 23 :
22 I. C. 187 : 36 Mad. 471 :
A. I. R. 1914 Cal. 589.

—S. 195—Prima facie case.

Where *A.* stated that the two defendants were partners but admitted in cross-examination that the second defendant stood guarantee for the debts borrowed by the first : *Held*, that the statements were not necessarily contradictory and there was no *prima facie* case of wilfully making contradictory statements. *Jamma Das v. Sobapathy Chetti*.

12 Cr. L. J. 545 :
12 I. C. 521 : 10 M. L. T. 278 :
1911 2 M. W. N. 259 : 21 M. L. J. 1074.

—S. 195—Prima facie case.

Where the offence alleged to have been committed, is undoubtedly an offence against public justice, punishable under S. 193, Penal Code, and possibly also under S. 199, Penal Code, and the Court in its discretion has declined to prosecute on the ground that there was not a strong *prima facie* case and that no prosecution at all is far better than a prosecution which is likely to prove abortive; the party aggrieved, cannot be allowed to prosecute merely because he feels that he has been personally dishonoured. The refusal of the Court to prosecute is final. *Ramaswami Ayyangar v. K. V. Panduranga Mudaliar*.

39 Cr. L. J. 1 :
171 I. C. 943 : 1937 M. W. N. 1070 :
1937 2 M. L. J. 757 : 46 L. W. 704 :
10 R. M. 414 : A. I. R. 1938 Mad. 173.

—Ss. 195, 476—Prima facie case—Sanction to prosecute.

All that a Court granting sanction to prosecute under Ss. 195 and 476, Cr. P. C., for offences made punishable thereby, has to see is that a *prima facie* case has been made out upon the evidence before it for inquiring further into the question whether or no any one of the offences punishable as set out in S. 195 has or has not been made out. *Kidha Singh v. Emperor*.

16 Cr. L. J. 117 :
31 I. C. 993 : 13 A. L. J. 1111 :
A. I. R. 1915 All. 345.

—S. 195—Procedure.

A complaint for an offence under S. 193, Penal Code, must state what exactly the false evidence was that was given by the accused. *Kalyanji v. Ram Deen Lala*.

26 Cr. L. J. 801 :
86 I. C. 449 : 48 M. L. J. 290 :
21 L. W. 664 : 48 Mad. 395 :
A. I. R. 1925 Mad. 609.

—S. 195—Procedure.

A Court granting sanction under S. 195 should have regard to certain rules of prudence in exercising its discretion under the section. They are:—(1) chances of conviction being remote if the prosecution is initiated, (2) the prosecution not being required in the interests of justice, being aimed at harassing an opponent, (3) the moral turpitude being slight,

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though there may be chances of conviction; (4) the granting of sanction leading to an abuse of the administration of criminal justice. In such cases, sanction should not be granted. *Palanippa Chettiar v. Ramaswami Chettiar*.

18 Cr. L. J. 289 :
38 I. C. 321 : 4 M. L. W. 615 :
20 M. L. T. 557 : 32 M. L. J. 54 :
A. I. R. 1917 Mad. 56.

—S. 195—Procedure.

A Court, in considering an application under S. 195, is not confined to the document or statement in respect of which sanction is asked or to the evidence already on record, but may take additional evidence to determine its action. *Palanippa Chettiar v. Ramaswami Chettiar*.

18 Cr. L. J. 289 :
38 I. C. 321 : 4 M. L. W. 615 :
20 M. L. T. 557 : 32 M. L. J. 54 :
A. I. R. 1917 Mad. 56.

—S. 195—Procedure.

A person who lays an information before the police is entitled to have his case determined by the Court before he is called upon to answer the charge of laying a false information. *Isser v. Emperor*.

11 Cr. L. J. 354 :
6 I. C. 415.

—S. 195—Sanction to prosecute—Procedure.

An application for sanction when made under S. 195 must be carefully considered before the sanction is given, especially when the application is on behalf of an old offender in jail and is directed against a Sub-Inspector of Police. *Iqbal Hussain v. Wilayat Hussain*.

17 Cr. L. J. 93 :
32 I. C. 685 : A. I. R. 1916 All. 318.

—S. 195—Procedure before complaint.

Before taking action against a person for fabrication of false evidence, it is necessary that he should be given an opportunity to substantiate his allegations. *Balijeppalli Seshayya v. Balijeppalli Subbarayudi*.

26 Cr. L. J. 1589 (a) :
90 I. C. 661 : 1925 M. W. N. 470 :
A. I. R. 1925 Mad. 1157.

—S. 195—Procedure—Complaint dismissed as false—Proceedings under S. 211, Penal Code.

Where a Magistrate dismissed a complaint as false and is of opinion that the complainant ought to be proceeded against under S. 211, Penal Code, the proper procedure is to make a complaint under S. 195, Cr. P. C., and to hold inquiry himself and commit the complainant to the Court of Session for trial under S. 211, Penal Code. *Ambika Singh v. Emperor*.

27 Cr. L. J. 987 :
96 I. C. 651 : 5 Pat. 450 :
7 P. L. T. 716 : A. I. R. 1926 Pat. 368.

—S. 195—Procedure—Contradictory statements—Duty of Court.

In granting sanction to prosecute a witness for making two contradictory statements, if his explanation, which is correct, is not put forward first and another considered explanation is put instead, the one afterwards put must be considered an after-thought, and no notice should be taken of it, but that question must be decided by the trying Magistrate and all possible consideration should be given in order

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to see whether they cannot be reconciled and whether the obvious explanation may not have been in some way delayed by a confusion of mind or any other doubtful circumstance, the trying Magistrate being the proper tribunal to consider the argument if it is advanced before him. *Valias Lalji Ramji v. Sutar Arjan Punja*.
7 Cr. L. J. 136.

———**S. 195—Procedure—Dual kind of inquiry—Right procedure.**

Where a Sub-Judge gave notice to the accused to show cause why sanction should not be granted, under S. 195 for his prosecution but at the inquiry raised the issue whether sanction ought to be granted or case committed to the Sessions, and finally passed an order of committal: *Held*, that the procedure followed by the Sub-Judge in holding a dual kind of inquiry is not what is contemplated by the Cr. P. C. If he thought that this was a matter in which he ought to pass an order of committal, instead of granting a sanction to prosecute, he ought to have proceeded from the beginning under S. 476. *In re : Sitaram Shivrambhat*.

1 Cr. L. J. 746 :
6 Bom. L. R. 578.

———**S. 195—Procedure—Duty of prosecution.**

Upon a complaint being filed on the strength of the sanction as it stands, it will be for the prosecution to satisfy the Court that the sanction is not being taken advantage of by the District Magistrate against the wish or without the authority of the person in whose favour it was originally granted. *Hari Pado Mozamdar v. Lachmi Narain Marwari*.

13 Cr. L. J. 551 :
15 I. C. 967 : 15 O. C. 177.

———**S. 195—Procedure—Examination of witnesses on commission.**

For the purposes of an enquiry made by a Civil Court under the provisions of S. 195, the examination of witnesses on commission is permissible. *Dulloo Singh v. Deputy Inspector-General of Police, C. I. D., Bengal*.

23 Cr. L. J. 138 :
66 I. C. 570 : 49 Cal. 551 :
A. I. R. 1922 Cal. 412.

———**S. 195—Procedure.**

In making a complaint of an offence under S. 193 of the Penal Code, a Court should quote the passages in the statement of the accused in respect of which the complaint is made. *Dwarka Prasad v. Makund Sarup*.

26 Cr. L. J. 1506 :
90 I. C. 290 : 24 A. L. J. 122 :
A. I. R. 1926 All. 21.

———**S. 195—Procedure—Object of.**

The procedure under S. 195, Cr. P. C. is necessary in order to avoid the risk of vexatious charges designed, to harass and annoy the persons against whom they are directed. Unless this has been borne in mind, the Court's use of discretion cannot be regarded as judicial. The remoter the prospect of any public purpose being served the greater is the decree to which the Court should insist on ordinary evidence in support of the

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charge. *Munuswamy Mudaliar v. Rajaratnam Pillai*.

24 Cr. L. J. 340 :
72 I. C. 340 : 16 L. W. 505 :
45 Mad. 928 : 44 M. L. J. 774 :
A. I. R. 1923 Mad. 136.

———**S. 195—Procedure—Penal Code (Act XLV of 1860), Ss. 211, 500—False charge—Defamation—Sanction, refusal of, for prosecution under S. 211, Penal Code—Process, issue of, under S. 500 on same facts, legality of.**

A Court should not issue process for an offence under S. 500, Penal Code, when, on the same facts, it refuses to sanction prosecution for an offence under S. 211, Penal Code. *Profulla Kumar Ghose v. Harendra Nath Chatterjee*.

18 Cr. L. J. 377 :
38 I. C. 761 : 21 C. W. N. 253 :
25 C. L. J. 445 : 44 Cal. 970 :
A. I. R. 1917 Cal. 708.

———**S. 195—Procedure—Pleader for accused, prosecution of, while proceeding pending, advisability of.**

The prosecution of a Pleader defending an accused person for abetment of giving of false evidence while the trial is pending, and before the evidence of the witnesses instigating to give false evidence has been appreciated by the Court, is inadvisable. If such a prosecution is to be started, it ought to be started after the principal proceeding, in relation to which the offence is said to have been committed, has terminated. *In re : Vasudeo Ramchandra Joshi*.

24 Cr. L. J. 171 :
71 I. C. 523 : 24 Bom. L. R. 1153 :
A. I. R. 1923 Bom. 105.

———**S. 195—Procedure—Prosecution, essentials for—Revision—Interference.**

No prosecution can be instituted in respect of offences specified in S. 195, Cr. P. C. which have been committed in or in relation to a proceeding in a Court unless the Court itself prefers a complaint and the person who is the subject of the complaint has a definite right of appeal to a superior Court against the institution of the complaint, it is not the function of the High Court, unless the circumstances are altogether outside the ordinary, to examine in revision the merits of such a complaint with a view to discovering whether it is likely to result in conviction. To do so, is the task of the Magistrate before whom the complaint is laid and there is nothing to prevent him from dismissing it without issuing process to the accused person. Similarly when a Magistrate presiding over a Court and a Court of Appeal are agreed that a prosecution is necessary, then unless the case is one which has peculiar features, it would be extremely difficult for the High Court in revision to declare that the prosecution is not in the interests of public policy. *Behram v. Emperor*.

27 Cr. L. J. 776 :
95 I. C. 312 : 7 Lah. 108 :
27 P. L. R. 314 : A. I. R. 1926 Lah. 305.

———**S. 195—Procedure—Prosecution for perjury.**

Under the Cr. P. C., as amended by Act XVIII of 1923, the Court desiring to initiate proceed-

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ings for perjury has no alternative but to prefer a complaint in writing and to forward it to a Magistrate of First Class having jurisdiction to entertain it. *Emperor v. Qadir Bhakhsh Shah*. 27 Cr. L. J. 98 :

91 I. C. 530 : 1 L. Cas. 477 : 6 Lah. 134 :
A. I. R. 1925 Lah. 312.

———S. 195—*Procedure—Same facts constituting offence under more than one section—Procedure.*

Where a given set of facts constitutes an offence under more than one section of the Penal Code, proceedings should be taken with respect to the more serious offence. *Mi Ngwe v. Mi Chit*. 13 Cr. L. J. 576 :

15 I. C. 992 : U. B. R. 1912 I, 134.

———S. 195—*Procedure—Sanction—Order granting sanction, forum of.*

An order granting sanction to prosecute for giving false evidence ought to specify the statement alleged to be false. *Obiter dictum*.—It is no offence to make a false statement to the Police. *Po Yin v. Emperor*.

18 Cr. L. J. 98 :
37 I. C. 306 : 9 Bur. L. T. 203 :
A. I. R. 1917 L. Bur. 82.

———S. 195—*Procedure—Sanction to prosecute.*

Before granting a sanction to prosecute, the provisions of the Cr. P. C., must be strictly followed. A vernacular order of an executive officer merely bearing some illegible initials directing a Subordinate Magistrate to take up a case under S. 182, I. P. C. is not a sufficient compliance with the requirements of law. *Kala Khan v. Crown*. 9 Cr. L. J. 190 :

211 P. L. R. 1908 : 46 P. W. R. 1908.

———S. 195—*Procedure—Sanction to prosecute.*

In a proceeding under S. 195, a Sessions Judge sitting as a Court of Appeal proceeded to hold thorough and searching enquiry, in the course of which he examined on oath the person against whom the sanction was sought and recorded a quantity of other evidence, and having done this, he rejected the application for sanction : *Held*, that the Sessions Judge was right in adopting the procedure which he did. *Rahmatullah v. Emperor*. 17 Cr. L. J. 29 :

32 I. C. 157 : A. I. R. 1916 All. 97.

———S. 195—*Procedure.*

The order granting sanction should express no definite pronouncements or conclusions on the matter to be enquired into that may prejudice the accused, but the Court should apply its mind fully to the materials placed before it. *Planiappa Chettiar v. Ramaswami Chettiar*.

18 Cr. L. J. 289 :
38 I. C. 321 : 4 M. L. W. 615 :
20 M. L. T. 557 :
32 M. L. J. 54 :
A. I. R. 1917 Mad. 56.

———S. 195—*Procedure—When competing complaints.*

When there are competing complaints, it is manifestly within the discretion of the Magistrate on a consideration of the circumstances

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of the particular case, to determine in which he should issue process first and not less so when he has made an inquiry under S. 202, Cr. P. C., in one of them which necessarily involves also a consideration of the other. *Parmanand Brahmchari v. Emperor*.

30 Cr. L. J. 354 :
116 I. C. 46 : I. R. 1929 Pat. 286 :
10 P. L. T. 618 :
A. I. R. 1930 Pat. 30.

———Ss. 195, 476—*Procedure—Distinction between proceedings under two sections.*

Proceedings under S. 195 are distinct from those under S. 476. The former are of a summary character, and a Court proceeding under that section is not bound to hold an inquiry. In the case of the latter, the inquiry has to be as nearly as under Chap. XVIII of the Code. *In re : Sitaram Shivrambhat*.

1 Cr. L. J. 746 :
6 Bom. L. R. 578.

———S. 195 (1) (b)—*Procedure—Penal Code Ss. 182, 211—False charge of theft made to Police—Complaint against informant under Ss. 182 and 211, I. P. C.—Duty of Magistrate.*

The offence of making a false charge of theft in an information laid at a Police station falls not only under S. 182, but also under S. 211, I. P. C., and as sanction is not necessary in order to proceed against the informant under the latter section, a Magistrate should proceed under that section when the complaint is under both sections, *viz.*, under Ss. 182 and 211, I. P. C. *Mi Ngwe v. Mi Chit*.

13 Cr. L. J. 576 :
15 I. C. 992 : U. B. R. 1912 I, 134.

———S. 195 (1) (b)—*Procedure—Penal Code (Act XLV of 1860), S. 182—False information to Police—Complaint by Police against informant—Petition by informant before Magistrate showing cause against conviction—Trial of informant before trying complaint by him, legality of.*

When a Magistrate has once properly taken cognizance of an offence, anything that may happen subsequently cannot bring into operation S. 195 (1) (b) so as to deprive him of jurisdiction to dispose of the matter in accordance with law. A lodged an information at a Police station to the effect that some money and documents had been stolen from a box in his house. The Sub-Inspector after investigating the matter, found the information to be false and he complained to the Sub-Divisional Magistrate that A had committed an offence punishable under S. 182, Penal Code. The Magistrate issued process under S. 182 and on the date fixed, A filed a petition stating that the information which he had given was true and that he could prove it to be true. The trial proceeded with the result that A was convicted of the offence charged. It was contended in revision that the Magistrate should have treated A's petition as a complaint and proceeded with this petition before proceeding with the trial of A: *Held*, that as the Magistrate had taken cognizance of the complaint under S. 182, Penal Code, he could proceed with the

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trial of A and the conviction was not bad.
Gonour Singh v. Emperor.

31 Cr. L. J. 1200 :
127 I. C. 287 : A. I. R. 1930 Pat. 505.

—S. 195 (1) (b)—*Proceeding—Proceedings under S. 195 (1) (b), if judicial.*

The proceeding contemplated in S. 195 (1) (b), is a judicial proceeding. *Government Advocate, Bihar v. Kumar Singh.*

39 Cr. L. J. 314 :
173 I. C. 432 : 16 Pat. 571 :
19 P. L. T. 51 : 10 R. P. 408 :
4 B. R. 274 : A. I. R. 1938 Pat. 83.

—S. 195 (1) (3)—*'Produced,' meaning of—Alleged forged document used in possession proceedings—Prosecution for antecedent forgery and user—Sanction.*

On the application of the accused, who were parties to a proceeding under S. 145, Cr. P. C. an alleged forged document, which had been registered before a Sub-Registrar, was called for by the Magistrate in the said proceedings from the record of a case instituted against a stamp-vendor and was made use of by their Pleader in the course of his argument and referred to by the Magistrate in his judgment : *Held*, (1) that the document was 'produced' within the meaning of S. 195 (1) (c), Cr. P. C., in the proceedings and the accused could not, therefore, be prosecuted in respect of its antecedent forgery and antecedent user before the Sub-Registrar without the sanction of the Magistrate ; (2) that although such sanction was not necessary for the prosecution of the accessories to the crime who were not parties to the proceedings, it was not desirable that proceedings should be taken piecemeal against them while there was still a bar to the prosecution of the principal offenders. *Nalini Kanta Laha v. Anukul Chandra Laha.*

18 Cr. R. J. 522 :
39 I. C. 490 : 25 C. L. J. 255 :
21 C. W. N. 640 : 44 Cal. 1002 :
A. I. R. 1918 Cal. 792.

—S. 195 (1) (c)—*'Produced in the Court,' meaning of.*

A document is 'produced' in Court within the meaning of S. 195 (1) (c) of the Cr. P. C., though it is produced only before the *Munsarim* of the Court for the purpose indicated in O. VII, R. 17, Cr. P. C., and is never called to the Court. *Rameshwar Lal v. Emperor.*

28 Cr. L. J. 668 :
103 I. C. 204 : 25 A. L. J. 555 :
49 All. 898 : A. I. R. 1927 All. 571.

—S. 195—*Proof required.*

Prosecutions for perjury should not be launched unless there is some proof likely at least to satisfy a Court that the statements made by the person charged are false statements. *Yar Mohammad v. Bansil Singh.*

34 Cr. L. J. 105 :
141 I. C. 146 (2) : I. R. 1933 All. 51 :
A. I. R. 1932 All. 674.

—S. 195—*Prosecution—Procedure.*

Where a person is required to show cause why he should not be criminally prosecuted,

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although he is not upon his trial upon a criminal charge, he is in the position of a person accused of committing an offence. His examination, therefore, should not be on oath, nor should he be cross-examined but any questions put to him should be put with the object of enabling him to explain circumstances which appear to require explanation. *Thaxeni v. Nga Sau.*

14 Cr. L. J. 422 :
20 I. C. 406 : U. B. R. 1913 I. 166.

—S. 195—*Prosecution for defamation—Refusal to sanction prosecution, whether bar to prosecution for defamation.*

The dismissal of an application for sanction under S. 195, Cr. P. C., to prosecute for defamation in respect of a statement made in a judicial proceeding is no bar to the institution of a prosecution for defamation. *Satis Chandra v. Ram Dayal.*

22 Cr. L. J. 31 :
59 I. C. 143 : 32 C. L. J. 91 :
24 C. W. N. 982 : 48 Cal. 338 :
A. I. R. 1921 Cal. 1.

—S. 195—*Prosecution for perjury.*

A false statement of an accused in an affidavit in support of his transfer application is not immune from prosecution and can be the subject-matter of a charge for perjury. *Emperor v. Qadir Bakhsh Shah.*

27 Cr. L. J. 98 :
91 I. C. 530 : 6 Lah. 134 :
A. I. R. 1925 Lah. 312.

—Ss. 195, 109, 438—*Prosecution for perjury—Magistrate exercising jurisdiction in one district, whether can delegate powers to Magistrate in another district—False statements made in ultra vires proceedings.*

A Magistrate exercising jurisdiction in one district has no jurisdiction to make an enquiry into the sufficiency of security required under S. 109, Cr. P. C., by a Magistrate of another district. Therefore, persons making false statements in the course of such enquiry cannot be prosecuted for perjury under S. 195, Cr. P. C. *Khuda Bakhsh v. Emperor.*

18 Cr. L. J. 130 :
37 I. C. 482 : 52 P. W. R. 1916 Cr. :
A. I. R. 1917 Lah. 305.

—S. 195—*Provision is imperative.*

Provision in S. 195 is imperative and it affects the jurisdiction of Courts to take cognizance of an offence under S. 211 except as set forth therein. *Ramdhari Gope v. Emperor.*

29 Cr. L. J. 660 :
110 I. C. 212 : 9 P. L. T. 236.

—S. 195—*Public servant—Meaning of—"Public servant concerned" means person holding particular post and not particular individual, who passed order.*

The words "public servant concerned" in S. 195 (1) do not mean a particular individual

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but the person at the time holding a particular post. *King-Emperor v. Chhedi Singh*.

40 Cr. L. J. 508 :
180 I. C. 769 : 1939 O. W. N. 337 :
1939 O. L. R. 206 :
11 R. O. 260 :
A. I. R. 1939 Oudh 160.

—S. 195—Public servant.

The public servant referred to in S. 182 of the I. P. C., is the Public servant to whom the information is given and not the public servant whom it is sought to injure, and it is the former whose sanction under S. 195 (1) (a) is necessary. *Nga Kyaw Zan v. Nga Kyi Dan*.

17 Cr. L. J. 59 :
32 I. C. 651 : U. B. R. 1915 II, 91 :
A. I. R. 1916 U. Bur. 15.

—S. 195 (1) (a)—‘Public servant,’ meaning of—‘Public servant concerned,’ meaning of—False information given to Sub-Inspector—Complaint filed by his successor-in-office—Validity of.

The proper construction of ‘public servant concerned’ in S. 195 (1) (a), is the public servant holding for the time being the office held by the public servant to whom the false information was given. The complaint filed by the successor-in-office of Sub-Inspector to whom false information was given is, therefore, a valid complaint under Cl. (a) of S. 195 (1). *Jot Narain Thakur Prasad v. Emperor*.

40 Cr. L. J. 659 :
182 I. C. 412 :
12 R. S. 7 : 1939 Kar. 656 :
A. I. R. 1939 Sind 169.

—S. 195—Reasons.

An order granting sanction to prosecute should show reasons why the sanction is granted. *Aung Gyi v. Emperor*.

18 Cr. L. J. 97 (b) :
37 I. C. 305 : 9 Bur. L. T. 202 :
A. I. R. 1917 L. Bur. 24.

—S. 195 (1) (b)—Registrar of High Court—Whether competent to make complaint—High Court directing Deputy Registrar to make complaint—No order specifically authorising such officer—Complaint, validity of.

The Deputy Registrar is the principal officer of the Judicial Branch of the High Court Office. In that capacity he has to perform the requisite ministerial work in connection with the judicial business of the High Court. He would, therefore be deemed to be an officer appointed to file complaints as contemplated in S. 195 (1) (b). Where the order of the Criminal Division Bench directs the complaint to be made that order, by necessary implication, must be treated as having been addressed to the head of Judicial Branch of the High Court Office. By practice in the Nagpur High Court, the Deputy Registrar (Judicial) is the officer to fulfil the requirements of S. 195 (1) (b), Cr. P. C. The mere fact that the authority is not given in writing is immaterial. In any case the irregularity, if any, cannot in view of S. 537, impair the validity of the decision. *Sheoshanker Dhondbaji Mahar v. Emperor*.

41 Cr. L. J. 697 :
188 I. C. 885 : 1940 N. L. J. 165.
13 R. N. 14 :

—S. 195 (6)—Remand—Powers of superior Court.

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The powers of revision exercisable by an Appellate Court under S. 195 (6), Cr. P. C., are confined to revoking or granting the sanction given or refused by a subordinate Court. It has no jurisdiction to make an order of remand even when the order appealed against was passed by a Civil Court. *Sit Taw v. Maung Ye*.

17 Cr. L. J. 222 :
34 I. C. 334 : 9 B. L. T. 128 :
A. I. R. 1916 L. Bur. 78.

—S. 195 (1) (c) (4)—Revenue Court—Whether includes Mukhtiarkar—Mukhtiarkar holding enquiry in mutation proceeding in Revenue Court—Offence committed during such proceeding—Complaint of Mukhtiarkar, if necessary.

A Mukhtiarkar holding an enquiry in mutation proceedings in a Revenue Court within the meaning of S. 195 (1) (c), though his proceedings are not judicial proceedings within the meaning of S. 196, Bombay Land Revenue Code. Hence where offences under Ss. 193 and 467, I. P. C., are committed during mutation proceedings, the complaint of the Mukhtiarkar is necessary under S. 195 (1) (b) and (c), before criminal proceedings could be taken for offences under Ss. 193 and 467, I. P. C. *Assudomul Ramandas v. Jhamandas Hotchand Matti*.

41 Cr. L. J. 861 :
190 I. C. 222 : 1940 Kar. 435 : 13 R. S. 73 :
A. I. R. 1940 Sind 100.

—S. 195—Revision—Presidency Small Cause Court, power of, to administer oath—High Court, power of, to interfere with order of Presidency Small Cause Court refusing to sanction prosecution.

Under S. 195, a High Court is the superior Court of a Presidency Small Cause Court and has power to deal with the order of that Court refusing to grant sanction for prosecution. Where leave to sue is necessary to give a Court jurisdiction, an application for such leave is a stage in a judicial proceeding. A Presidency Small Cause Court has ample jurisdiction to administer oath to a party when he makes an application for leave to sue and such oath, when administered, is an oath taken in the course of a judicial proceeding. *Chattu Gope v. Budhu Lal*.

17 Cr. L. J. 504 :
36 I. C. 472 : 43 Cal. 597 :
A. I. R. 1916 Cal. 103.

—S. 195—Revision.

The question of the propriety of the prosecution is in the first instance a matter for the discretion of the courts affected, and the High Court in revision will not lightly interfere with this discretion. *Hiralal v. Emperor*.

33 Cr. L. J. 860 :
139 I. C. 543 : 13 P. L. T. 370 :
I. R. 1932 Pat. 245 : A. I. R. 1932 Pat. 243.

—S. 195 (6)—Revision.

S. 195 creates a special jurisdiction and provides in Cl. 6 the machinery for the correction of possible errors committed by the Primary Court. Consequently the interference by the High Court must be attributed neither to S. 115, C. P. C., nor to S. 435 and 439, Cr. P. C., but to S. 195 (6) of the latter Code. *Budhu Lal v. Chattu Gope*.

18 Cr. L. J. 497 :
39 I. C. 465 : 21 C. W. N. 269 : 5 C. L. J. 193 :
44 Cal. 816 : A. I. R. 1918 Cal. 850.

Cr. P. CODE (1898), S. 195**—S. 195 (6)—Revision.**

Where sanction to prosecute given by a Munsif is confirmed on appeal by the District Judge, the High Court has power to interfere with the order of the District Judge under S. 195 (6) of the Cr. P. C. *Padarath Singh v. Ratan Singh*.

21 Cr. L. J. 145 :
54 I. C. 673 : 5 P. L. J. 23 : 1920 Pat. 140 :
1 P. L. T. 458 : A. I. R. 1920 Pat. 419.

—S. 195 (6), (7)—Revision—Order of Sessions Judge confirming order of Subordinate Judge refusing to grant sanction, if can be revised by High Court—High Court's power of superintendence, exercise of—Government of India Act, 1915 (5 and 6 Geo. V, C. 61), S. 107—Civil Procedure Code Act (V of 1908), S. 115.

The petitioner applied to a Subordinate Judge for sanction to prosecute the opposite party for using as genuine a certain document which they alleged was a forgery. The Subordinate Judge having refused to grant sanction, the District Judge was moved and he also refused to sanction on ground that there was no clear *prima facie* case against the opposite party. The petitioner then moved the High Court against the order of the District Judge refusing the sanction: *Held*, that the application to the High Court was not maintainable either under S. 107, Government of India Act, or under S. 115, C. P. C. or under Sub-ss. (6) and (7) of S. 195, Cr. P. C. An application for sanction to prosecute is made under S. 195, Cr. P. C. The fact that it is made to a Civil Court is immaterial. A section of the C. P. C. cannot be invoked to deal with a sanction granted under a section of the Cr. P. C. *Sarat Chandra v. Ram Sashi Roy*.

23 Cr. L. J. 665 :
69 I. C. 153 : 26 C. W. N. 1016 :
36 C. L. J. 265 : A. I. R. 1923 Cal. 45.

—S. 195 (6)—Revocation—Application for Limitation.

An application to a superior Court to revoke a sanction granted by an inferior Court is not an appeal coming within the purview of Art. 154 of Sch. I to the Limitation Act, and such applications are not governed by the periods of limitation provided in the Limitation Act. *Bapu v. Bapu*. (F. B.).

13 Cr. L. J. 209 :
14 I. C. 305 : 11 M. L. T. 367 :
1912 M. W. N. 499 : 22 M. L. J. 419.

—S. 195 (6)—Revocation—Difference between Judges of High Court Bench—Procedure.

Where an application is made to the High Court, under S. 195, Cl. (6) to revoke a sanction granted by a lower Court or to give a sanction refused by it, and the Judges of the High Court, composing the Bench, differ in opinion, the provision described in Cl. 36 of the Letters Patent is to be followed, i. e., the opinion of the Senior Judge should prevail: *Held*, by the Division Bench, *Bapu v. Bapu*. (F. B.).

13 Cr. L. J. 209 :
14 I. C. 305 : 11 M. L. T. 367 :
1912 M. W. N. 499 : 22 M. L. J. 419.

Cr. P. CODE (1898), S. 195**—S. 195 (6)—Revocation—Order refusing to revoke sanction, nature of.**

Held, by the Full Bench.—An order refusing to revoke a sanction is akin to an order granting a sanction and it is open to a party dissatisfied with the order to apply to a superior Court, under S. 195, Cl. (6). *Bapu v. Bapu* (F. B.).

13 Cr. L. J. 209 :
14 I. C. 305 : 11 M. L. T. 367 :
1912 M. W. N. 499 : 22 M. L. J. 419.

—S. 195 (5)—Revocation—Sanction by Munsif—Revocation by District Judge—High Court's power of interference.

The High Court has no power to interfere under S. 195, Cr. P. C., with a District Judge's order revoking sanction to prosecute granted by a Munsif. Nor can it interfere under S. 622, C. P. C., where the District Judge has revoked sanction for reasons relating to the merits, and has not exercised a jurisdiction not vested in him by law or acted illegally or with material irregularity. *Hami-juddi Mondol v. Damodar Ghose*.

4 Cr. L. J. 168 :
10 C. W. N. 1026.

—S. 195—Revocation of sanction, application for, effect of.

An application for the revocation of sanction is no bar to the institution by the complainant of proceedings in pursuance of the sanction.

Where such proceedings are instituted, it is open to the Court to stay them pending the decision of the application for revocation. *Ram Saran Singh v. Chandra Mahan Saha*.

24 Cr. L. J. 94 :
71 I. C. 222.

—S. 195—Revocation of sanction—Principle.

A sanction to prosecute granted by the Trial Court against a person instituting criminal proceedings ought not to be lightly set aside because of the mere existence of a possibility of the charge and the evidence adduced in support of it being true. *Brij Kumar v. Manna Lal Misra*.

24 Cr. L. J. 217 :
71 I. C. 681 : 25 O. C. 153 : 9 O. L. J. 662 :
A. I. R. 1922 Oudh 18.

—S. 195 (7)—Revocation of sanction.

On a petition to the High Court for the revocation of a sanction for prosecution granted by a Subordinate Judge, the High Court having formed a firm opinion as to the impropriety of the sanction, set it aside, though it felt that the proper course for the petitioner should have been to apply to the District Judge under S. 195 (7), Cr. P. C. *Raj Kumar Deoty v. Satish Chandra Ghosh*.

18 Cr. L. J. 735 :
40 I. C. 735 : 2 C. W. N. 753 :
A. I. R. 1918 Cal. 791.

—S. 195—Sanction.

A Court can give a sanction under S. 195, Cr. P. C. even if no application is made to the Court for it. *In re : Sangappa Gudigeppa*.

16 Cr. L. J. 107 :
27 I. C. 155 : 16 B. L. R. 947 :
A. I. R. 1914 Bom. 230.

—S. 195—Sanction.

A prosecution for attempting to fabricate

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false evidence before District Judge, when acting in this capacity, cannot lie without a sanction under S. 195, Cr. P. C. *In re : Nanchand Shivchand.* 14 Cr. L. J. 72 : 18 I. C. 408 : 15 Bom. L. R. 45.

———S. 195—Sanction, absence of.

The absence of the sanction required by S. 195, Cr. P. C., is not a defect which can be cured by the provisions of S. 537. *Jaswant Singh v. Emperor.* 25 Cr. L. J. 721 : 81 I. C. 209 : 1 L. Cas. 419 : A. I. R. 1925 Lah. 139.

———S. 195—Sanction.

For a prosecution under Ss. 193 and 120-B of the Penal Code in respect of fabrication of false evidence, in conspiracy for the purpose of its being used in a proceeding before a Magistrate, previous sanction of the Magistrate is necessary under S. 195 (1). *Emperor v. Mathuranath De.* 33 Cr. L. J. 657 : 139 I. C. 89 : I. R. 1932 Cal. 561 : A. I. R. 1932 Cal. 850.

———S. 195—Sanction.

Sanction, if may be given to one not party in proceeding—Sanction, if may be given by successor of Magistrate before whom offence was committed. *Rati Jha v. Emperor.* 13 Cr. L. J. 201 : 14 I. C. 201 : 15 C. L. J. 509 : 16 C. W. N. 623 : 39 Cal. 463.

———S. 195—Sanction—Illegality of.

The prosecution of a person under a sanction not properly given and in a case where there was no application for sanction is illegal and cannot be maintained. *Mulfat Ali Sheikh v. Emperor.* 3 Cr. L. J. 112 : 2 C. L. J. 619 : 10 C. W. N. 222.

———S. 195—Sanction—Jurisdiction—Penal Code (Act XLV of 1860), Ss. 182, 211—Application in Judge's Court—False information—Prosecution sanctioned by Judge.

The appellant pending an insolvency proceeding against him in the District Judge's Court, applied to the District Judge that the respondent had misappropriated certain things belonging to him. The District Judge forwarded the petition to the Magistrate with the result that the respondent was arrested and his house searched. Eventually the District Magistrate discharged the respondent. The respondent then applied to the District Judge for sanction to prosecute the appellant under Ss. 182 and 211, Penal Code : *Held*, that the District Judge was a public servant to whom the alleged false information was given and that he had before him materials sufficient to warrant his granting sanction for the institution of proceedings under S. 182. With regard to S. 211, District Judge was not the Court in which the Criminal Proceedings were instituted and it could not be said that the offence of causing to be instituted criminal proceedings without just or lawful ground was committed in relation to a proceeding pending in the

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Court of the District Judge. *Muhammad Fakhruddin v. Bhikhi Ram.* 15 Cr. L. J. 360 : 23 I. C. 728 : 12 A. L. J. 278 : 36 All. 213 : A. I. R. 1914 All. 397.

———S. 195—Sanction—Legality.

A sanction for prosecution which is not addressed to any one in particular, and does not, as far as practical, specify the Court or other place in which and the occasion on which the offence was committed, is not a legal sanction under S. 195, Cr. P. C. *Gopal v. Emperor.* 16 Cr. L. J. 289 : 28 I. C. 513 : 11 N. L. R. 36 : A. I. R. 1915 Nag. 58.

———S. 195—Sanction.

Magistrate proceeding to the spot to prevent breach of peace—Complaint against Magistrate for acts committed in excess of powers necessary. Sanction of Local Governments. *C. S. Rajagopala Iyer v. Palaniswami Goundan.* 37 Cr. L. J. 154 : 159 I. C. 692 : 68 M. L. J. 526 : 41 L. W. 668 : 1935 M. W. N. 590 : 8 R. M. 539 (1) : A. I. R. 1935 Mad. 319.

———S. 195 — "Sanction", meaning and essentials of—Direction to prosecute, whether sanction.

It is not essential to the validity of a sanction under S. 195, Cr. P. C. that it should be addressed to a particular complainant for it only removes the bar put by the section on the jurisdiction of the Court. But sanction implies the existence of a person who desires to prosecute, and it is not desirable that it should be so indefinite as to be capable of being used by any possible prosecutor. A sanction is quite distinct from a direction to prosecute. A sanction leaves the private prosecutor to exercise his unfettered discretion as to whether he will proceed or not. An order expressly ordering a prosecution is, therefore, not a sanction. The order of a Magistrate ordering a prosecution *suo motu* is not a sanction. *Dodumal v. Emperor.* 17 Cr. L. J. 305 : 35 I. C. 481 : 10 S. L. R. 65 : A. I. R. 1916 Sind 94.

———S. 195—Name of the person to whom it is granted.

The sanction contemplated by S. 195, Cr. P. C. is not a sanction to any particular person to prosecute but a sanction to the Criminal Courts concerned to take cognizance of certain offences specified in that section of which the Criminal Courts cannot take cognizance except with the previous sanction or on the complaint of the authority described in that section. The sanction, whilst it is in force, restores to the Criminal Courts a jurisdiction of which the same section deprives them in respect of specified offences and need not even name the accused. *In re : Mowjee Liladhar.* 3 Cr. L. J. 227 : 8 Bom. L. R. 32.

———S. 195—'Sanction', meaning of.

A Police constable A., prepared a *Panchnama* in regard to an offence said to have been committed by a certain *Talukdar* under

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the Arms Act. The investigation into the alleged offence was not made by A. but by the village constable who sent the case up to the Sub-Inspector, by whom in turn it was committed to a Magistrate. The Magistrate found that certain recitals in the *Panchnama* were false and that the charge imputed to the *Talukdar* was false. He discharged the *Talukdar* and directed the prosecution of A. under S. 211, Penal Code. A. did not appear before the Magistrate in the case against the *Talukdar*. A. applied to the Sessions Judge, who found that the order of Magistrate was an order for sanction under S. 195, but that no such sanction was necessary in the circumstances of the case before A. could be prosecuted: *Held*, that A. could not be prosecuted without preliminary sanction because: (a) the offence imputed to A. was the instigation of the false charge against the *Talukdar* which took the form of a trial; (b) even if the offence of instigation was committed before the proceeding in Court was begun, the instigation was not committed in relation to the proceeding held by the Magistrate against the *Talukdar*. *In re: Khanderao Yeshwant*.

13 Cr. L. J. 527 :
15 I. C. 799 : 14 Bom. L. R. 362.

———S. 195—Sanction, necessity of.

Charges under Ss. 352 and 353, I. P. C. are not such as require any sanction for initiation of proceedings. *The Deputy Legal Remembrancer v. Arjun Pramanick*.

1 Cr. L. J. 525 :
8 C. W. N. 586 : I. L. R. 31 Cal. 664.

———S. 195—Sanction—Necessity of—Penal Code (Act XLV of 1860), Ss. 467 to 471—forgery committed by person not party to proceedings.

No sanction under S. 195, Cr. P. C. is required, in respect of a forged document, when the person producing it as evidence is not a party to the proceedings. *Sessions Judge of Cuddapah v. Condeti Obalesu*.

15 Cr. L. J. 242 :
22 I. C. 194 : 26 M. L. J. 220 :
A. I. R. 1914 Mad. 622.

———Ss. 195 (1), (b), 438—Sanction, necessity of—Information to Police followed by complaint to Magistrate.

A, B and C gave information to the Police in respect of certain offences committed by X and others. C subsequently petitioned the Sub-Divisional Magistrate against the conduct of the Police and prayed for judicial enquiry. The case against X and others was finally withdrawn by the Public Prosecutor, and the Police filed a complaint before the Sub-Divisional Magistrate for offences under S. 211, Penal Code against C and under 211-109 against A and B in respect of the false complaint before the Police: *Held*, (1) that as the complaint before the Police was followed by one in Court, S. 195 (b), Cr. P. C. applied, and no proceedings could be taken against C without obtaining sanction for his prosecution: (2) that although C alone had petitioned the Magistrate, sanction was required for proceedings against A and B as well, as their

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information to the Police were given for and in the interests of C, and the charges against them were for the abetment of the offence with which C was charged. *Lalbehary Singh v. Emperor*.

18 Cr. L. J. 554 :
39 I. C. 68 : 1 P. L. W. 205 :
A. I. R. 1916 Pat. 103.

———S. 195 (1), (c)—Sanction, necessity of—Forgery—Penal Code (Act XLV of 1860), ss. 463 and 467.

Where forgery is alleged to have been committed before a document was produced in a Court, sanction is required to prosecute the offender. Although S. 467, Penal Code, is not mentioned in S. 195 (c), Cr. P. C., yet S. 463, Penal Code, which is mentioned therein covers forgery for which penalty is provided under S. 467 and, therefore, sanction is necessary for a prosecution under S. 467. *Teni Shah v. Bolari Shah*. 11 Cr. L. J. 280 :
5 I. C. 879 : 14 C. W. N. 479.

———S. 195 (6)—Sanction—“Any sanction given or refused,” meaning of—Order of Sessions Judge passed on application against order of Subordinate Court—High Court’s power of interference.

The words “any sanction given or refused” under S. 195 (6) are applicable only to a sanction given or refused upon an original application, and Sub-s. (6) does not provide for interference by a Third Court. Consequently, the High Court has no power to interfere under that section with an order granting or refusing sanction passed by a Sessions Judge on an application against the order of a Subordinate Court. A High Court has, however, power to interfere with such an order of the Sessions Judge in the exercise of its revisional jurisdiction under S. 439 of the Cr. P. C. *Nazir Hasan v. Mohammad Yamin*.

23 Cr. L. J. 574 :
68 I. C. 414 : 9 O. L. J. 282 :
A. I. R. 1922 Oudh 225.

———S. 195—Sanction.

Order sanctioning prosecution does not amount to complaint. *Kalicharan v. Emperor*.

35 Cr. L. J. 789 :
148 I. C. 784 : 11 O. W. N. 473 :
6 R. O. 434 (2) : A. I. R. 1934 Oudh 186.

———S. 195—Sanction, object of.

The necessity of a sanction order is a mere barrier which has to be crossed before a Court reaches the stage of trial, and once that barrier is crossed, the jurisdiction to try the case is not taken away by the fact that barrier has subsequently been abolished or altered. *In re: Appaswamy Iyer*.

27 Cr. L. J. 84 :
91 I. C. 388 : 49 M. L. J. 276 :
1925 M. W. N. 668 : 22 L. W. 554 :
A. I. R. 1925 Mad. 1122.

———S. 195—Sanction—Perjury and its abetment during Police investigation of a theft case—Theft case ending in conviction.

The petitioners were placed for trial before a Magistrate under S. 193, Penal Code, for making and abetting the making of certain false statements during the Police investigation of a theft

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case which ended in a conviction. A sanction to prosecute the petitioners for perjury and its abetment was not obtained from the Court which had tried the theft case : *Held*, that the sanction of the Court was necessary, and without its sanction, the petitioners could not be tried. *In re : Mahadev Yadneshwar Joshi*.

13 Cr. L. J. 751 :
17 I. C. 63 : 14 Bom. L. R. 715.

S. 195—Sanction—Revocation—Forum.

An application to revoke a sanction ought to be made to the Appellate Bench as the Court which gives the sanction has no power to revoke it. *Thaddeus v. Janki Nath Saha*.

14 Cr. L. J. 572 :
21 I. C. 172 : 40 Cal. 423.

S. 195 (6)—Sanction—Revocation, application for—Forum.

An application lies to the Court of the District Judge, under S. 195 (6), Cr. P. C. for the revocation of an order of sanction passed under the earlier provisions of the aforesaid section by the Judge of a court of Small Causes exercising jurisdiction in the same district. *Chidda Lal v. Bhajan Lal*.

18 Cr. L. J. 935 :
42 I. C. 167 : 15 A. L. J. 721 :
39 All. 657 : A. I. R. 1917 All. 405.

S. 195 (6)—Sanction—Application for revocation of sanction—Superior Court, duty of—Limitation.

Inasmuch as a person against whom an order is made under S. 195, Cr. P. C. has a statutory right to ask a superior Court to re-consider the order and to revoke the same if sufficient cause is shown, the superior Court is bound to entertain an application for revocation of sanction and to deal with it on its merits, even if the application is belated. *Quære*—Whether the period of limitation for criminal appeals is applicable to a proceeding under S. 195 (6). *Sher Mohammad Khan v. Emperor*.

20 Cr. L. J. 386 :
50 I. C. 994 : 17 A. L. J. 429 :
A. I. R. 1919 All. 400.

S. 195—Sanction—Sanction of both Courts, whether necessary.

Per *Macleod, C. J.* and *Shah, J.*—In the case of an alternative charge under S. 193, Penal Code, based upon two statements made before two different Courts, the sanction of both the Courts or of Courts to which these two Courts may be subordinate for such an alternative charge is necessary. *Purshotam Ishwar Amin v. Emperor*.

22 Cr. L. J. 241 :
60 I. C. 593 : 23 Bom. L. R. 1 : 45 Bom. 834 :
A. I. R. 1921 Bom. 3.

S. 195—Sanction, when necessary.

Granting sanction implies that someone wishes to prosecute but cannot do so without the sanction prescribed by S. 195, Cr. P. C., because no Court will take cognizance without it. Where it is the Court or public servant that wishes to prosecute, sanction is not required. All that is wanted is the complaint of that Court or public servant. *Nga Paw U v. Emperor*.

6 Cr. L. J. 25 :
U. B. R. 1907 Cr. P. Code 1 :
13 Bur. L. R. 338.

Cr. P. CODE (1898), S. 195**S. 195—Sanction.**

Where before a complaint is made, a document is produced by a party to a proceeding before it, the sanction of such Court is necessary for his prosecution in respect of an antecedent forgery and antecedent user. *Hayat Khan v. Emperor*.

33 Cr. L. J. 452 (2) :
137 I. C. 341 : 26 S. L. R. 73 :
I. R. 1932 Sind 77 : A. I. R. 1932 Sind 90.

Ss. 195, 476—Sanction—Trial—Effect of amendment.

A trial which has been properly begun on a sanction order granted to a private individual under the provisions of the Cr. P. C. before its amendment cannot be regarded as having been vitiated by an alteration in the procedure with regard to the initiation of proceedings laid down in the amended Code. *In re : Appaswamy Iyer*.

27 Cr. L. J. 84 :
91 I. C. 388 : 49 M. L. J. 276 :
1925 M. W. N. 668 : 22 L. W. 554 :
A. I. R. 1925 Mad. 1122.

Ss. 195, 537—Sanction, want of, only an irregularity and not fatal to the prosecution.

The general provisions of S. 195, Cr. P. C., ought not to be so construed as to nullify the special provisions of S. 537 (b). The want of sanction required by S. 195 is not fatal to a prosecution unless the accused is prejudiced thereby. *Ismail Rowther v. Shanmugavalu Nandan*.

3 Cr. L. J. 419 :
I. L. R. 29 Mad. 149.

S. 195 (1) (c)—Sanction.

No sanction is required for institution of a prosecution under S. 477-A, Penal Code. *Jethmal v. Emperor*.

33 Cr. L. J. 328 :
136 I. C. 766 : 25 S. L. R. 471 :
I. R. 1932 Sind 62 : A. I. R. 1932 Sind 53.

S. 195 (1) (c), (2)—Sanction—Offence committed in course of proceedings before Revenue Officer—Sanction, whether necessary—Penal Code (Act XLV of 1860), Ss. 465, 468, 471.

Where the offence of forgery was committed in the course of mutation proceedings held by a *Naib-Tahsildar* in his administrative capacity of a "Revenue Officer?" *Held*, that the proceedings were not those of a "Revenue Court" within the meaning of S. 195 (2), Cr. P. C. and that the previous sanction of the *Naib-Tahsildar* was not essential to the institution of criminal proceedings under Ss. 465 and 471, Penal Code. *Emperor v. Lehna Singh*.

16 Cr. L. J. 785 :
31 I. C. 648 : 18 P. R. 1915 Cr. :
A. I. R. 1915 Lah. 250.

S. 195, Cl. (4)—Sanction—Direction to prosecute—Specification of particulars.

A sanction granted under S. 195, Cr. P. C., must be granted to a particular person and must specify the Court or other place in which and the occasion on which the alleged offence has been committed. *Niamat Mian v. Emperor*.

2 Cr. L. J. 656 :
1 C. L. J. 630.

S. 195 (6)—Sanction—Application for withdrawal to higher authority—Limitation.

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An application under S. 195 (6), Cr. P. C., is not by way of appeal and is not governed by the Second Schedule of the Limitation Act. But it should be made without unnecessary delay. *Jivatram Jhamnadas v. Emperor*.

15 Cr. L. J. 654 :
25 I. C. 982 : 8 S. L. R. 49 :
A. I. R. 1914 Sind 51.

———S. 195 (6)—Sanction—Lapse of sanction.

A sanction to prosecute was granted at the instance of one of the defendants to a suit. This sanction exhausted itself: because six months were allowed to elapse and no prosecution was instituted. Then another defendant applied for the sanction, but the Subordinate Judge rejected the application. On appeal, the District Judge remanded the application for re-consideration; *Held*, reversing the order passed by the District Judge, that very strong ground would be necessary for a second sanction to be granted, for the first sanction opened the door of the Criminal Courts for the institution of criminal proceedings, and the proviso to S. 195 provides that the High Court may, for good causes shown, extend the time. *In re: Sheikh Saheb Saman Saheb*.

1 Cr. L. J. 1112 :
6 Bom. L. R. 1097.

———S. 195, Cl. (6)—Sanction—Limitation—Extension of time.

The limit of time imposed by Cl. (6) of S. 195 is not an ordinary rule of limitation. It is an absolute bar applying only to proceedings under S. 195. When a sanction has *de facto* expired by lapse of time, the only authority which can extend the time is the High Court. *Ananta Pande v. Bhagwan Ramnaja*.

12 Cr. L. J. 382 :
11 I. C. 246.

———S. 195—Sanction and complaint, difference between.

There is an obvious distinction between an order of a Court granting sanction to a private individual or to a public servant, and a direction of the Court that a certain person should be prosecuted, because private individuals might be actuated by unworthy or vindictive motives and public servants might entertain mistaken notions or act upon misguided impulse whereas no motives could be imputed to a Court of justice whose action must be deemed to be taken in the interests of justice alone and after judicial consideration of the special circumstances of the case before it after hearing what each side had to say and that accordingly the rule was that an order granting, refusing or revoking sanction was subject to revision but not a complaint. *Soni Lakhu Hamir v. Azam Bhima Wala's Estate*.

7 Cr. L. J. 143.

———S. 195—Sanction by District Magistrate—Sanction to prosecute given by District Magistrate where Police could give.

Where false information was given to the Police, and the Police instead of sanctioning themselves the prosecution of the inform-

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ant requested the District Magistrate to give the requisite sanction and obtained it: *Held*, that the sanction given by the District Magistrate was sufficient. *Emperor v. Saroda Prosad Chatterjee*.

2 Cr. L. J. 171 :
I. L. R. 32 Cal. 180.

———S. 195—Sanction by High Court—Perjury committed in course of judicial enquiry.

Where on a petition being presented to the High Court for setting aside an *ex parte* decree on the ground that the petitioner was not served with notice of the appeal, an enquiry was ordered and the District Munsif's report showed that the petitioner had committed perjury while giving evidence before the Munsif: *Held*, that the High Court had jurisdiction to sanction the prosecution of the petitioner on a charge under S. 193, Penal Code. *Gudala Surah v. Jamal Bee Bee*.

16 Cr. L. J. 740 :
31 I. C. 340 : A. I. R. 1916 Mad. 1065.

———S. 195 (1) (c)—Sanction of Insolvency Court—Production of false document before Official Assignee—Subsequent production in Insolvency Court—Sanction of Insolvency Court.

Where, on the petition of a creditor to adjudge a debtor insolvent, a vesting order was made by the Court and the debtor produced before the Official Assignee a false pro-note alleged to have been executed by him to a near relation, which was subsequently produced before the insolvency Court, and the creditor applied to the Magistrate to prosecute the debtor for making a false document: *Held*, that the sanction of the Insolvency Court was necessary for the said prosecution. The scope of S. 195, Cr. P. C., cannot be restricted to cases in which the commencement of the proceeding precedes the completion of the offence. *Beardsell and Co. v. Abdul Gunni Saheb*.

13 Cr. L. J. 241 :
14 I. C. 593 : 14 M. L. T. 391 :
1912 M. W. N. 536.

———S. 195—Sanction of Magistrate—Necessity of.

The applicant made a complaint to Police charging the respondent with theft. The Police investigated the charge and found it to be false. Thereafter the applicant repeated the charge to the Magistrate by a complaint. The Magistrate held an enquiry and dismissed the complaint. The accused applied for prosecution of the complainant on the basis of the Police report under S. 211, Penal Code, without obtaining sanction as required under S. 195, Cr. P. C., from the Magistrate: *Held*, that the proceedings before the Magistrate could not be ignored and that sanction was necessary for the institution of the complaint under S. 211, Penal Code. *Jaggu v. Pala*.

17 Cr. L. J. 177 :
33 I. C. 817 : U. B. R. 1915 II, 95.

———S. 195—Sanction for perjury.

A witness is entitled to *locus penitentiae* and an opportunity to correct himself and if,

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he re-calls to his mind any fact about which he had made a statement which was not quite accurate, a prosecution for perjury in respect of the former statement is not desirable. *Maharaj Prasad v. Emperor*.

24 Cr. L. J. 77 :
74 I. C. 443 : 21 A. L. J. 673 :
A. I. R. 1924 All. 83.

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Sanction for prosecution—Discretion. *Azibulla Sarcar v. Udoy Sonthal*.

9 Cr. L. J. 282 :
1 I. C. 287 : 13 C. W. N. 422.

—S. 195—Sanction for prosecution—False evidence—Case of approver distinguished.

The counter-petitioners were examined as witnesses by the Committing Magistrate and made certain statements. In the Sessions Court, they retracted such statements. The Sessions Judge believing the depositions before the Magistrate were true, convicted accused but the conviction was reversed in appeal. In an application by the Public Prosecutor to accord sanction for the prosecution of the counter-petitioners on an alternative charge of giving false evidence in either of the Courts: *Held*, that it was unnecessary to sanction prosecution as the counter-petitioners not being approvers were under no temptation to give false evidence and it should be presumed to have been due to mistake. *In the matter of Lakkamma*.

9 Cr. L. J. 433 :
12 M. C. C. R. 243.

—S. 195—Sanction for prosecution—Forgery—Document put in Court—Absence of judicial inquiry—Preliminary inquiry whether necessary before giving sanction.

Where a document has been filed in Court by a party, about whose genuineness there is no judicial inquiry, the Court should not accord sanction to prosecute the party for having filed a forged document. The Court must take some preliminary inquiry and satisfy that there is a *prima facie* case for prosecution. *Muthurearapu Seshiah v. Gotram Ramiah*.

13 Cr. L. J. 19 :
13 I. C. 211 : 1911 M. W. N. 526.

—S. 195—Sanction for prosecution—Legal evidence, determination on—Order based on Police report, legality of.

An order granting sanction under S. 195, Cr. P. C., should be based on legal evidence and not merely on a Police report. Petitioner preferred a complaint before a Magistrate against the respondent and his wife charging them with criminal breach of trust. The Magistrate examined the complainant and suspecting the case to be false, referred it to the Police for investigation and report. The Police reported that the case was false. Respondent then applied to prosecute petitioner for an offence under S. 211, and after notice to the petitioner, the Magistrate granted the sanction without holding any enquiry or examining witnesses: *Held*, that the materials

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before the Magistrate were not legal evidence on which sanction could be granted under S. 195, Cr. P. C. *Bapu v. Bapu*.

18 Cr. L. J. 434 :
38 I. C. 994 : 39 Mad. 768 :
A. I. R. 1917 Mad. 82.

—S. 195—Sanction for prosecution of witness during pendency of suit, propriety of.

Sanction for the prosecution of a witness for deposing falsely in a suit which is still pending, is improper, particularly when the witness is a near relative and *am-Mukhtiar* of the plaintiff, a lady who depends upon him for the proper prosecution of her suit. Generally speaking, it is not desirable that witnesses should be prosecuted while the case in which they have deposed or are about to depose is still pending. *Raj Kumar Deoty v. Sa'ish Chandra Ghosh*.

18 Cr. L. J. 735 :
40 I. C. 735 : 2 C. W. N. 753 :
A. I. R. 1918 Cal. 791.

—Ss. 195, 476—Sanction proceedings—Judicial proceedings.

When a case under S. 195, Cr. P. C. is taken to a High Court in revision, the proceedings in the higher Court relating to sanction are judicial proceedings. The function exercised by the higher Court in upholding the order of a Court below or reversing it is a judicial act. *Chadamm v. Lalla Prosad*.

13 Cr. L. J. 717 :
16 I. C. 525 : 10 A. L. J. 174 : 34 All. 602.

—S. 195—Sanction to prosecute.

A Deputy Tahsildar is a Revenue Court, and the sanction of that Court is necessary for parties to proceedings before him to be proceeded against with reference to a forged document filed before that Court, even though the inquiry in those proceedings was conducted through the Revenue Inspector. *In re : Mallam Shinnu Viraiiah*.

24 Cr. L. J. 15 :
71 I. C. 63 : 16 L. W. 534 :
A. I. R. 1923 Mad. 87.

—S. 195—Sanction to prosecute.

A person alleged to have abetted the forgery of a document cannot be prosecuted for the offence without the sanction of the Civil Court, if he was a party to the proceeding with respect to the document in that Court. *Bhavani Das v. Emperor*.

17 Cr. L. J. 289 :
35 I. C. 161 : 14 A. L. J. 74 :
38 All. 169 : A. I. R. 1916 All. 299.

—S. 195—Sanction to prosecute.

A sanction for prosecution given by a Court under S. 195, Cr. P. C., 1898, is not a personal privilege granted to a petitioner but a decision that the case is one suitable for magisterial investigation; and, therefore, such sanction does not lapse on the death of the person who obtained it. *Gopal Singh v. Emperor*.

24 Cr. L. J. 185 :
71 I. C. 601 : A. I. R. 1922 Lah. 221.

—S. 195—Sanction to prosecute, absence of—Irregularity.

Although sanction to prosecute for an offence under S. 182, Penal Code, is necessary, the absence of such sanction, unless a failure of justice is occasioned thereby, is a mere irregu-

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larity under S. 537, Cr. P. C. and would not vitiate the prosecution. *Nagappan Mudaliar v. Emperor*. 24 Cr. L. J. 755 :

74 I. C. 259 : A. I. R. 1923 Rang. 135.

—S. 195—Sanction to prosecute—Same Court.

An Assistant Collector in charge of a Sub-Division, although transferred to another Sub-Division, is yet the same Court for the purpose of giving sanction for prosecution in respect of an offence committed during the trial of a rent suit tried by him while in charge of that Division. *Dalip Singh v. Nawal*.

18 Cr. L. J. 303 :

38 I. C. 335 : 15 A. L. J. 161 :

39 All. 297 : A. I. R. 1917 All. 214.

—S. 195—Sanction to prosecute, essentials of.

An order sanctioning prosecution did not specify the Court or other place, in which and the occasion on which the offence was committed : *Held*, that the order was defective. *Serh Mal v. Bhairon Prasad*. 7 Cr. L. J. 389 :

5 A. L. J. 247 : 28 A. W. N. 102 :

30 All. 243 : 3 M. L. T. 377.

—S. 195—Sanction to prosecute.

An order upon an appeal against an order sanctioning the prosecution of the appellant, containing the words : "The application is rejected," amounts to a refusal to consider the question, and is a material irregularity within the meaning of S. 115, Cr. P. C. Sanction to prosecute for giving false evidence is not justified where there is no documentary evidence and the question is of oath against oath. *Abdul Aziz v. Bohra Tara Chand*.

22 Cr. L. J. 304 :

60 I. C. 800 : 19 A. L. J. 291.

—S. 195—Sanction to prosecute against other offence, if valid—Sanction granted in respect of one offence—Framing charge in respect of another offence disclosed by facts.

Where sanction to prosecute has been granted in respect of an offence and thus the bar to the Magistrate taking cognizance of the case has been removed by the sanction, the Magistrate may frame a charge in respect of any other offence referred to in S. 195 and which is disclosed by the facts. *Emperor v. Jhamandas*.

12 Cr. L. J. 320 :

10 I. C. 616.

—S. 195—Sanction to prosecute—Abolition of.

The old system of sanctions is now abolished. The Court or officer concerned does not sanction a prosecution. The Court or officer concerned makes the complaint direct under S. 195 (1) (a) (b). Where, therefore, a complaint is made by the Sub-Inspector concerned with necessary administrative sanction, no judicial sanction is necessary. *Dharamdas Hiranand v. Emperor*. 40 Cr. L. J. 12 :

178 I. C. 218 : 11 R. S. 82 :

1939 Kar. 241 : A. I. R. 1938 Sind 213.

—S. 195—Sanction to prosecute—Against whom valid.

A plaintiff in a civil case sought to enforce a right by means of a forged deed. The Court

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sanctioned his prosecution for an offence under S. 208 of the Penal Code. He was tried and acquitted. An appeal was then made to the Sessions Judge who, purporting to act under S. 476, Cr. P. C., sanctioned the prosecution of the petitioner in this case for an offence under S. 466 of the Penal Code. An application to revise this order was made to the High Court, and it was contended that, inasmuch as the petitioner was not a party to the civil suit, out of which the original prosecution arose, the order was bad in law as made without jurisdiction : *Held*, that as there was an appeal to the Sessions Judge from the order discharging the original accused under S. 209 of the Penal Code lawfully presented to a proper Court and that Court was of opinion that the petitioner should be prosecuted, the Sessions Judge did have before him a judicial proceeding in the course of which he became acquainted with the facts as to the petitioner's participation in the act of forgery, and that he did not exceed his powers in making the order in question. *Bachu Behari Lal v. Emperor*. 20 Cr. L. J. 630 :

52 I. C. 390 : A. I. R. 1919 Pat. 551.

—S. 195—Sanction to prosecute—Amendment of Code—Right to move superior Court for revocation of sanction, whether taken away.

A Magistrate granted sanction for the prosecution of the accused for an offence under S. 211, Penal Code, and a complaint was filed before a competent Magistrate pursuant thereto before the amendment of S. 195 of the Cr. P. C., by Act XVIII of 1923. Thereafter the accused moved the District Magistrate to revoke the sanction under Sub-s. (6) of S. 195 of the old Cr. P. C. : *Held*, that notwithstanding the amendment of the Code and the re-construction of the whole procedure with regard to sanctions, the District Magistrate had jurisdiction to entertain the application of the accused and to revoke the sanction granted by the lower Court if it appeared to him that on the merits the sanction should not have been granted. *Ramakrishna Iyer v. Sithai Ammal*. (F. B.)

27 Cr. L. J. 91 :

91 I. C. 395 : 49 M. L. J. 223 :

1925 M. W. N. 684 : 48 Mad. 620 :

22 L. W. 879 : A. I. R. 1925 Mad. 911.

—S. 195—Sanction to prosecute—Appeal pending against decree in the High Court—One statement on oath, another not on oath—Sanction should not be granted.

Sanction to prosecute should not be granted during the pendency of a regular appeal to the High Court from the decree and the proceedings out of which the application for sanction arises. Sanction should not be granted on a discrepancy between the statement made before the Court on oath and that recorded in the course of mutation proceedings without oath and to which the attention of the defendant was not drawn in the course of his examination. *Mahant Kirpalban v. Emperor*.

11 Cr. L. J. 445 (a) :

7 I. C. 260 : 7 A. L. J. 647.

—S. 195—Sanction in prosecute—Appeal, temporary dismissal of, legality of—Procedure.

Accused preferred a charge under S. 406, Penal

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Code against one *B* which was dismissed. *B* then applied for sanction to prosecute accused for perjury but that application was rejected. In the meantime accused brought a civil suit to recover the sum of money in respect of which he had preferred the charge in the Criminal Court. That suit was pending, when *B* appealed to the District Magistrate against the order refusing sanction to prosecute. The latter dismissed the appeal till the decision of the civil suit, but after its determination granted the sanction: *Held*, that the order of the District Magistrate granting sanction was illegal, inasmuch as the Magistrate became *functus officio* when he passed his order dismissing the appeal, there being no such thing known to law as a temporary dismissal of an appeal; that the proper procedure for the District Magistrate would have been to have postponed the decision of the appeal till the decision of the civil suit. *Lachmi Narain v. Bindraban*.

19 Cr. L. J. 358 :
44 I. C. 582 : 16 A. L. J. 210 :
A. I. R. 1918 All. 247.

————S. 195—Sanction to prosecute—Appellate Court, power of, to accord sanction as for offence committed before it.

An Appellate Court cannot accord sanction for prosecution of a person for false statements made in his deposition before the Trial Court on the ground that the offence of perjury was again committed before the Appellate Court with reference to that very deposition. The offence is complete when the evidence is given and it cannot be said to be repeated afterwards because there is an appeal. The words in relation to any proceeding 'in any Court' have reference to the original trial of the suit or the criminal case. *Kompella Anantaramayya v. Chikkalla Tukkadu*.

19 Cr. L. J. 483 :
45 I. C. 147 : 34 M. L. J. 404 :
1918 M. W. N. 280 : 23 M. L. T. 285 :
7 L. W. 533 : 41 Mad. 787.

————S. 195—Sanction to prosecute—Appellate Court, power of, to take additional evidence.

An Appellate Court acting under S. 195 (6), Cr. P. C. has power to examine any number of witnesses, or to take any evidence it thinks fit to satisfy itself whether it should grant sanction or direct the prosecution of any person. *Ramdhari Ahir v. Emperor*.

24 Cr. L. J. 277 :
71 I. C. 997 : 1922 Pat. 29 :
4 P. L. T. 370 : A. I. R. 1922 Pat. 52.

————S. 195—Sanction to prosecute—Application dismissed for default by the first Court—Appellate Court cannot grant sanction on appeal—Absence of applicant—Dismissal of application for default not permissible practice.

The Public Prosecutor applied to the Subordinate Judge for sanction to prosecute in respect of offences committed in his Court. On the day and at the hour fixed for the hearing of that application, the Public Prosecutor having failed to appear, the Subordinate Judge dismissed the application for default. Later on he moved the Subordinate Judge to review the order, but this was declined. On appeal, the District Judge granted the sanction under S. 195 of the

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Cr. P. C.: *Held*, (1) that the Subordinate Judge had no power to review his order, because the Cr. P. C., 1898, contained no provision giving jurisdiction to a Court to review order passed under it; (2) that there is no provision in the Cr. P. C., 1898, which warranted the Subordinate Judge in rejecting or dismissing the application of the Public Prosecutor because of his failure to appear at the time the application was called on for dismissal. In the absence of such a provision, the Subordinate Judge was bound to consider the application on its merits, even though the party who made it was not there to help the Court; (3) that as there was no sanction given or refused by the Subordinate Judge, the District Judge had no jurisdiction to accord the sanction under S. 195 of the Cr. P. C., 1898. The only jurisdiction he had under the circumstances was to revise the order of the Subordinate Judge dismissing the application as for default. *In re: Gopal Siddeshwar Deshpande*.

7 Cr. L. J. 120 :
10 Bom. L. R. 95 : 32 Bom. 203 :
3 M. L. T. 170.

————S. 195 (6)—Sanction to prosecute, application for—Power of District Judge to transfer application for disposal to Sub-Judge.

Where an application has been made to a District Judge under S. 195 (6), Cr. P. C. for the revocation of a sanction to prosecute granted by a Munsif, the application cannot be transferred by the Judge to a Subordinate Judge for disposal. *Hari Mandal v. Keshab Chadra Manna*.

13 Cr. L. J. 296 :
14 I. C. 760 : 16 C. W. N. 903 :
16 C. L. J. 515 : 40 Cal. 37.

————S. 195—Sanction to prosecute, application for—Small Cause Court, order made by—Revision—Court, proper.

Held, by a majority of the Court (*Jwala Prasad J.* dissenting), that Cl. (c) of Sub-s. 7 of S. 195 applies to a Small Cause Court, and that the authority to review an order made by the latter Court granting or refusing sanction to prosecute is the District Court within whose local limits the Small Cause Court is situate. *Lalji Tawari v. Emperor*.

20 Cr. L. J. 577 :
52 I. C. 193 : 1919 Pat. 329 :
4 P. L. J. 609 :
A. I. R. 1919 Pat. 350.

————S. 195—Sanction to prosecute—Application to revoke sanction—Order of Sessions Judge, whether open to revision.

The order of a Sessions Judge passed on an application to revoke a sanction given by a Magistrate under S. 195, Cr. P. C., is not open to revision by the High Court. *Debi Sahai v. Raghunath Sahai*.

22 Cr. L. J. 349 (b) :
61 I. C. 173 : 19 A. L. J. 399 :
A. I. R. 1921 J. 7 (3).

————S. 195—Sanction to prosecute—Application to Sessions Court to grant or revoke sanction, nature of—Sessions Court, power of, to take evidence.

An application to an Appellate Court to revoke or grant sanction, granted or refused, is not an appeal but an original application, and the

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Court has inherent power in dealing with such an application to take itself, such evidence as it considers necessary to satisfy its mind as to the propriety of granting or refusing sanction.
In re : Subbasari. 22 Cr. L. J. 372 :

61 I. C. 288 : 12 L. W. 605 :
44 Mad. 47 : A. I. R. 1921 Mad. 453.

—S. 195—Sanction to prosecute—By whom application for sanction may be made.

There is nothing in law to prevent the Government Pleader on instructions from the District Magistrate applying for sanction to prosecute in respect of an offence alleged to have been committed in connection with a civil suit.
Emperor v. Ram Adhar Rai.

8 Cr. L. J. 157 :
28 A. W. N. 209.

—S. 195—Sanction to prosecute—Procedure—Chance of conviction—Penal Code (Act XLV of 1860), S. 193.

Sanction to prosecute ought not to be given unless the Court giving sanction has satisfied itself that there are very favourable chances of obtaining a conviction. *In re : Danappa Narsappa.* 23 Cr. L. J. 176 :

65 I. C. 640 : 24 Bom. L. R. 45 :
A. I. R. 1922 Bom. 38.

—S. 195—Sanction to prosecute—City Magistrate, whether permanent Court—Jurisdiction.

The Court of the City Magistrate is not a permanent Court with a perpetual succession of Judges so that where a City Magistrate has been transferred, his successor has no power to sanction a prosecution in respect of an offence committed before his predecessor. In such a case, the Sessions Judge alone is competent to grant the necessary sanction under S. 195.
Jia Lal v. Phogo Mal.

19 Cr. L. J. 914 :
47 I. C. 286 : 22 P. R. 1918 Cr. :
34 P. W. R. 1918 Cr. :
A. I. R. 1918 Lah. 53.

—S. 195—Sanction to prosecute—Complaint, dismissal of, under S. 203, Cr. P. C., after enquiry under S. 202 of Cr. P. C.—Sanction for prosecution for making false charge.

Held, that S. 203 allows a criminal complaint to be disposed of after examination of the complainant and an enquiry under S. 202, and when a complaint disposed of under that section is found or believed to be false, the Magistrate is competent to grant sanction under S. 195.
Chiragh-ud-Din v. Emperor. 5 Cr. L. J. 491 :
2 P. R. Cr. 1907 : 49 P. L. R. 1907 :
18 P. W. R. 1907 Cr.

—S. 195—Sanction to prosecute—Complaint to Executive Officer as such—Absence of proper inquiry—Notice.

When no proper inquiry has been made into the genuineness of a complaint, the Court is not justified in granting sanction to prosecute the complaint under S. 211, I. P. C., particularly when no notice has been given him to show

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cause against the granting of the sanction.
Zain-ud-Abdin v. Nawab Din.

9 Cr. L. J. 152 :
1 I. C. 93 : 2 P. W. R. 1909 :
37 P. L. R. 1909.

—S. 195—Sanction to prosecute—Complaint to Magistrate—Investigation by Police—Permission to Police to proceed against complainant—Case classed B.

A complaint of an offence was made to a Magistrate, who examined the complainant and sent the case to the Police for investigation. The Police reported that the case was false and asked for orders for the prosecution of the complainant. At the foot of this report, the Magistrate made the following endorsement: "The case is classed as (B). You may proceed against the complainant." Held, that the order made by the Magistrate at the foot of the report made by the Police could not be accepted as a sanction under S. 195, Cr. P. C. *Emperor v. Lalubhai.* 13 Cr. L. J. 855 :

17 I. C. 791 : 14 Bom. L. R. 960.

—S. 195—Sanction to prosecute—Complainant having some foundation for charge against accused—Practice—Judgment.

When the complainant, having failed to prove his charge, the accused was acquitted and the Magistrate sanctioned prosecution of the complainant under S. 211, Penal Code, the Chief Court set aside the sanction on the ground that the complainant had some foundation for the charge. *Punjab Singh v. Emperor.*

11 Cr. L. J. 87 (a) :
4 I. C. 945 : 137 P. L. R. 1909.

—S. 195—Sanction to prosecute witnesses—Contradictory statements before Committing Magistrate and at trial.

It would be a dangerous doctrine to hold that in every case where a comparison of the deposition of a witness before the Committing Magistrate with his evidence given at the trial, discloses contradictory statements, sanction to prosecute him for perjury should be granted. It is necessary for the Court to consider how it has come about that there were those contradictions, and how it is that the witness has resiled at the trial from the statements he made before the Magistrate. Where there were indications to show that the witness told a false story before the Magistrate because he was tutored by the Police and gave a true story at the trial, sanction should not be given.
Emperor v. Sailendra Kumar Das.

11 Cr. L. J. 360 :
6 I. C. 476.

—S. 195—Sanction to prosecute—Court by which sanction can be given.

Sanction to prosecute for perjury can, under S. 195, only be granted by the Court which tried the case in which the alleged perjury was committed. Sanction, therefore, by a Sub-Divisional Magistrate in respect of a statement made in the Court of Session is bad in law.
Khajumal Peramal v. Emperor.

21 Cr. L. J. 787 :
58 I. C. 515 : A. I. R. 1920 Sind 49.

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———S. 195—*Sanction to prosecute—Contradictory statements made before Police Officer and Magistrate—Sanction by Magistrate in respect of one of such statements.*

The Chief Presidency Magistrate granted sanction to prosecute the accused in respect of contradictory statements made by him before a Police Officer, making an investigation, and before himself, in the course of an enquiry, on the ground that one or other of such statements was false to the knowledge of the accused: *Held*, that the sanction was sufficient to meet the requirements of S. 195, Cr. P. C. though no sanction was required to be given in respect of the false statement before the Police Officer. *Fakir Mohideen v. F. Hartnett*.

9 Cr. L. J. 304 :

1 I. C. 547 : 5 M. L. T. 355.

———S. 195—*Sanction to prosecute for forgery—Document not before Court granting sanction—Delay in applying for sanction, effect of—Revision—High Court, power of interference of—Civil Procedure Code (Act V of 1808), S. 115.*

Before granting sanction to prosecute an accused person for forgery, it is desirable that the Court should examine the alleged forged document. Inordinate and unexplained delay in making an application for sanction to prosecute is a sufficient ground for refusing the sanction. The High Court has power to interfere with an order of a Court refusing or granting sanction for prosecution under S. 195, Cl. (6), Cr. P. C. and not only under S. 115, C. P. C. *Kishen Dayal Singh v. Jaglal Mandal*.

19 Cr. L. J. 642 :

45 I. C. 834 : A. I. R. 1918 Pat. 621.

———S. 195—*Sanction to prosecute—Decree-holder failing to give credit for payment.*

Sanction to prosecute a decree-holder under S. 210, Penal Code, for failing to give credit in execution for a sum paid to him should not be withheld, merely on the ground that the judgment-debtor making the payment has not been prejudiced or that there is not satisfactory proof of the payment on the file. *Bur Singh v. Emperor*.

18 Cr. L. J. 619 :

39 I. C. 987 : 4 P. W. R. 1917 Cr. :

53 P. L. R. 1917 Cr. : A. I. R. 1917 Lah. 209.

———S. 195—*Sanction to prosecute—Discrepancy owing to inaccuracy of mind.*

Prosecution for perjury under S. 193, Penal Code, should not be ordered where the statements complained of are slightly discrepant owing to inaccuracies of mind, and are not deliberately false. *Chandra Mohan Nanda v. Emperor*.

19 Cr. L. J. 230 :

43 I. C. 822 : A. I. R. 1918 Cal. 106.

———S. 195—*Sanction to prosecute—Discretion of Court—Principles governing exercise of—Appellate Court, interference by.*

No sanction should be granted under S. 195 unless upon the record itself there is a foundation for the charges made. In granting sanction under S. 195, the Court should be satisfied that there shall be no abuse of the administration of criminal justice: No one should be permitted to use the Penal Law merely to satisfy his own private ends or personal spite.

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Where a lower Court has exercised the discretion vested in it under S. 195 with great care and caution and has refused sanction to prosecute, an Appellate Court should not lightly dispose of the matter and grant the sanction. In such a case, it is essential that the Appellate Court should be satisfied that there is a reasonable *prima facie* case fit to be tried, and that there is a reasonable chance of securing a conviction and should give reasons for differing from the view of the lower Court. *Bachan Ram v. Mohit Ahir*.

20 Cr. L. J. 337 (b) :

50 I. C. 817 : A. I. R. 1919 Pat. 215.

———S. 195—*Sanction to prosecute—District Judge, power of, to convert proceedings under S. 195 into proceedings under S. 476.*

A District Judge has power to convert proceedings to obtain or to revoke sanction, refused or granted in a lower Court under S. 195, Cr. P. C. into proceedings under S. 476. *Ambica Prasad v. Emperor*.

18 Cr. L. J. 300 :

38 I. C. 332 : 1 P. L. J. 607 :

2 P. L. W. 388 : A. I. R. 1916 Pat. 86.

———S. 195—*Sanction to prosecute—District Magistrate's appeal against order of, whether lies to Sessions Judge.*

An appeal against an order of a District Magistrate granting or refusing sanction under S. 195, Cr. P. C. to prosecute for an offence under S. 211, Penal Code, lies to the Sessions Court, and not to the Chief Court, and the Sessions Judge has power to revoke or grant the sanction. *Jiwan Mal v. Beli Ram*.

18 Cr. L. J. 298 :

38 I. C. 330 : 11 P. R. 1917 Cr. :

10 P. W. R. 1917 Cr. :

A. I. R. 1917 Lah. 91.

———S. 195—*Sanction to prosecute—Duty of Court.*

If a Court is of opinion, on evidence that no reasonable Jury would convict on it, it is its duty to refuse sanction. But the mere fact that a Court sanctions a prosecution is no intimation to the Magistrate who is to enquire into the case that it thinks that there is a case to go to Jury or that he thereby is in any way relieved from his duty of considering whether the accused ought to be committed for trial. *Munuswamy Mudaliar v. Rajaratnam Pillai*.

24 Cr. L. J. 340 :

72 I. C. 340 : 16 L. W. 505 : 45 Mad. 928 :

44 M. L. J. 774 : A. I. R. 1923 Mad. 136.

———S. 195—*Sanction to prosecute—Duty of trial Court.*

The duty of a Court granting sanction is discharged if it exercises a judicial discretion, and similarly, the duty of the Appellate Court if it satisfies itself that such a discretion has been exercised. The former Court must, therefore, be required, to put on record that its exercise of discretion has been judicial, and it is undesirable in fairness to the accused that it should do more. In case it does less, the Appellate Court will have no choice but to ascertain the necessary facts for itself and base its conclusions on them. The former Court cannot be regarded as having exercised a

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judicial discretion when it has satisfied itself only that a *prima facie* case has been made out, if by that is meant only that formal evidence of the ingredients of the offence is available, without reference to defects which may render the evidence useless. *Munuswamy Mudaliar v. Rajaratnam Pillai*.

24 Cr. L. J. 340 :
72 I. C. 340 : 16 L. W. 505 : 45 Mad. 928 :
44 M. L. J. 774 : A. I. R. 1923 Mad. 136.

—S. 195—Sanction to prosecute—Enquiry, mode of.

Although no hard and fast rule can be laid down as to the manner in which an inquiry should be made under S. 195, it is necessary that the inquiry should be complete in every detail. An inquiry confined to an examination of the accused and his witnesses is not sufficient. The inquiry should proceed on the allegations made by the party who asks for sanction and on the basis of materials placed by him before the Court, and the Court should abstain from pronouncing any opinion on the merits of the case. *Kakka Gope v. Antonini*.

20 Cr. L. J. 541 :
51 I. C. 781 : 1919 Pat. 286 :
A. I. R. 1919 Pat. 547.

—S. 195—Sanction to prosecution—Evidence in original suit—Court, whether can go beyond.

In giving or upholding a sanction under S. 195, Court is not restricted to the evidence recorded in the original suit. It has inherent power to take such steps as may be necessary to enable it to discharge the duty imposed upon it under Sub-s. (6) of the section. *Parmanand Parcar v. Kartar Nath*.

25 Cr. L. J. 15 :
75 I. C. 703 : A. I. R. 1924 Nag. 35.

—S. 195—Sanction to prosecute—Ex parte decree—Defendant, whether can apply for sanction without setting aside decree.

A defendant against whom an *ex parte* decree has been passed is not, merely by reason of the decree not having been set aside, precluded from applying for sanction to prosecute the plaintiff under Ss. 193 and 210, Penal Code. If the Court which decreed the suit is satisfied that the suit was false, it is competent to grant the sanction, notwithstanding that the decree still stands and is capable of execution. *Jujeshwar Pershad v. Ragho Misser*.

19 Cr. L. J. 146 :
43 I. C. 434 : 2 P. L. J. 688 : 4 P. L. W. 143 :
A. I. R. 1918 Pat. 190.

—S. 195—Sanction to prosecute—Execution proceeding, whether judicial proceeding.

An execution proceeding is a judicial proceeding within the meaning of S. 476, and consequently the Court while engaged in such a proceeding, is competent to make an order under that section, if the fact is brought to its notice that offences have been committed while the process of the Court was attempted to be enforced. *Abdul Basir v. Panchkori*.

12 Cr. L. J. 21 :
8 I. C. 1106 : 12 C. L. J. 618.

—S. 195—Sanction to prosecute—Expressly given to a particular person—Complaint by some other person.

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A sanction to prosecute expressly given to a particular person cannot be availed of by some other person against that person's wish and without his authority. *Jogendra Nath Mukerjee v. Sarat Chandra Banerjee*.

2 Cr. L. J. 78 :
9 C. W. N. 277 : I. L. R. 32 Cal. 351.

—S. 195—Sanction to prosecute—Failure to specify offence—Appellate Court directing Subordinate Court to rectify mistake in form of sanction—Jurisdiction.

Under S. 195 (6), Cr. P. C., it is open to a Superior Court either to revoke or grant a sanction, when such sanction has been given or refused by the Subordinate Court; but there is no provision in the law authorising the Superior Court to direct the Subordinate Court to rectify a mistake in the form of the sanction. Therefore, where sanction to prosecute was granted by a Sub-Judge but he failed to specify the offence, and the District Judge on appeal sent the case back to the Sub-Judge for an order for sanction to be drawn up in accordance with the observations made by the Judge in his judgment on appeal: *Held*, (1) that the order of the District Judge on appeal must be vacated: (2) that the sanction as granted by the Sub-Judge not being in proper form, the application for sanction remained undisposed of. The High Court directed the Sub-Judge to pass a proper order on that application by specifying the offence and other necessary particulars. *Chandra Kumar Manna v. Jugal Charan Mondal*.

14 Cr. L. J. 655 :
21 I. C. 895.

—S. 195—Sanction to prosecute—False charge laid before Police—Sanction, Court, whether grant—Prosecution.

Sanction for the prosecution of an offence under S. 211, Penal Code, is required by S. 195, Cr. P. C. and such sanction cannot be given by the Police. No Court can grant a sanction for the prosecution of an accused in respect of a false charge laid before the Police which does not lead to proceedings in Court. *Emperor v. Mi Wa*.

18 Cr. L. J. 758 :
41 I. C. 134 : 8 L. B. R. 534 :
A. I. R. 1917 L. Bur. 65.

—S. 195—Sanction to prosecute—False charge made to Police at a Police station—Penal Code (Act XLV of 1860), S. 211.

No judicial sanction is required in order to prosecute a person for laying a false charge at a Police station. There is no necessity in such a case to hold a preliminary magisterial inquiry. *Emperor v. Sheikh Ahmad*.

13 Cr. L. J. 578 :
15 I. C. 994 : 5 Bur. L. T. 129.

—S. 195—Sanction to prosecute—False complaint made to Police—Subsequent inquiry and discharge of accused by a Magistrate.

Though, no sanction is required to prosecute for making a false charge to the Police, where, after the rejection of a complaint by the police as false, the complainant complains to a Magistrate, who, after full inquiry, discharges the accused, the latter cannot prosecute the complainant merely for the false charge made to the Police but must obtain the Magistrate's

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sanction before prosecuting. *Po Hlaing v. Ba E.*

13 Cr. L. J. 565 :
15 I. C. 981 : 6 L. B. R. 50 :
5 Bur. L. T. 111.

—S. 195—Sanction to prosecute—Filing forged document though not tendering in evidence—Attempt to use forged document—Penal Code, Ss. 471, 511.

The filing of a forged document in a Court with the intention of relying on it at the trial of a case amounts to an attempt to use such document though the document itself was not actually used : and the person filing it may be prosecuted for offences under Ss. 511 and 471, Penal Code. *Krishna Proshan v. Rabindra Nath.*

13 Cr. L. J. 6 :
13 I. C. 99.

—S. 195—Sanction to prosecute—For alternative charge under S. 236, Cr. P. C., when valid.

It is only when the contradictory statements in respect of which a prosecution for perjury is instituted, constitute a "series of acts" that an alternative charge can be framed under S. 236. The series of acts referred to in S. 236 implies two or more acts connected by some more intimate relation than that of mere consecutiveness of time. Two contradictory statements recorded being, at that time when he gave one deposition, an approver in the Session Court, and when he gave the second, a defendant in a civil suit, cannot form the basis of an alternative charge of perjury under S. 236. *Seemle.*—Where an alternative charge of giving false evidence is based on contradictory statements made before different Courts, it is necessary that sanction of each of those Courts must be obtained under S. 195, before a Court can take cognizance of the charge. *Salek Shah v. Emperor.*

25 Cr. L. J. 1195 :
82 I. C. 59 : 16 S. L. R. 285 :
A. I. R. 1924 Sind 1.

—S. 195—Sanction to prosecute.

For the purposes of S. 195 (7) (a), Cr. P. C. appeals from a Subordinate Judge's Court must be regarded as ordinarily lying to the District Court ; and a District Judge is competent to revoke or grant a sanction granted or refused by a Sub-Judge in a case in which sanction had originally been refused or granted by a Munsif. *Narayannan Chettiar v. Kodiraya Goundan*

24 Cr. L. J. 337 :
72 I. C. 337 : 44 M. L. J. 320 :
17 L. W. 311 : 1923 M. W. N. 223 :
A. I. R. 1923 Mad. 504.

—S. 195—Sanction to prosecute—Forgery, charge of—Sanction, whether necessary.

It is necessary for a party wishing to prosecute upon a charge of forgery committed in respect of a document produced in Court to obtain sanction of the Court under S. 195, Cr. P. C. *Hardeo Prasad v. Ram Sarup.*

16 Cr. L. J. 203 :
27 I. C. 763 : A. I. R. 1915 All. 21.

—S. 195—Sanction to prosecute for perjury—Four months' delay—Sanction given by the successor of the Judge—Jurisdiction—Penal Code (Act XLV of 1860), Ss. 193, 211.

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A prosecution for perjury should be instituted as soon as possible after the commission of the offence. Therefore, an order, granting sanction to prosecute for perjury on an application made four months after the decision of the case in which the offence was committed was held to be bad in law and was set aside. Sanction to prosecute for perjury can be granted by a successor to the Judge who tried the case in which the offence was committed, but it would be more satisfactory if it were granted by the very Judge who tried the case. *Yad Ram v. Risal.*

11 Cr. L. J. 140 :
5 I. C. 469 : 7 A. L. J. 50.

—S. 195—Sanction to prosecute.

Fraudulent execution of decree. Offence under S. 210, Penal Code, held sanction was properly granted. *Chiman Lal v. Ghulam Mohi-ud-Din.*

12 Cr. L. 189 :
10 I. C. 646 : 59 P. L. R. 1911.

—S. 195—Sanction for prosecution, grant of Death of petitioner, effect of—Prosecution, continuance of.

A sanction for prosecution given by a Court under S. 195, Cr. P. C., is not a personal privilege granted to a petitioner but a decision that the case is one suitable for magisterial investigation and, therefore, a sanction for prosecution does not lapse on the death of the person who obtained it. *Behari v. Kure.*

18 Cr. L. J. 344 :
38 I. C. 446 : 15 A. L. J. 269 :
A. I. R. 1917 All. 313.

—S. 195—Sanction to prosecute—Grant to decree-holder—Transferee of decree, whether entitled to prosecute.

Where a decree-holder obtained sanction to prosecute one of the judgment-debtor's witnesses for perjury but before starting the prosecution, transferred the decree to another : *Held*, that the transferee of the decree was entitled to prosecute the witness under the sanction obtained by the decree-holder. *In re : Vital Bhimrao Kulkarni.*

20 Cr. L. J. 399 :
50 I. C. 1007 : 21 Bom. L. R. 266 :
43 Bom. 538 : A. I. R. 1919 Bom. 174.

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Sanction to prosecute granted before amendment of Code—Lapsing of sanction—Procedure—Superior Court, power of, to make complaint. *Pattabi Chetty v. Gopala Chetty.*

26 Cr. L. J. 1125 :
88 I. C. 357 : A. I. R. 1925 Mad. 1181.

—S. 195—Sanction to prosecute—Granted before amendment—Revocation—High Court, power of.

Act XVIII of 1923 which amended Cr. P. C., has abolished the procedure of obtaining sanction and has substituted for it a complaint in writing by the Court itself or by the Court to which that Court is subordinate, and the procedure prescribed by the new Act must be adopted for all prosecutions launched after the Act came into force. A sanction for prosecution granted before the amendment came into force cannot be revoked by the High Court

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after the coming into force of the new Act.
Sesha Aiyar v. Public Prosecutor.

25 Cr. L. J. 702 :
81 I. C. 199 : 19 L. W. 463 :
34 M. L. T. 353 ; A. I. R. 1924 Mad. 585.

—S. 195—Sanction to prosecute granted by Magistrate and upheld by Sessions Judge—Revision—High Court, power of interference of.

Where a Court exercising jurisdiction under the Cr. P. C. sanctions, under S. 195 of the Code, the prosecution of a witness for giving false evidence, and the sanction so given is upheld by the Sessions Judge acting under Cl. (6) of S. 195, the High Court has jurisdiction under S. 435 (1) of the Code to call for and examine the record of the proceeding before the Sessions Judge and to set aside the order if it is not satisfied as to its propriety. The existing state of the law permitting a revision to the High Court from the order of a Sessions Judge under S. 195 (6) animadverted upon. *Muqaddas Hussain v. Zahuruddin.*

20 Cr. L. J. 564 :
52 I. C. 52 : A. I. R. 1919 All. 430.

—S. 195—Sanction to prosecute—Granting of—Procedure—Order granting sanction, contents of—Grounds for upholding sanction.

An order under S. 195, granting sanction to prosecute should contain materials to justify the sanction; an order giving no reasons whatsoever for granting sanction cannot be upheld. The mere fact that sanction is granted to the Public Prosecutor because the Magistrate disbelieved the prosecution story, is not a sufficient ground to justify an order upholding sanction. *Ramani Mohan v. Public Prosecutor, Bhagalpor.*

21 Cr. L. J. 255 :
55 I. C. 207 : 1 P. L. T. 521 :
A. I. R. 1920 Pat. 168.

—S. 195—Sanction to prosecute—High Court, jurisdiction of—Extension of the period of sanction to prosecute.

A high Court has jurisdiction to extend the period of six months for which a sanction granted by a Subordinate Court, under S. 195, Cr. P. C., may remain in force, even though such extension is granted after the period of six months has expired. Where sanction to prosecute under S. 195, Cr. P. C., for an offence against public justice is granted to a private person and the District Magistrate, within whose jurisdiction the offence has been committed, desires to take cognizance of the offence, the latter can move the Court to extend the prescribed period of six months. *Hari Pado Mozamdar v. Lachmi Narain Marwari.*

13 Cr. L. J. 551 :
15 I. C. 967 : 15 O. C. 177.

—S. 195—Sanction to prosecute—Identification by the flash of a revolver.

Where the Sessions Judge made grant of sanction for prosecution of the accused, a Police Inspector, for having stated falsely that he recognised a certain person by the flash of his revolver : *Held*, that it was not a fit case for according sanction, as identification by

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means of the flash of a gun or revolver is not impossible. *Gopalswami Naidu v. Emperor.*

10 Cr. L. J. 7 :
2 I. C. 429.

—S. 195—Sanction to prosecute—Illegality of.

Defendant's properties were attached in execution of a decree. The amount of the decree having been deposited in Court, the Court directed the *Amin* to re-deliver the properties to the defendant. The *Amin* reported that he could not effect delivery as the defendant had already taken the properties from the bailees with whom they were deposited. The District Judge sanctioned prosecution of defendant under S. 183 and 186, Penal Code : *Held*, that the order directing the properties to be entrusted to the petitioner was not authorised by any of the provisions of the Cr. P. C. and that attachment having been withdrawn there was no resistance by defendant to a public servant within the meaning of S. 183 or 186 of the Penal Code. *In re : Arakkal Ahmad Ali.*

10 Cr. L. J. 496 :
4 I. C. 97.

—S. 195—Sanction to prosecute—Illegality of.

Where the defendant stated that he denied the plaint allegations, except those contained in a certain para. and sanction was asked for and granted for his prosecution under S. 191, Penal Code : *Held*, that the defendant only meant to say that he did not admit the plaint allegations and wanted plaintiff to prove them and that sanction should not have been granted on the basis of such loose expressions of language. Pleadings in the *mofussil*, where no great exactitude of expression is found, should not be taken too literally. *Narayan Sastrulu v. Kanakamuna.*

10 Cr. L. J. 364 :
3 I. C. 723.

—S. 195—Sanction to prosecute, expediency of.

It is inexpedient to grant sanction to prosecute under S. 195 or to permit continuation of prosecution, when the person obtaining sanction might use it for the purpose of harassing his opponent. *Dharshan Das v. Atma Ram.*

14 Cr. L. J. 389 :
20 I. C. 213 : 11 A. L. J. 313.

—S. 195—Sanction to prosecute—Inveterate enmity between parties—Sanction, whether should be given.

When there is inveterate enmity between parties, it is neither desirable nor in the interest of justice that sanction to prosecute should be granted. *Nazir Hasan v. Mohammad Yamin.*

23 Cr. L. J. 574 :
68 I. C. 414 : 9 O. L. J. 282 :
A. I. R. 1922 Oudh 225.

—S. 195—Sanction to prosecute.

It is undesirable, except in very unusual circumstances, that an Appellate Court, in ever ruling a reasoned and strongly expressed decision by a subordinate Magistrate who has passed a conviction should take the step of ordering or sanctioning the prosecution of

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the complainant in the case under S. 211, Penal Code. *Budh Ram v. Emperor*.

3 Cr. L. J. 121 :
6 P. L. R. 627 : 56 P. R. Cr. 1905.

—————**S. 195—Sanction to prosecute—Jurisdiction.**

A Magistrate has no jurisdiction to sanction prosecution for a statement made before another Magistrate. *Charan Das v. Rodu*.

24 Cr. L. J. 506 :
72 I. C. 970 : A. I. R. 1923 Lah. 36.

—————**S. 195—Sanction to prosecute—Legality of.**

An accused person was prosecuted for stabbing and was convicted of the offence, his defence version having been found by the Magistrate to be false. He afterwards brought a complaint against his prosecutors on the same facts as were urged by him in his defence. The Magistrate sent for the records of the previous case, examined the complainant on oath and, having patent doubts as to the correctness of his story, referred his complaint to the Police. The Police reported his complaint to be false and the Magistrate while dismissing his complaint under S. 203, Cr. P. C., also sanctioned his prosecution: *Held*, that the order granting sanction was legal. *In re : Narayana Nadam*.

15 Cr. L. J. 271 :
23 I. C. 479 : 1 L. W. 381 :
26 M. L. J. 486 : A. I. R. 1915 Mad. 229.

—————**S. 195—Sanction to prosecute, legality of.**

Some butchers made an application to Deputy Commissioner that the Hindu shop-keepers of the place would not supply them, and asked him to take steps. The Deputy Commissioner on *Tahsildar's* report that it was not shown that any ring or boycott had been established, issued a vernacular order for their prosecution under S. 182, I. P. C. without receiving any complaint or calling petitioners before him. The Chief Court on revision set aside the order as illegal. *Kala Khan v. Crown*.

9 Cr. L. J. 190 :
211 P. L. R. 1903 : 46 P. W. R. 1908.

—————**S. 195—Sanction to prosecute—Letters Patent, Cl. 10, proceeding under.**

A proceeding under Cl. 10 of the Letters Patent against the opposite party was heard by a particular Bench. The application failed: but the Court thought that there were matters in the case which called for further inquiry with a view to possible criminal proceedings. The papers were placed before the Public Prosecutor who applied under S. 195, Cr. P. C. for sanction to prosecute the opposite party for offences alleged to have been committed by him under Ss. 193 and 196, Penal Code, in relation to the proceeding under Cl. 10 of the Letters Patent: *Held*, that the Bench was neither prosecuting nor trying an accused, that it was merely considering whether the bar to the cognizance of the alleged offences should be removed by according the required sanction, and that under S. 195, Cr. P. C., it was this

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Bench alone that could give the required sanction. *Mr. Hume v. Poresh Chunder Ghose*.

15 Cr. L. J. 49 :
22 I. C. 321 : 41 Cal. 446 :
A. I. R. 1914 Cal. 597.

—————**S. 195—Sanction to prosecute, necessity of—Fabricating false evidence—Fabricating document—Lodging suit on same—Calling original to be produced—Offence, whether committed in relation to judicial proceeding.**

One *A M* fabricated a document and caused it to be registered; he brought a suit on the basis of this document filing a certified copy with the plaint and asked that the defendant be summoned to produce the original; this the defendant was unable to do, so an application was made to have the document produced from the Sub-Registry Office. A complaint was then made against *A M* of an offence under S. 193, Penal Code, without obtaining the sanction of the Civil Court in which the suit was brought; the complaint was dismissed upon the ground among others that no sanction had been accorded: *Held*, that the offence imputed was committed in relation to a judicial proceeding in Court and that previous sanction for the prosecution must be obtained from the Court under S. 195 (c), Cr. P. C. *Abdul Majid Khan v. Norol Haque*.

14 Cr. L. J. 289 :
19 I. C. 945 : 17 C. W. N. 937.

—————**S. 195—Sanction to prosecute, necessity of.**

When an offence is of such a nature that at the time of committing it, the accused must have legal proceedings in mind and prior to his being charged with the commission of the offence, legal proceedings of the same nature have already commenced in any Court, it is most in consonance with the intention of the Legislature to require that the sanction of the Court should be obtained. *In re : Parameswara Nambudri*.

16 Cr. L. J. 721 :
31 I. C. 161 : 18 M. L. T. 322 :
A. I. R. 1916 Mad. 72.

—————**S. 195—Sanction to prosecute—No sanction—Competency of Magistrate to try offences under Ss. 355, 323—Amin, sanction of.**

The complainant charged the accused under Ss. 183, 186, 355 and 323, Penal Code, in that the accused assaulted the complainant when he was, under the orders of the *Amin*, trying to open the door of the judgment-debtor's house: *Held*, that the sanction of the *Amin* would have been a sufficient warrant for the Magistrate taking cognizance of the offences under Ss. 183 and 186 of the Penal Code: *Held also*, that it was not necessary to obtain sanction in respect of offences under Ss. 355 and 323 of the Penal Code. *Kristna Pillai v. Krishna Konan*.

7 Cr. L. J. 6 :
17 M. L. J. 559 : 31 Mad. 43 :
3 M. L. T. 113.

—————**S. 195—Sanction to prosecute—Notice of application for sanction—Practice.**

Where an application is made to a Court under S. 195, Cr. P. C. for sanction to prosecute, although it is not legally necessary that notice of such application should be given to

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the opposite party before orders are passed thereon nevertheless it is highly desirable that such notice should be given. *Inayat Ali v. Mohur Singh*. 2 Cr. L. J. 598 : 25 A. W. N. 231 : 28 All. 142.

———S. 195—Sanction to prosecute, object of—Conflict of opinion between Original Court and Appellate Court as to truth of evidence—Sanction, whether should be granted—Object of sanction.

Where there is a conflict of opinion between an Original Court and an Appellate Court as to the truth or falsity of any evidence, oral or documentary, the case is not one in which sanction to prosecute for falsely giving or fabricating that evidence should ordinarily be accorded. The object of the law in requiring sanction to prosecute is to restrain the exercise of private spite or desire for revenge and to secure that, prosecutions shall only take place, where the interests of public justice make it necessary to have them. *Amolak Chand Hemraj v. Ishanaji*. 19 Cr. L. J. 769 (a) : 26 I. C. 689 : A. I. R. 1917 Nag. 69.

———S. 195—Sanction to prosecute, offence requiring—Trial by Court before which offence committed—Jurisdiction—Irregularity.

Where a Criminal Court, on being informed of the commission of an offence in connection with certain proceedings taken by it, the prosecution for which required its sanction under S. 195, Cr. P. C., directed the prosecution of the offenders and convicted them of the offence without granting the sanction or proceeding under S. 476, Cr. P. C. : *Held*, that the action of the Court amounted to such an irregularity as was covered by S. 537, Cr. P. C., and that it had no jurisdiction to try the case itself. *Fatch Singh v. Emperor*. 18 Cr. L. J. 969 : 42 I. C. 329 : 4 O. L. J. 492 : A. I. R. 1917 Oudh 372.

———S. 195—Sanction to prosecute—Offence committed before Munsif—Prosecution ordered by District Judge.

Where a Munsif refused to grant sanction to prosecute and the District Judge also refused it on appeal under S. 195 (6), but acting under S. 476, ordered prosecution himself : *Held*, that the District Judge's order was without jurisdiction inasmuch as neither the offence was committed before him nor was it brought to his notice in the course of a judicial proceeding. *In re : Mathara Das*, 10 A. 80 followed. *Shiam Lal v. Chuni Lal*. 9 Cr. L. J. 181 : 1 I. C. 220.

———S. 195—Sanction to prosecute—Omission to name person to whom sanction granted, effect of.

A sanction to prosecute which omits to specify the person, either by name or by office, to whom sanction is accorded is bad in law, and consequently a trial held under such sanction is invalid. *Basheshar Nath v. Emperor*. 20 Cr. L. J. 490 : 51 I. C. 474 : 8 P. R. 1919 Cr. : A. I. R. 1919 Lah. 310.

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———S. 195—Sanction to prosecute—Order of Single Judge of High Court—Appeal to Bench, if lies.

An appeal lies to a Division Bench of the Appellate Side hearing appeals from the Original Side of the High Court, Madras, from an order of a Single Judge sitting on the Original Side giving, under S. 195, Cr. P. C., sanction for prosecution for an offence committed in relation to proceedings before him. *Munisami Mudaliar v. Rajaratnam*. 24 Cr. L. J. 78 : 71 I. C. 126 : 16 L. W. 365 : 43 M. L. J. 375 : 1922 M. W. N. 594 : 31 M. L. T. 287.

———S. 195—Sanction to prosecute, order granting, whether appealable.

An order under S. 195 is not appealable. An application to a superior Court under Cl. (6) of the section is not an appeal. *Choti v. Khecheru*. 21 Cr. L. J. 746 : 58 I. C. 250 : 18 A. L. J. 758 : 24 P. L. R. All. 353 : 42 All. 649 : A. I. R. 1920 All. 177.

———S. 195—Sanction to prosecute—Particulars, absence of, effect of.

S. 195 (4) provides that the sanction referred to in that section may be expressed in general terms, and need not name the accused person ; but that it shall, so far as practicable, specify the Court or other place in which, and the occasion on which the offence was committed. A sanction under S. 195 which omits to specify the particulars required by Sub-s. (4) of the section is bad in law and a conviction based on such sanction is liable to be set aside in revision by the High Court. *Jaswant Singh v. Emperor*. 25 Cr. L. J. 721 : 81 I. C. 209 : 1 L. Cas. 429 : A. I. R. 1925 Lah. 139.

———S. 195—Sanction to prosecute—Parties on bad terms—Sanction, grant of.

Where it is found, after a consideration of the evidence that a charge of an offence against an accused person is false, the accused should be allowed to prosecute his accuser for having brought a false charge. The fact that parties are on bad terms is not a reason for refusing sanction for prosecution. *Hari Chand v. Aya Ram*. 25 Cr. L. J. 386 : 77 I. C. 434 : 4 L. L. J. 321 : A. I. R. 1922 Lah. 403.

———S. 195—Sanction to prosecute—Penal Code (Act XLV of 1860), Ss. 193 and 471, offence under, committed in proceedings before arbitrator appointed by Court.

A complaint charging a person with offences under Ss. 193 and 471, Penal Code, alleged to have been committed in proceedings before an arbitrator, under the order of reference made by a Court, cannot be entertained without the sanction of the Court. *Mula Mal v. Churanji Lal*. 15 Cr. L. J. 358 : 23 I. C. 726 : 3 P. R. 1914 Cr. : 136 P. L. R. 1914 : A. I. R. 1914 Lah. 253.

———S. 195—Sanction to prosecute—Penal

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Code (Act XLV of 1860), Ss. 196, 211—False case—False evidence.

Sanction to prosecute under S. 211, Penal Code, should only be given where the case is deliberately false, where the case brought is not false in substance, but is bolstered up by false evidence, the proper section to give sanction to prosecute under is S. 196, Penal Code. *Bholanath v. Hari Mohan.*

7 Cr. L. J. 196 :
7 C. L. J. 169.

———S. 195—Sanction to prosecute—Penal Code (Act XLV of 1860), S. 209—False suit—Plaintiff prevented from producing evidence—Sanction whether should be granted.

Where a plaintiff in a civil suit was prevented from producing the evidence in support of his claim owing to the interference of the Criminal Investigation Department Officers and his suit was consequently dismissed: *Held*, (1) that the action of the Criminal Investigation Department was most unwarranted; (2) that in such a case it would not only be unjust but oppressive to grant sanction for the prosecution of the plaintiff under S. 209 of the Penal Code. *Kharaiti Ram v. Emperor.*

22 Cr. L. J. 689 :
61 I. C. 817 : A. I. R. 1921 J. 7.

———S. 195—Sanction to prosecute—Penal Code (Act XLV of 1860), S. 211—False information to Police—Case launched in consequence.

Sanction to prosecute was applied for against a person who was alleged to have "planted" a mould in the applicant's house, and then to have given information to the Police that the applicant was counterfeiting coin, in consequence of which, the applicant's house was searched, resulting in discovery of the mould, and he was sent up for trial, but ultimately discharged: *Held*, that if the facts alleged were true, the respondent could be considered to have caused the prosecution of the applicant and to have committed an offence in relation to the proceedings before the Magistrate. *Ani v. Ah Yone.*

26 Cr. L. J. 383 :
84 I. C. 863 : 2 Bur. L. J. 289 :
A. I. R. 1924 Rang. 211.

———S. 195—Sanction to prosecute—Penal Code (Act XLV of 1860), S. 183—Perjury—Trial Court and Appellate Court taking different views of evidence.

Where the Trial Court and the Appellate Court take different views of a piece of evidence, sanction to prosecute a witness for perjury in respect of that piece of evidence ought not to be granted. *Hira Lal Mahton v. Lila Mahton.*

22 Cr. L. J. 755 :
64 I. C. 276 : 3 P. L. T. 60 :
A. I. R. 1921 Oudh 149.

———S. 195—Sanction to prosecute—Penal Code (Act XLV of 1860), S. 471—Forgery—Knowledge of applicant that the document was a forgery—Proof.

Before a conviction under S. 471, Penal Code, it is necessary to prove that the accused knew or had reason to believe that the document was a forgery. Where, therefore, there is no ground for supposing that the accused had

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any knowledge or belief as to the forgery of a pro-note, on which a suit was based, sanction for his prosecution cannot be given. *Ramaswamy Chetty v. Maung Shwe Son.*

11 Cr. L. J. 749 (a) :
8 I. C. 995 : 3 Bur. L. T. 151.

———S. 195—Sanction to prosecute—Period—Competition of—Sanction, when can be said to be "given"—Duration of sanction—Period of six months, commencement of.

A sanction granted under S. 195 is "given" by the Court which first grants it, and not by the Court which subsequently refuses to revoke it. Hence the period of six months mentioned in S. 195, Cl. (6), for which the sanction is to remain in force, must be computed from the day on which it is "given" by the Court which first grants it, and not from the date of the refusal of a superior Court to revoke it. *Tilak Ram v. Dalip Singh.*

19 Cr. L. J. 387 :
44 I. C. 739 : 16 A. L. J. 223 :
40 All. 338 : A. I. R. 1918 All. 243.

———S. 195—Sanction to prosecute—Perjury—Excise Act (VII B. C. of 1878), R. 16—License, nature of.

Under the Excise Rules a person to whom a license is granted is forbidden to sub-let his shop or transfer his license, which is a purely personal one, to any other person or allow any person to sell liquor under his license. A licensee under the Excise Rules stated in a criminal case that a particular wine shop was exclusively owned by him, but it was found in a civil suit that he had a partner: *Held*, that in making the statement he might have unconsciously deviated into the truth and it might be that the claim of the alleged partner was without legal justification, and that sanction to prosecute him for perjury should not be granted. *Rakhal Chandra v. Damodar Shah.*

12 Cr. L. J. 11 :
9 I. C. 115 : 15 C. W. N. 169.

———S. 195—Sanction to prosecute—Perjury—Magistrate, discretion of—Sanction, when ought not to be given.

The granting of sanction to prosecute for perjury is a matter within the discretion of the Magistrate who tried the case, and such sanction ought not to be given in a case in which it is obvious that there can be no conviction. *Durga Prasad Biswas v. Ari Patar.*

22 Cr. L. J. 423 :
61 I. C. 711.

———S. 195—Sanction to prosecute—Perjury—Omission to specify false statements—Revocation of sanction—Probability of conviction—Withdrawal of suit, effect of.

Omission to specify statements in respect of which a prosecution is sanctioned is not in itself a sufficient ground for revoking the sanction. The Court before granting sanction must be satisfied that there is reasonable probability of conviction. The withdrawal of a suit by a plaintiff cannot be construed as an admission that the note sued on was not executed by the defendants. It is at most an admission that plaintiff cannot prove execution,

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which is a very different thing. *Mutaya Pillay v. Maung Shwe Bon.*

11 Cr. L. J. 749 (b) :
8 I. C. 996 : 3 Bur. L. T. 152.

————S. 195—Sanction to prosecute—Practice—
Illegality of.

Under S. 195 (1) (b), the District Judge can grant the sanction. Before sanction is granted, there must be a formal application by some person for sanction. Sanction granted by the District Judge on the motion of the Magistrate, who is himself enquiring into the case, is no legal sanction and must be revoked. *Sundar Lal v. Emperor.*

10 Cr. L. J. 437 :
3 I. C. 966 : 6 A. L. J. 796 : 6 M. L. T. 98.

————S. 195—Sanction to prosecute—
Principle.

The true rule regarding grant of sanction to prosecute is that the Judge should be satisfied that there is a reasonable *prima facie* case, fit to be tried. The grant of sanction does not involve any trial of the issue, nor necessarily forming any definite opinion, upon the accused's guilt, but is restricted to removing a bar to this question being formally tried by another Court. *Safurabai v. Abdullah.*

10 Cr. L. J. 539 :
4 I. C. 273 : 11 Bom. L. R. 1164.

————S. 195—Sanction to prosecute—Private
grudge.

A person cannot obtain sanction to prosecute in pursuance of a private grudge. *Patun Din v. Bhagwan Din.*

16 Cr. L. J. 624 :
30 I. C. 448 : A. I. R. 1915 Oudh 120.

————S. 195—Sanction to prosecute—
Procedure.

A sanction given on account of the contradictory statements made by a person without giving him an opportunity to explain those contradictory statements is not a sanction given with due consideration. *Iqbal Hussain v. Wilayat Husain.*

17 Cr. L. J. 93 :
32 I. C. 685 : A. I. R. 1916 All. 318.

————S. 195—Sanction to prosecute—Pro-
cedure.

In granting sanction to prosecute, it is incumbent on the Court to inquire whether the statement made was material to the result of the case, and whether there is a *prima facie* case and a reasonable prospect of a conviction. The Court should also consider whether a prosecution is desirable in the public interest. *Khajumal Parumal v. Emperor.*

21 Cr. L. J. 787 :
58 I. C. 515 : A. I. R. 1920 Sind 49.

————S. 195—Sanction to prosecute—
Procedure—Matters to be considered—
Proceedings likely to prove abortive—Sanction,
refusal of.

In granting sanction to prosecute under S. 195, the Court should be astute to see that there is no abuse of the administration of criminal justice, and where there is a strong probability that proceedings will prove abortive, sanction

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ought to be refused. *Chaudhuri Meah v. Abdul Rahman.*

21 Cr. L. J. 765 :
58 I. C. 349 : 24 C. W. N. 102 : 31 C. L. J. 33 :
A. I. R. 1920 Cal. 938.

————S. 195—Sanction to prosecute—Pro-
cedure—Sanction to prosecute—Court to state
reasons for granting sanction.

Where a Court sanctions a prosecution under S. 195, it should state its reasons for doing so and not confine itself merely to saying that it sanctions the prosecution, otherwise a superior Court is not in a position to decide whether it should exercise the powers conferred upon it by S. 195 of the Code. *Maula Bakhsh v. Niazo.*

1 Cr. L. J. 646 :
24 A. W. N. 171.

————S. 195—Sanction to prosecute—Pro-
cedure.

When sanction is given to prosecute a witness for giving false evidence, the actual statements which are alleged to be false should be mentioned in the sanction. *In re : Danappa Narsappa.*

23 Cr. L. J. 176 :
65 I. C. 640 : 24 Bom. L. R. 45 :
A. I. R. 1922 Bom. 38.

————S. 195—Sanction to prosecute—Proceed-
ing in contemplation before Criminal Court—False
evidence, abetment of—Prosecution—Sanction,
whether necessary.

Where a person instigates certain others to give false evidence in a criminal proceeding which is about to come before a Magistrate, and does in fact come before that Magistrate, sanction, under S. 195, Cr. P. C., is necessary before a Court can take cognizance of a complaint against that person of the offence of having abetted the giving of false evidence. *In re : Vasudev Ramchandra Joshi.*

24 Cr. L. J. 171 :
71 I. C. 523 : 24 Bom. L. R. 1153 :
A. I. R. 1923 Bom. 105.

————S. 195—Sanction to prosecute—Proceed-
ings under S. 476—Application for sanction by
private person—Procedure.

Where a Court initiates proceedings under S. 476, a subsequent application by a private person for sanction to prosecute the accused is no justification for dropping the proceedings under S. 476 and in substitution granting sanction to prosecute. The Magistrate ought to decide for himself whether or not the case is a fit one in which to lay a complaint. It is not usually advisable to grant sanction to a private person. *Ram Sahai v. Emperor.*

20 Cr. L. J. 368 :
50 I. C. 848 : 17 A. L. J. 431 :
A. I. R. 1919 All. 356.

————S. 195—Sanction to prosecute—Promise
to grant sanction, legality of.

If a Magistrate thinks deliberate perjury has been committed before him, he can himself direct the prosecution of those whom he believes to be the offenders ; or if a party comes to him and asks for sanction, he can deal with that application and give or withhold sanction. But he should not hold out to a party to a case that i

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he comes for sanction, the sanction will be given. *In re : Edulji Limjibhai*.

13 Cr. L. J. 104 :
43 I. C. 328 : 19 Bom. L. R. 910 :
A. I. R. 1917 Bom. 60.

————S. 195—Sanction to prosecute, proper officer to grant.

Where there are many Deputy Magistrates and one of them is transferred, the Deputy Magistrate who comes to fill the gap is not the successor-in-office of the Deputy Magistrate who has been transferred, and is not, therefore, the proper officer to grant sanction for prosecution in respect of the use of a forged document in the proceedings under S. 107, Cr. P. C. before the Deputy Magistrate transferred. *Girish Chandra Ray v. Sarat Chandra Singh*.

16 Cr. L. J. 695 :
30 I. C. 743 : 42 Cal. 667 :
A. I. R. 1915 Cal. 692.

————S. 195—Sanction to prosecute—Public interest.

It is the duty of a Judge to grant sanction to prosecute, if he thinks it is in the public interest, independently altogether of any further grievance or complaint. *Angnoo Singh v. Emperor*.

24 Cr. L. J. 257
71 I. C. 865 : 20 A. L. J. 881 :
45 All. 109 : A. I. R. 1923 All. 735.

————S. 195—Sanction to prosecute—Public Officer, complainant—Sanction, whether necessary.

The sanction of a Public Officer for a prosecution under S. 195 is not necessary in a case where the complainant is himself the Public Officer concerned. *Government Advocate, Behar and Orissa v. Ganga Prasad*.

25 Cr. L. J. 31 :
75 I. C. 719 : 3 P. L. T. 559 :
1 Pat. 423 : A. I. R. 1922 Pat. 532.

————S. 195—Sanction to prosecute to private person, abolition of—Sanction to prosecute granted after amendment of Act, legality of—Order, whether can be treated as complaint.

Where an application for sanction to prosecute was made before the amendment of S. 195 but the section was amended before the application could be disposed of and sanction was nevertheless granted: *Held*, (1) that after the amendment, the Court had no jurisdiction to grant sanction; (2) that the order granting the sanction could not be treated as a complaint within the meaning of S. 195 (b). *Baldeo Misser v. Deputy Inspector-General of Police, Bengal*.

26 Cr. L. J. 338 :
84 I. C. 62 : 51 Cal. 652 :
A. I. R. 1924 Cal. 826.

————S. 195—Sanction to prosecute to private person—Effect of amendment on—Criminal Procedure Code Amendment Act (XVIII of 1923), S. 47—Sanction to prosecute obtained and complaint filed before Amending Act, whether lapses after Amending Act.

A sanction for prosecution obtained under the Cr. P. C., 1898, and a complaint based on it, filed before the coming into force of the Amending Act of 1923, do not lapse by virtue of the

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coming into force of the new Act. *Muthaih Goundan v. Chinna Nallappa Goundan*.

26 Cr. L. J. 142 :
83 I. C. 702 : 19 L. W. 392 :
1924 M. W. N. 358 :
A. I. R. 1924 Mad. 615.

————S. 195—Sanction to prosecute—Revision—Ss. 435, 476.

Application was made by an accused person who had been discharged by the trying Magistrate—a Magistrate of the First Class—for sanction to prosecute the complainant under S. 193, Penal Code. That application was refused. The applicant then applied for sanction to the Magistrate of the District. On this the Magistrate of the District directed the prosecution of the complainant under S. 211, Penal Code: *Held*, that the Magistrate of the District had no jurisdiction to pass such an order, either under S. 195 or 435 or 476 of the Cr. P. C. *Mihi Lal v. Larchi Prasad*.

7 Cr. L. J. 304 :
28 A. W. N. 74 : 5 A. L. J. 562.

————S. 195(6)—Sanction to prosecute—Revocation of sanction by Appellate Court—Power of High Court to grant sanction.

The higher Appellate Court has power not only to grant a sanction which has been refused but also to grant a sanction which has been revoked. A sanction which has been revoked is in effect only sanction which has been refused. *Lalu v. Gurdasmal*.

13 Cr. L. J. 768 :
17 I. C. 80 : 6 S. L. R. 81.

————S. 195—Sanction to prosecute—Revocation of sanction to prosecute—Jurisdiction.

A sanction under S. 195 given or refused by a Magistrate of the Second Class, can be revoked or granted under Sub-s. (6) only by the District Magistrate. A District Magistrate delegated his authority to hear and dispose of an application for revocation of such a sanction to a Sub-Divisional Magistrate who was empowered to hear appeals under S. 407 (2): *Held*, that the proceedings of the Sub-Divisional Magistrate were void. *Ramdayal v. Ramprasad*.

5 Cr. L. J. 432 :
3 N. L. R. 50.

————S. 195—Sanction to prosecute—Sanction based on circumstantial evidence, validity of.

In the absence of any direct evidence, the existence of circumstantial evidence is sufficient to justify an order granting sanction to prosecute. *Gauri Shankar Prasad v. Baldeo Koeri*.

21 Cr. L. J. 180 (b) :
54 I. C. 384 : A. I. R. 1920 Pat. 461.

————S. 195—Sanction to prosecute—Sanction granted by a Civil Court—Revision—Civil Procedure Code, S. 622.

Where a Munsif granted sanction under S. 195 of the Code of Criminal Procedure for the prosecution of certain persons for offences under S. 193 of the I. P. C., and the sanction so given was upheld by the District Judge, it was held that no application in revision under S. 622 of the Code of Civil Procedure

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would lie to the High Court. *Ranjit Singh v. Shibba Mal.* 2 Cr. L. J. 225 : 25 A. W. N. 85.

———**S. 195—Sanction to prosecute—Sanction proceedings under amending Act—Petition to set aside order revoking sanction—Appeal under old Act.**

A High Court cannot entertain sanction proceedings under the Cr. P. C., as amended by Act XVIII of 1923. Therefore a petition to set aside an order (passed under the old Act of 1898) revoking an order for sanction to prosecute does not lie to a High Court. S. 195 (6) did not give a right of appeal. The amendment of S. 195 by Act XVIII of 1923, has effected only an alteration in procedure. *Nataraja Pillai v. Rangaswamy Pillai.*

25 Cr. L. J. 361 :
77 I. C. 297 : 46 M. L. J. 274 :
19 L. W. 358 : 47 Mad. 384 :
A. I. R. 1924 Mad. 657.

———**S. 195—Sanction to prosecute—False complaint—Procedure.**

As a matter of judicial prudence, sanction to prosecute for making a false complaint ought not to be granted unless the complaint has been properly dealt with and dismissed. *Mahadu v. Emperor.*

24 Cr. L. J. 959 :
75 I. C. 543.

———**S. 195—Sanction to prosecute, given to a particular individual—Prosecution, if can be started under his authority by another person—Authority to be a matter of record—Magistrate's duty to require and record evidence as to such authority.**

Where sanction to prosecute is given to a particular person but another person starts the prosecution with his express authority, the authority must be a matter of record so as to enable the accused to challenge its validity both before the Magistrate and also on appeal or revision. S. 200, Cl. (b) does not excuse the Chief Presidency Magistrate from the necessity of placing on record the necessary evidence of such authority. *Kali Kinkar Sett v. Nritya Gopal Roy.*

1 Cr. L. J. 845 :
8 C. W. N. 883 : I. L. R. 32 Cal. 469.

———**S. 195—Sanction to prosecute—Sanction to prosecute Receiver, necessity of.**

The leave of the Civil Court is not a condition precedent to a Magistrate's taking cognizance of a complaint against a Receiver appointed by the Court. A criminal offence by a Receiver would be clearly in respect of an act in excess of the authority of the Receiver appointed by a Civil Court and the reason of the rule requiring leave of the Court before suing the Receiver would not apply to a criminal prosecution against the Receiver for violation of the Criminal Law. *Khemchand Narottam v. Devkaran Mulji.*

30 Cr. L. J. 495 :
115 I. C. 387 : 30 Bom. L. R. 1273 :
52 Bom. 898 : I. R. 1929 Bom. 291 :
A. I. R. 1928 Bom. 493.

———**S. 195—Sanction to prosecute—Sanction**

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to prosecute, refusal to grant by Trial Court—Sessions Judge, interference by, when justified.

Where a trial Court which has the advantage of seeing a witness in the box and is cognizant of the full facts in connection with the case, refuses to sanction the prosecution of the witness, the Sessions Judge should not, unless a clear case is made out against the witness too readily adopt a different view and grant sanction. *Nirghin Mahlon v. Emperor.*

21 Cr. L. J. 500 :
56 I. C. 660 : A. I. R. 1920 Pat. 171.

———**S. 195—Sanction to prosecute—Sanction to prosecute, refusal to grant, by First Class Magistrate—Additional Sessions Judge, jurisdiction of, to grant sanction.**

An Additional Sessions Judge has jurisdiction to hear an application or an appeal from a First Class Magistrate refusing to give sanction to prosecute under S. 195, and has jurisdiction to grant a sanction refused by such Magistrate. *In re : Sikandarkhan Mahomaddkhan.*

21 Cr. L. J. 382 :
55 I. C. 862 : 22 Bom. L. R. 200 :
44 Bom. 877 : A. I. R. 1920 Bom. 415.

———**S. 195—Sanction to prosecute.**

Sanctioning a prosecution for an offence is a judicial act, and the party to whose prejudice it is done, must be previously heard and a judgment formed upon legal evidence. *In re : Nataraja Pathan.*

18 Cr. L. J. 277 :
38 I. C. 309 : A. I. R. 1918 Mnd. 992.

———**S. 195—Sanction to prosecute.**

S. 195 (1) (c) applies to parties and not to witnesses. Therefore, no sanction is required to prosecute a witness for producing a forged document. Therefore, where sanction to prosecute a witness under Ss. 182, 469 and 471, Penal Code, is given by one Court and revoked by the superior Court, the revocation does not affect the right of any person to prosecute a witness under Ss. 469 and 471. A Magistrate trying a case should pay no attention to any directions given to him by the District Magistrate or other Magistrate extra-judicially as to how he should dispose of the case. *Bassarmal Awatmal v. Emperor.*

23 Cr. L. J. 31 :
64 I. C. 511 : 15 S. L. R. 149.

———**S. 195—Sanction to prosecute—Stage for grant of—Order for prosecution after termination of proceedings in which offence is committed, legality of.**

Where the commission of an offence is discovered by a Court after the judicial proceeding in the course of which the offence was committed has terminated, but at a time when the facts are fresh in the mind of the Judge, he cannot pass an order for the prosecution of the offender under S. 476. It is open to the Court, in such a case, to act under S. 195, Cr. P. C. and direct an officer of the Court to file a complaint. *In re : Padmanabha Hebbara.*

20 Cr. L. J. 309 :
50 I. C. 486 : 9 L. W. 315 :
36 M. L. J. 352 : 25 M. L. T. 296 :
1919 M. W. N. 223 : 42 Mad. 422 :
A. I. R. 1919 Mad. 410.

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—S. 195—*Sanction to prosecute—Statements not absolutely irreconcilable.*

Sanction for prosecution for giving false evidence should not be granted where the statements complained of were made in the course of a lengthy cross-examination and are not absolutely irreconcilable and for which explanations, which go far to reconcile them, have been subsequently given. *Baldeo Das Tansuk Das v. Mohamed Inamul Haq.*

19 Cr. L. J. 234 :
43 I. C. 826 : A. I. R. 1918 Cal. 97.

—S. 195—*Sanction to prosecute—Superior Court's duty when no prima facie case for sanction.*

Where sanction to prosecute for any offence specified under S. 195, Cr. P. C. has been granted, the superior Court should see whether the discretion has been properly exercised, and when there is no *prima facie* case for the prosecution, the sanction should be revoked. *Jhandu v. Emperor.*

13 Cr. L. J. 831 :
17 I. C. 575 : 40 P. W. R. 1912 Cr.

—S. 195—*Sanction to prosecute—Technical grounds—Sanction not to be granted in absence of reasonable prospect of conviction.*

When a Court is invited to sanction a prosecution because an offence against public justice has been committed, the ends of justice ought not to be allowed to be defeated on technical grounds. But it should be remembered that a sanction ought not to be granted merely because there is room for suspicion that an offence may have been committed. The Court is bound to satisfy itself that there is at least a *prima facie* case, and that if a sanction is granted, there is a reasonable prospect of a successful termination of the prosecution about to be instituted. *Mathura Sahu v. Damri Ram.*

13 Cr. L. J. 291 :
14 I. C. 755 : 15 C. L. J. 337.

—S. 195—*Sanction to prosecute.*

The granting of sanction under S. 195 is an executive act, and does not become a judicial one because the sanction is granted by a Court, or because the sanctioning Court treats it as such. *Ali Hussain Khan v. Hareharan Das.*

23 Cr. L. J. 113 :
65 I. C. 545 : 2 Lah. 305 :
4 P. W. R. 1922 Cr. : 35 P. L. R. 1922 :
A. I. R. 1922 Lah. 146.

—S. 195—*Sanction to prosecute.*

The test for the necessity of the sanction under S. 195, Cr. P. C., is the character of the offence and not the character of the offender. Sanction is necessary under the section when an offence punishable under S. 211, Penal Code, is committed in or, in relation to, any proceeding in any Court. *In re : Khanderao Yeshwant.*

13 Cr. L. J. 527 :
15 I. C. 799 : 14 Bom. L. R. 362.

—S. 195—*Sanction to prosecute.*

There is no Court of a Munsif of the 1st class as a permanent Court with a perpetual succession of Judges, and on the transfer of a Munsif from a District, the

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Court of the Munsif who takes over the pending work is not identical with the Court of the Munsif who has been transferred. Therefore, a Munsif before whom an offence has not been committed cannot grant sanction to prosecute under S. 195, merely because he has succeeded a Munsif in that particular place or district. *Maula Bakhsh v. Lal Chand.*

18 Cr. L. J. 121 :
37 I. C. 473 : 23 P. R. 1916 Cr. :
A. I. R. 1917 Lah. 277.

—S. 195, as amended by Act (XVIII of 1923)—*Sanction to prosecute to private person, abolition of—Sanction granted under old Act—Complaint not filed—Amendment of Code—Effect of.*

The Cr. P. C., 1898, as amended in 1923, has not only done away with the rule of granting permission to private persons to prosecute, but has also stopped the application of the old procedure to cases in which sanction had already been granted before the coming into force of the amended Code but in which no complaint had actually been filed. *Ameraj Singh v. Emperor.*

26 Cr. L. J. 751 :
86 I. C. 287 : 23 A. L. J. 35 :
A. I. R. 1925 All. 306.

—S. 195—*Sanction to prosecute to private person—Abolition of by amendment in 1923—Sanction to prosecute obtained before amendment of Code—Complaint instituted after coming into force of amended Code, whether can be entertained.*

No prosecution in respect of an offence specified in S. 195 can, since the amendment of the Code, be instituted except on the complaint of the authority concerned, and a complaint made by a private individual in respect of an offence alleged to have been committed in or in relation to any proceeding in a Court must be dismissed if it is instituted after the 1st of September, 1923, that is to say, the date on which the amended Code came into force. *Jawahar Lal v. Joggu Mal.*

26 Cr. L. J. 1163 :
88 I. C. 523 : 6 Lah. 41 :
A. I. R. 1925 Lah. 350.

—S. 195 as amended by Act (XVIII of 1923)—*Sanction to prosecute to private person—Effect of amendment on—General Clauses Act (X of 1897, S. 6 (c))—Sanction to prosecute—Perjury—Application to Appellate Court—Amendment of section, effect of.*

A Subordinate Judge refused to sanction the prosecution of certain persons under S. 195 for the offence of perjury. The complainant thereupon applied to the District Judge for sanction. While the application was pending in the Court of the District Judge, the Amended Code of 1923 came into force. Sanction was eventually granted by the District Judge: *Held*, (1) that the case was governed by S. 6 (c) of the General Clauses Act; the persons had incurred a liability to have their prosecution for false evidence sanctioned, and the

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complainant on his application being dismissed by the Subordinate Judge, acquired a right to apply to the Appellate Court under S. 195 of the unamended Code for the grant of the sanction which the lower Court had refused; (2) that under these circumstances the repeal of S. 195 as it then stood could not affect any pending investigation in respect of the right which had accrued to the complainant or the liability which had been incurred by the other persons, and the order of the District Judge was perfectly valid. *Kashmiri Lal v. Kishen Dei.*

26 Cr. L. J. 90 :
83 I. C. 650 : A. I. R. 1924 All. 563.

———S. 195—Sanction to prosecute—Trying Magistrate, whether can question legality of sanction.

A Magistrate trying an accused person for an offence for which sanction is required under S. 195, has no right to go behind the order of sanction and to question its propriety or legality. If he thinks that the sanction is bad for any reason, he cannot refuse to recognise it; all that he can do is to stay proceedings in order to allow the accused to get the sanction revoked by some Court to which the Court granting the sanction is subordinate. *Emperor v. Thamman.*

19 Cr. L. J. 399 (b) :
44 I. C. 751 : 8 P. R. 1918 Cr. :
17 P. W. R. 1918 Cr. :
A. I. R. 1918 Lah. 188.

———S. 195—Sanction to prosecute—Validity of—Order directing prosecution for forgery—Documents alleged to be forged not produced in sanction proceedings—Order, legality of.

N. and S. produced two bonds in the course of two civil suits which were eventually compromised. C., the defendant in both suits, filed a complaint against N. and S. under S. 417 of the Penal Code, alleging that he had been deceived into the compromise. Evidence was recorded and the bonds examined by a Court witness, who was of the opinion that alterations had been made in them. Warrants of arrest were thereupon issued. On the date of hearing C. alone was examined but the two bonds were not produced by him or given in evidence and N and S. were discharged. Subsequently the Magistrate commenced proceedings under S. 476 and finally ordered the prosecution of both N. and S. under S. 471 of the Penal Code. N. and S. moved the High Court on the revision side: *Held*, that as the bonds were not given in evidence during the proceedings to which the petitioners were parties, the Magistrate had no jurisdiction to take action under S. 476, Cr. P. C. *Nanak Chand v. Emperor.*

21 Cr. L. J. 7 :
54 I. C. 55 : 4 P. W. R. 1920 Cr. :
3 P. L. R. 1920 :
A. I. R. 1920 Lah. 89.

———S. 195—Sanction for prosecution, validity of—Petty theft committed thirty-eight years pre-

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viciously, denial of—Sanction, whether should be granted.

Sanction was granted for the prosecution of the accused for perjury in respect of a statement made by him in which he had denied the fact of his having been convicted of petty theft thirty-eight years previously at the age of fourteen: *Held*, that the fact which the accused had denied was not relevant to the trial before the Magistrate, and that, therefore, this was not a fit case in which sanction should have been granted. *Gujadhar v. Emperor.*

20 Cr. L. J. 2 :
48 I. C. 493 : 16 A. L. J. 923 :
A. I. R. 1918 All. 67.

———S. 195—Sanction to prosecute—Validity of.

The applicant gave a petition to the Deputy Commissioner alleging that a certain Sub-Inspector of Police had borrowed a certain amount of money from him, which he refused to pay, and when asked to pay it, threatened to kill him, etc. The Deputy Commissioner ordered the Superintendent of Police to inquire into the complaint. The latter reported that the case was false and had been put in as a bit of *peshbandi*. Upon this, the Deputy Commissioner ordered prosecution of the applicant under S. 182, Penal Code: *Held*, that the proceedings in the Court of the Deputy Commissioner had been altogether irregular and unwarranted by the provisions of the Cr. P. C., and that the order for prosecution of the applicant must be set aside. *Lalla Prasad v. Emperor.*

25 Cr. L. J. 303 :
76 I. C. 975 : 23 O. C. 382.

———S. 195—Sanction to prosecute, when not justified—Prima facie case whether can be indicated in sanction order.

A Judge is entitled to call for such records as he thinks would assist him in the exercise of his discretion, but he cannot sanction the prosecution of witnesses on inferences drawn against them from such records when they were not produced before or at the time of their deposition and when the witnesses were not given an opportunity to explain them. A *prima facie* case cannot be indicated against a person in the order sanctioning his prosecution. *Krishnamma v. Chitturi Chinna.*

16 Cr. L. J. 115 :
27 I. C. 179 : 17 M. L. T. 15 :
1915 M. W. N. 140 :
A. I. R. 1915 Mad. 1136.

———S. 195—Sanction to prosecute—When required for ends of justice—Sanction to prosecute, whether ends of justice require—Penal Code (Act XLV of 1860), Ss. 192, 193, 199.

On the 18th July, 1919, the petitioner filed a written statement in a suit against him in which he denied the execution of a hand-note. On the 6th of November of the year in the course of certain criminal proceedings, the petitioner was examined as a witness and there he admitted that as a matter of fact he had executed the hand-note. Sanction

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having been given for his prosecution under S. 109, Penal Code, the present Rule was obtained: *Held*, that the only question was whether the ends of justice required that there should be a prosecution of the petitioner in respect of the written statement filed on the 18th July, 1919, and that on the whole after the lapse of time, the ends of justice did not require that there should be a prosecution in respect of what may be spoken of as the petitioner's temporary lapse from probity not persisted in but rather apparently repented of. *Trailokya Nath v. Radharanjan*.

23 Cr. L. J. 380 :
67 I. C. 204 : 25 C. W. N. 886.

———S. 195—Sanction to prosecute, when to be granted—Delay in making application or malice.

The main principle which should guide a Court in taking action under S. 195 or S. 476, Cr. P. C., is, that no prosecution should be allowed to be instituted unless there is a reasonable probability of conviction. The mere fact that there has been delay in applying for sanction, or that the applicant is actuated by malice, is no ground for refusing to grant sanction, where there is a probability of securing a conviction. *Krishnarao v. Silaram*.

22 Cr. L. J. 151 :
59 I. C. 855 : A. I. R. 1921 Nag. 91.

———S. 195—Sanction to prosecute, when to be granted.

In granting or refusing sanction to prosecute under the provisions of S. 195 of the Cr. P. C., what has mainly to be seen is whether there is a reasonable probability of a conviction. *Bhagirathi Bai v. Emperor*.

26 Cr. L. J. 1401 :
89 I. C. 713 : A. I. R. 1926 Nag. 141.

———S. 195—Sanction to prosecute, when to be granted.

Sanction to prosecute is not usually granted unless there is a very reasonable chance of a conviction following. A sanction to prosecute under S. 195, Cr. P. C., ought to be granted with great circumspection and care. If granted, it places in the hands of the person obtaining it a very powerful weapon which the unscrupulous might use for oppression or blackmail. *Kali Charan Lal v. Basudeo Narain Singh*.

6 Cr. L. J. 356 :
2 M. L. T. 518 :
12 C. W. N. 3.

———S. 195—Sanction to prosecute, when to be granted.

Sanction to prosecute should not be granted unless there is a reasonable expectation of a conviction. *Aldul Qadir v. Muhammad Ibrahim Khan*.

25 Cr. L. J. 119 :
76 I. C. 183 : A. I. R. 1924 Lah. 569.

———S. 195—Sanction to prosecute.

Where sanction was accorded for prosecution of a suitor under S. 195, I. P. C., for a false statement in an affidavit filed by him to

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the effect that he owned large properties which he had already conveyed, and he stated that the conveyance was *benami* and it was in evidence that he was consistently asserting his right to the properties, notwithstanding the conveyance: *Held*, that it was not a fit case for granting sanction for a prosecution for perjury. *Palaniappu Chettiar v. Ramaswami Chettiar*.

18 Cr. L. J. 289 :
38 I. C. 321 : 4 M. L. W. 615 :
20 M. L. T. 557 : 32 M. L. J. 54 :
A. I. R. 1917 Mad. 56.

———S. 195—Sanction to prosecute.

Where the prosecution of the accused was sanctioned for having, as a member of the Municipal Council of Ellore, committed an offence punishable under S. 168, Penal Code, by having interested himself in certain Municipal contracts, but the contracts were not specified in the order of sanction, though they were specified in the Collector's report: *Held*, that the sanction was not vague, and that it specified with sufficient clearness the offence for which the accused was to be prosecuted. *Acting Sessions Judge v. Kalagora Bapiiah*.

11 Cr. L. J. 527 :
7 I. C. 752 : 8 M. L. T. 205.

———S. 195—Sanction to prosecute—Whether application in writing necessary.

Sanction under S. 195, Cr. P. C. should ordinarily be given only on an application made by some person who may desire to complain of any of the particular offences specified in the section but whose complaint cannot be entertained without such sanction. It must be observed, however, that S. 195 does not expressly provide that an application must be made for the grant of sanction. The rule stated above may be justified to this extent before sanction is granted, the Court must be satisfied that there is some person who is willing to avail himself of it and carry on the prosecution. An application for sanction need not be made in writing nor need it be made before an inquiry is held under S. 195. *Raghunandan Prasad Singh v. Ram Narain Singh*.

13 Cr. L. J. 4 :
13 I. C. 97.

———S. 195—Sanction to prosecute, whether necessary—Bihar and Orissa Public Demands Recovery Act (IV of 1914), sale under—Application to withdraw, surplus money—Forgery.

A certain *mahal* was sold by a Collector for arrears of Road Cess under the Bihar and Orissa Public Demands Recovery Act, and after paying the Government demand, a surplus was lying in the Collectorate to the credit of the certificate debtors. A *mukhtar* subsequently filed a *mukhtarnama* purporting to have been executed in his favour by all the co-sharers in the *mahal* and withdrew the amount in deposit. Complainant, one of the co-sharers, lodged a complaint before a Magistrate that the accused, the other co-sharers in the *mahal* had forged his name on the *mukhtarnama* and praying that process should issue against them for offences under Ss. 468 and 471, Penal Code. The Magistrate issued process against the accused and the

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latter moved the High Court in revision to quash the proceedings on the ground that the sanction of the Certificate Officer under S. 195, Cr. P. C. had not been obtained for the prosecution of the accused: *Held*, (1) that the certificate proceedings had terminated after the sale of the property and the deposit of the money and that thereafter it was open to any ministerial officer of the Court to return the surplus money to the persons entitled under proper safeguards: (2) that the application to withdraw the money was not made to the officer entrusted with the custody of the surplus sale-proceeds in his capacity as a Court: (3) that, therefore, no sanction under S. 195, Cr. P. C. was necessary for the prosecution of the accused. *Jharu Lal v. Madan Das*.

24 Cr. L. J. 809 :
74 I. C. 713 : 2 Pat. 257 :
A. I. R. 1923 Pat. 410.

—S. 195—Sanction to prosecute, whether should be granted to debtor against creditor.

It is not expedient that a sanction to prosecute should be granted to a debtor to use against his creditor. *Bikram Singh v. Nihal Chand*.

25 Cr. L. J. 544 :
77 I. C. 1008 : A. I. R. 1924 Lah. 680.

—S. 195—Sanction to prosecute—Whether valid against several offences—Making false charges against several persons—Several offences—Sanction to prosecute in respect of each offence, whether should be granted.

A person who falsely charges several persons with having committed an offence is guilty of as many separate offences and there is no impropriety in his being called to account under S. 211, Penal Code, in respect of each of such false charges. *Gnanakannu v. Veeravagu*.

19 Cr. L. J. 1002 (b) :
48 I. C. 342 : 11 Bur. L. T. 136 :
A. I. R. 1918 L. Bur. 7.

—S. 195—Sanction to prosecute—Whether valid on trivial offence—Charge of trivial offence made in complaint—Accused acquitted—Serious allegations in petition of complaint, whether material.

The petitioner lodged a complaint in the Magistrate's court accusing the opposite party of offences under Ss. 355 and 504, Penal Code. In the complaint, he made some serious allegations against them which, however, were declared to be absolutely false in an affidavit put in on their behalf. The Magistrate, after hearing some prosecution witnesses, adjourned the case for the convenience of the complainant but on the adjourned date the complainant being absent, the Magistrate acquitted the opposite party with the remark that the matter was an extremely trivial one. Subsequently on an application by the opposite party, the Magistrate granted sanction for the prosecution of the petitioner for an offence under S. 211, Penal Code: *Held*, (1) that having regard to the trivial nature of the charge which was made in the petition of complaint and having regard to the way in which the Magistrate had dealt with it, namely, that he acquitted the accused on the ground that the

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case was of a trivial nature and the complainant was not present, it was not a case where sanction to prosecute the complainant under S. 211 ought to have been granted: (2) that it was immaterial whether the serious allegations made in the petition of complaint were true or false. *Nairkar v. Nalini Ranjan Sirkar*.

19 Cr. L. J. 767 :
46 I. C. 607 : A. I. R. 1919 Cal. 915.

—Ss. 195, 196—Sanction to prosecute—Order revoking it—Revision—Principles underlying.

An order revoking a sanction to prosecute might be treated, in effect, as an order refusing to grant the sanction and, whether S. 195 (6) or S. 439 of the Cr. P. C. is applied, the propriety of the order revoking the sanction or refusing to grant it can be considered by a High Court in revision. *Brij Kumar v. Manna Lal Misra*.

24 Cr. L. J. 217 :
71 I. C. 681 : 25 O. C. 153 :
9 O. L. J. 662 : A. I. R. 1922 Oudh 18.

—S. 195 and 439—Sanction to prosecute—Revision.

The petitioner applied to the District Magistrate for sanction under S. 195, Cr. P. C. for the prosecution of the respondent for giving false evidence. The District Magistrate rejected this application, but of its own motion directed the prosecution of the respondent for giving false evidence with the intention of evading payment of income-tax. The order of the District Magistrate was set aside by the Sessions Judge. The petitioner applied for revision, and contended that the District Magistrate accorded sanction as Collector of the District, and that his order could not be interfered with by the Court of Sessions: *Held*, that the petitioner's application for sanction having been rejected by the District Magistrate, his remedy was by revision of that order and there was no reason for the exercise by the Chief Court on his initiative, the discretion vested in it under S. 439, Cr. P. C. That an order passed by a District Magistrate as such can be set aside, on cause shown, by a Court of Sessions, and the order was passed by an official purporting to act as a District Magistrate. *Gurmukh Singh v. Naman*.

1 Cr. L. J. 112 :
5 F. L. R. 93 : 30 P. R. Cr. of 1903.

—Ss. 195, 439—Sanction to prosecute—Revision—Powers of High Court.

When an order granting or refusing sanction to prosecute under S. 195 (1) (b) or (c) of Cr. P. C. has been dealt with under S. 195 (6) of the Code by the Court to which appeals from the Court which passed the order ordinarily lie, the High Court has no power to interfere in revision with the order passed under S. 195 (7). *Kusal v. Badri Prasad*.

6 Cr. L. J. 372 :
27 A. W. N. 283.

—Ss. 195, 476—Sanction to prosecute—Complaint to a District Registrar—Enquiry held departmentally—Judicial proceeding—Penal Code (Act XLV of 1860), S. 182—Complaint.

Where a person made a complaint to a District

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Registrar against the conduct of a subordinate officer, a Sub-Registrar, alleging that the latter had delayed to register a document presented by him, and the District Registrar after holding a departmental enquiry was satisfied as to the falsity of the complaint and made an order sanctioning his prosecution for an offence under S. 182, Penal Code : *Held*, the order for prosecution was not one under S. 476, Cr. P. C. nor was it a sanction under S. 195 ; it was wholly without jurisdiction and should be set aside. The enquiry held by the District Registrar being a departmental one and not a judicial proceeding, S. 476, Cr. P. C. can have no application. *Mulfat Ali Sheikh v. Emperor*.

3 Cr. L. J. 112 :

2 C. L. J. 619 : 10 C. W. N. 222.

———Ss. 195, 476—*Sanction to prosecute—False information given to Police—Enquiry by Deputy Magistrate—Prosecution ordered by District Magistrate—Jurisdiction.*

An information of arson was given to the Police. It was reported false by them. The District Magistrate ordered an enquiry by the Deputy Magistrate, who also considered the information to be false. The case then coming before the District Magistrate, he ordered it to be entered as false and directed the prosecution of the informant under S. 211, Penal Code : *Held*, that the District Magistrate's order did not fall under S. 195, Cr. P. C. The complaint having been made to the Police, it was unnecessary for him to sanction the prosecution under S. 195. That the order was one purporting to be made under S. 476, Cr. P. C. But it was bad inasmuch as it was not passed with regard to a matter which had come to the District Magistrate's cognizance in the course of a judicial proceeding. Had he himself made an enquiry into the truth or falsity of the complaint, he might have had power under the said section to order prosecution. But it was not legal for him to order it when the enquiry had been made by another officer. *Habut Khan v. Emperor*.

3 Cr. L. J. 125 :

10 C. W. N. 30 : I. L. R. 33 Cal. 30.

———S. 195, 476—*Sanction for prosecution of witness at Sessions trial of Original Side of High Court—“Nearest Magistrate of the 1st Class,” who is.*

Where a Judge presiding at the Criminal Sessions of the Original Side of Calcutta High Court is of opinion that there is ground for enquiring into an offence referred to in S. 195, Cr. P. C., said to have been committed by a prosecution witness and brought under his notice in the course of the trial of a case committed by a Magistrate in the District of Alipore, the proper course for him is to send the case against the witness for inquiry or trial under S. 476, Cr. P. C. to the nearest Magistrate of the 1st class at Alipore, after having made such preliminary enquiry as may be necessary. *Emperor v. Donaldson*.

17 Cr. L. J. 475 :

36 I. C. 155 : 43 Cal. 542 :

A. I. R. 1916 Cal. 425.

———Ss. 195, 476—*Sanction to prosecute—Order directing prosecution, legality of.*

There cannot, in the same proceeding, be a

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sanction under S. 195, and an order for prosecution under S. 476. *Eqbal Khan v. Emperor*.

20 Cr. L. J. 413 (b) :

51 I. C. 173 : A. I. R. 1919 Pat. 319.

———S. 195, 476—*Sanction to prosecute—“Subordinate”—Whether the successor of a Judge can take proceedings under the sections.*

S, a Sub-Divisional Officer, commenced proceedings under S. 476, Cr. P. C. Before passing the final orders, he reverted to his substantive post of a Deputy Magistrate in the same Sub-Division. His successor C, thinking that S was subordinate to him, gave sanction under S. 195 (1) (b) of the Code : *Held*, that C had no authority to proceed under S. 195 (1) (b), as S was not subordinate to him within the meaning of S. 195 (7). C could, however, take action under S. 195 or 476 of the Code as the offences had been committed in his own Court though not when he was the presiding officer. *Bholu v. Emperor*.

11 Cr. L. J. 438 :

7 I. C. 51.

———Ss. 195, 476—*Sanction to prosecute—Evidence, whether can be taken before granting sanction—Discretion.*

When a Court proceeds under S. 476, Cr. P. C., it may or may not make a preliminary inquiry as it may consider necessary. But if a Court admits any evidence in sanction proceedings under S. 195, Cr. P. C. it acts without jurisdiction. The only question for the Court under that section is whether there is a *prima facie* ground for sanctioning a prosecution. The section does not say on what materials and on what evidence a Court should act before granting or refusing sanction. It simply vests the Courts with discretion which must be exercised judicially, i. e., with due care and caution. But if a Court admits or takes evidence before granting sanction under S. 195, Cr. P. C., its order of sanction would not become invalid and revocable on that ground. *In re : Karvirappa*.

13 Cr. L. J. 689 :

16 I. C. 497 : 14 Bom. L. R. 587.

———Ss. 195, 476—*Sanction to prosecute under Ss. 182, 211, Indian Penal Code—Departmental enquiry by District Registrar—Judicial proceeding.*

The petitioner complained to a District Registrar alleging that a Sub-Registrar had misappropriated certain commission fee paid by the petitioner. The District Registrar had a departmental enquiry and concluded that the complaint was false. He then forwarded a report to himself as District Magistrate, and as such sanctioned the prosecution of the petitioner under Ss. 182 and 211, Penal Code : *Held*, that, if the Magistrate acted under S. 195, Cr. P. C., then his sanction would be without jurisdiction as to S. 182, Penal Code, inasmuch as he was not the public officer concerned or the public officer to whom he was subordinate and as to S. 211, Penal Code, as there was no offence committed in or in relation to any proceedings in Court : *Held*, further that the Magistrate could not take action under S. 476, Cr. P. C. as the offences could not be said to have been committed before him or brought

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under his notice as a Court in the course of a judicial proceeding. *Elahi Bux v. Emperor*.

11 Cr. L. J. 212 :

5 I. C. 721 : 11 C. L. J. 111.

———S. 195 (1) (a)—*Sanction to prosecute—who can grant—False charge against public servant made in letter addressed to Collector—Jurisdiction.*

A letter was addressed to the Collector of the district making certain charges against an official of the district. It was found that in respect of this letter, he had committed an offence under S. 182, Penal Code, and the Sub-Divisional Magistrate sanctioned his prosecution: *Held*, that the Sub-Divisional Magistrate had no jurisdiction to sanction the prosecution, as, under S. 195 (1) (a), Cr. P. C., such sanction could only be given by the public servant concerned or by some public servant to whom he was subordinate, and with reference to S. 182, Penal Code, the proper officer to sanction the prosecution was the Magistrate of the district. *Emperor v. Mohammad Naqi Hussain*.

20 Cr. L. J. 702-A :

52 I. C. 670 : 17 A. L. J. 1054 :

A. I. R. 1919 All. 175.

———S. 195 (1) (b)—*Sanction to prosecute.*

No sanction for prosecution is required under S. 195 (1) (b), Cr. P. C. in respect of a false charge made to the Police when it has not been followed by a judicial investigation on the complainant insisting upon a judicial investigation after the Police has reported as to the falsity of his complaint. *Tayabullah v. Emperor*.

18 Cr. L. J. 13 :

36 I. C. 845 : 24 C. L. J. 134 :

20 C. W. N. 1265 : 43 Cal. 1152 :

A. I. R. 1917 Cal. 593.

———S. 195 (1) (b) (c)—*Sanction to prosecute—Duty of Court—Opinion on merits, avoidance of—Insolvency proceedings—Claim-petition—Affidavit presented to Official Assignee, false statements in—High Court, power of, to grant sanction.*

In sanctioning the prosecution of a person, the Court should abstain from giving anything like an analysis of the materials submitted to it for the purpose and avoid expressing any opinion as to the probability or otherwise of a conviction. All that a Judge in giving sanction is called upon to do is to feel that the matter is one which, on the face of it, requires investigation by a magisterial Court. A claimant in insolvency proceedings who files an affidavit in support of his claim before the Official Assignee, who is empowered as a subordinate officer of the Court to investigate it, is a party to the proceedings before the Court within the meaning of S. 195 (1) (c). The High Court can, therefore, in the exercise of its insolvency jurisdiction, sanction the prosecution of the claimant for false statements contained in such affidavits. *In the matter of: Hajee Mohammad Ilibillah Badsha Sahib*.

20 Cr. L. J. 193 :

49 I. C. 641 : 36 M. L. J. 60 :

43 Mad. 1 : A. I. R. 1919 Mad. 218.

———S. 195 (1) (b) (c)—*Sanction to prosecute.*

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Under S. 195 (1) (b), (c), Cr. P. C., sanction may be accorded in the first instance by the Court to which the Court in which the offence is committed is 'subordinate' even though no application for sanction has been made to the latter Court. *Palaniappa Chetti v. Annamalai Chetti*.

1 Cr. L. J. 321 :

14 M. L. J. 74 : I. L. R. 27 Mad. 223 :

2 Weir 208.

———S. 195 (1) (c)—*Sanction to prosecute—Bombay Land Revenue Code (Act V of 1879), Ss. 189, 197—Mutation—Mamlatdar holding inquiry, whether Revenue Court—Record of Rights—Production of forged Will—Sanction to prosecute.*

A Mamlatdar holding an inquiry under Chap. XII of Bombay Land Revenue Code, is a Revenue Court within the meaning of S. 195, (1) (c), Cr. P. C., and sanction is necessary in order to prosecute a person for an offence in respect of a document produced before the Mamlatdar in the course of the inquiry. *Emperor v. Narayan Ganpaya Havnik*.

16 Cr. L. J. 99 :

27 I. C. 147 : 16 Bom. L. R. 678 :

39 Bom. 310 : A. I. R. 1914 Bom. 232.

———S. 195 (1) (c)—*Sanction to prosecute—Mortgage-deed, suit based on—Deed not produced in Court—Sanction, necessity of.*

The applicant was prosecuted for forgery in respect of a mortgage-deed alleged to have been executed by the non-applicants. Previously to this the applicant had instituted a Civil suit against the non-applicants and others on the basis of the mortgage-deed. As the execution of the deed was denied before the Sub-Registrar, he refused to register it, and it was, lying with the Sub-Registrar who was ordered to produce it in the Civil Court, but the order was not complied with and the deed was not before the Civil Court, when the Sub-Divisional Magistrate took cognizance of the offence under S. 467, Penal Code: *Held*, (1) that the document though not actually produced in the Civil Court was under the control of the Court and S. 195 (c), Cr. P. C. applied to the case; (2) that the Sub-Divisional Magistrate could not, therefore, take cognizance of the offence unless the Civil Court had granted sanction under S. 195 (c), Cr. P. C. for the prosecution of the applicant under S. 467, Penal Code. *Zuberlal v. Malori*.

18 Cr. L. J. 1001 :

42 I. C. 729 : A. I. R. 1917 Nag. 198.

———S. 195 (1) (c)—*Sanction to prosecute witness, whether necessary.*

Sanction to prosecute a person under S. 463 or 471, Penal Code, is necessary only when such offence has been committed by him as a party to a proceeding, but in the case of a witness committing the said offence, no sanction is required. *Emperor v. Jiwan Mal*.

18 Cr. L. J. 544 :

39 I. C. 688 : 10 P. R. 1917 Cr. :

A. I. R. 1917 Lah. 333.

———S. 195 (1) (c), 3—*Sanction to prosecute—Abetment of offence specified in S. 195, Cl. (1) (c)—Abettor not party—No sanction necessary.*

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The offences in which S. 195, Cl. (1) Sub-cl. (c) read with Cl. (3), requires that sanction should be given by Court with respect to documents produced in Court, must be offences committed by parties to the proceedings whether the offence be one of the substantial offences described in S. 463 or punishable under Ss. 471, 475 or 476 of the Penal Code or only amounts to abetment of any such offences. *Gransham Singh v. Emperor*. 10 Cr. L. J. 497 : 4 I. C. 105.

———**S. 195, Cl. (1) (c) and Cl. (3)—Sanction to prosecute against party to proceeding when valid—Witness—Abetment of forgery.**

Under S. 195, Cl. (1), Sub-cl. (c), read with Cl. (3) sanction of Court for the prosecution of offences in respect of documents produced in Court is only necessary when the offence is committed by parties to the proceedings, whether the offence be one of the substantive offences under Ss. 463, 471, 475 or 476, I. P. C. or it only amounts to abetment of any such offences. Sanction is not necessary against any person who is not a party to the suit. A witness is not a party to the suit. No sanction is necessary to prosecute a witness in respect of the offences mentioned in Sub-cl. (c) of Cl. (1) even where there are other charges against him involving the necessity of sanction; and the witness may be tried for the first-mentioned offences without sanction, even though no sanction is given in respect of the latter offences. *Debilal v. Dhajadhari Goshami*.

12 Cr. L. J. 101 :
9 I. C. 577 : 15 C. W. N. 565.

———**S. 195 (b)—Sanction to prosecute—Abetment of offence—General sanction to prosecute, whether sufficient.**

A Court taking cognizance of any of the offences mentioned in S. 195 (b), Cr. P. C., when that offence has been committed in, or in relation to, any proceeding in any Court, or a Court taking cognizance of a conspiracy to commit such an offence, or of abetment, or attempt to commit such an offence, cannot do so unless sanction has been given not only to the *factum* but to cover the case of each person who is charged with having committed it. *Ram Bilas v. Lachmi Narain*.

24 Cr. L. J. 220 :
71 I. C. 684 : 20 A. L. J. 904 :
45 All. 140 : A. I. R. 1923 All. 34.

———**S. 195 (b)—Sanction to prosecute—Sanction refused by primary Court—District Judge, power of—Remand, whether justified.**

A District Judge, acting under S. 195, Cr. P. C., has no jurisdiction to remand a case to the Subordinate Court for further inquiry. He ought himself to decide whether the sanction refused to the Court should be granted, and for this purpose, has power to take evidence himself. *Mathuranath v. Rajendra Kumar*.

24 Cr. L. J. 319 :
72 I. C. 79.

———**S. 195 (b)—Sanction to prosecute.**

Where an *ex parte* decree was obtained fraudulently in the Small Cause Court in a suit tried by the Registrar of the Court, and the sanction to prosecute under Ss. 209,

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210, I. P. C., was given by the Chief Judge of the Court under S. 195, Cr. P. C.: *Held*, that the sanction was a good one. Ordinarily, as a matter of convenience and expediency, an application for sanction should be made to and sanction should be given by the Judge who tried the case, if he be present in the Court: but it is the Court, and not the Judge, that gives the sanction. The change of the incumbent does not alter the constitution of the Court, nor does it matter whether the Judge is alive or not, or absent, or has not been transferred from the Court. *Emperor v. Molla Fazal Karim*.

3 Cr. L. J. 365 :
I. L. R. 33 Cal. 193.

———**S. 195 (C)—Sanction to prosecute—Indian Penal Code, Ss. 465 and 467.**

One *S. B.* sued *M.* for cancellation of a mortgage-deed purporting to have been executed by *S. B.* in favour of *M.* on the ground that the document was a forgery, and had never been executed by him. *S. B.* filed along with his plaint a certified copy of the mortgage-deed obtained from the Registration Department and asked the defendant *M.* to produce the original. The defendant did not appear to defend the suit, nor did he produce the original. The suit was decreed *ex parte*. *S. B.* subsequently instituted criminal proceedings against *M.* and others under Ss. 465 and 467, Penal Code. It was objected on behalf of *M.* that the prosecution could not proceed as no previous sanction had been obtained under S. 195 (c), Cr. P. C.: *Held*, that no previous sanction was necessary as the original mortgage-bond had not been "produced or given in evidence," the complainant having given only secondary evidence of the same by producing a certified copy. The word "document" in S. 195 refers only to the original. *Emperor v. Raja Mustafa Ali Khan*.

2 Cr. L. J. 653 :
8 O. C. 313.

———**S. 195 (c)—Sanction to prosecute—Offence committed prior to production of document in Court—No sanction required.**

Courts are prohibited from taking cognizance of an offence described in S. 463, Penal Code, when such offence has been committed by a party to any proceeding in any Court in respect to a document given in evidence therein. But if the offence was committed prior to its production in Court, prosecution for such offence requires no sanction. *Lalla Prasad v. Emperor*.

13 Cr. L. J. 863 :
17 I. C. 799 : 10 A. L. J. 294 : 34 All. 654.

———**S. 195 (4)—Sanction to prosecute—Application giving full particulars—Order of sanction omitting to give particulars—Sanction, whether valid.**

An application, for sanction to prosecute should be read with the order granting such application and if the necessary particulars required by S. 195, Cr. P. C. are given in the application, the fact that the order omits to give these particulars would not render

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the sanction, a bad sanction. *Kali Singh v. Emperor.*

24 Cr. L. J. 949 :
75 I. C. 533 : 50 Cal. 461 :
A. I. R. 1924 Cal. 53.

—S. 195 (4)—*Sanction to prosecute—Sanction given on mere suspicion—No direct evidence as to abetment of offence—Legality of sanction.*

An application for sanction to prosecute must specify the time when, and the place where, the offence was committed, and a Court should not grant sanction except upon evidence. Mere suspicion is not sufficient for granting a sanction without a *prima facie* case being made out. *Azharul Hasan v. Mazhar Hasan.*

10 Cr. L. J. 28 :
6 A. L. J. 337 : 2 I. C. 467.

—S. 195, Sub-ss. (4) and (6)—*Sanction to prosecute, defective—Court granting sanction, duty of—Court, power of interference with order of subordinate Court granting sanction.*

In granting sanction for the criminal prosecution of any person, the Judge who grants such sanction should comply strictly with the terms of the law. Where the sanction does not specify the place where and the occasion on which the offences were said to have been committed, as required by law, the sanction is defective and ought to be revoked, even if the facts may be gathered by implication. *Girja Shanker Roy v. Benode Sheik.*

5 Cr. L. J. 188 :
5 C. L. J. 222.

—S. 195, Cls. (4) and (6)—*Sanction to prosecute—Sanction by Munsif, affirmed by District Judge—High Court's power to interfere—Requisites of a valid sanction—Question of guilt to be gone into.*

Where sanction to prosecute a person given under S. 195 was couched in such general terms that it was impossible to say exactly what offences were imputed to him and in connection with what deeds he was charged with having committed them: *Held*, that the sanction was illegal and ought to be set aside. Sanction to institute criminal proceedings should be in express terms and should strictly comply with the provisions of the law. It is not a sufficient compliance with the law, if the necessary elements have to be gathered from the Court's judgment by implication. No sanction should be granted unless the Court has made up its mind that the accused has committed the offence for which he is to be prosecuted. Where sanction to prosecute given by a Munsif was confirmed on appeal by the District Judge: *Held*, that the High Court has authority to interfere under S. 195, Cl. (6), Cr.P.C. *Habibur Rahman v. Munshi Khodabux.*

5 Cr. L. J. 29 :
11 C. W. N. 195 : 5 C. L. J. 219.

—S. 195 (5)—*Sanction to prosecute—Duty of Court.*

The Code of Criminal Procedure does not contemplate a Court or public servant giving sanction for prosecution where no application for sanction has been made. The authority given by S. 195 (5), Cr. P. C. to a Court taking

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cognizance of a case, to frame a charge of any offence referred to in that section, when sanction is given in respect of it, does not relieve the Court of the necessity to exercise due care and consideration before it orders a criminal prosecution. *Nga San Chein v. So Okaram.*

17 Cr. L. J. 82 :
32 I. C. 674 : U. B. R. 1915 II, 83 :
A. I. R. 1916 U. Bur. 13.

—S. 195 (6)—*Sanction to prosecute—Application to superior Court—Court, power of, to make enquiry.*

An application under S. 195 (6), Cr. P. C., to a superior Court to revoke a sanction granted by a Subordinate Court is not an appeal and should not be dealt with as such. There is nothing, however, in the Cr. P. C., which would prevent a Court acting under S. 195 (6), from making a preliminary inquiry before deciding whether it should revoke the sanction which has been granted by a Subordinate Court. *Francis Darah v. Muhammad Bakhsh.*

22 Cr. L. J. 298 :
60 I. C. 794.

—S. 195 (6)—*Sanction to prosecute, object of granting—Evidence, nature of.*

The object of granting sanction to prosecute is to remove the statutory bar to the prosecution of offences mentioned in S. 195, Cr. P. C. but that bar cannot be removed by a mere application for sanction; a *prima facie* case must be made out for setting the Criminal Law in motion against the accused, and the evidence must be such that, if unrebutted, the accused can be convicted; particularly when the evidence is circumstantial, it must be of a nature incompatible, upon any hypothesis, with the innocence of the accused. To justify a sanction for the prosecution of a plaintiff under S. 209, Penal Code, the mere dismissal of his claim is not enough, it must be shown that the claim he was making was to his knowledge false, the mere fact that he over-estimated his case and claimed more than what was his legal due, would not necessarily show this. *Rammandan Prasad Narayan Singh v. Public Prosecutor.*

22 Cr. L. J. 467 :
61 I. C. 995.

—S. 195 (6)—*Sanction to prosecute—Refusal to revoke sanction—Period of six months, commencement of.*

A sanction cannot be said to have been "given" within the meaning of Cl. (6) of S. 195 by a Court which did not originally grant the sanction but which merely refused to revoke that sanction when it had been granted. The period of six months mentioned in the clause, therefore, begins to run from the date of the order granting the sanction and not from the date of the order of the superior Court subsequently refusing to revoke the sanction. *Makhdam Thater v. Emperor.*

26 Cr. L. J. 995 :
87 I. C. 595 : 1 O. W. N. 752 :
A. I. R. 1926 Oudh 22.

—S. 195 (6)—*Sanction to prosecute—Extension of time—Meaning of 'High Court' in Sub-s. (6), S. 195, Cr. P. C.—Appeal.*

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Sanction to prosecute under S. 193, Penal Code, had been granted by a Judge sitting on the Original Side. Subsequently the same Judge after the period had expired granted an extension of time under S. 195, Cr. P. C. : *Held*, a Judge sitting on the Original Side was not a 'High Court' within the meaning of S. 195 (6), Cr. P. C., and had, therefore, no jurisdiction to extend the time. High Court in its Appellate Civil Jurisdiction was the proper forum for entertaining an application for extension of time of sanction to prosecute granted by a Judge on the Original Side: *Held also*, an appeal lay under Cl. 15 of the Letters Patent from the order of the Judge on the Original Side granting such extension of time: *Held further*, that once the time had expired, it could not be extended for there is nothing to extend. *Kali Kinkar Sell v. Dinobandhu Nundy*.

2 Cr. L. J. 106 :
9 C. W. N. 321 : I. L. R. 32 Cal. 469.

———S. 195 (6)—Sanction to prosecute period of, confirmed on appeal—Revision summarily rejected by High Court—Period of six months, commencement of.

The period of six months, during which a sanction to prosecute remains in force under Cl. (6) of S. 195 begins to run either from the time the original sanction was given or from the date of some subsequent order made by a competent Court which confirms the giving of the sanction or itself specifically gives a sanction. An order of the High Court summarily rejecting an application in revision does not approve or confirm the order of the Court below and, therefore, does not furnish a starting point for the period of six months to run from. *In re : Parvatrao Mahaskojirao*.

19 Cr. L. J. 353 :
44 I. C. 577 : 20 Bom. L. R. 108 :
42 Bom. 281 : A. I. R. 1917 Bom. 7.

———S. 195 (6)—Sanction to prosecute—Sanction granted by Additional District Judge—Power to revoke sanction—Central Provinces Courts Act (II of 1904), Ss. 15, 17.

When a Civil Court in practice tries suits of values so different that appeals from some of its decisions lie to one and appeals from other decisions to another higher Court, then the Court authorized to revoke or grant a sanction under S. 195 (6), is the Appellate Court of inferior jurisdiction. *Ramkrishnapuri v. Mohanlal*.

13 Cr. L. J. 498 :
15 I. C. 642 : 8 N. L. R. 57.

———S. 195 (6)—Sanction to prosecute—Township Court granting sanction—Revocation of sanction by District Court—Divisional Court, jurisdiction of, to interfere.

A Divisional Court in Lower Burma has no jurisdiction, appellate or revisional, to interfere with an order of a District Court revoking under S. 195 (6), Cr. P. C., a sanction to prosecute granted by a Township Court, the only Court having jurisdiction in such a case being the High Court. *Karupiah Naidu v. Muthusami*.

24 Cr. L. J. 511 :
72 I. C. 975 : 11 L. B. R. 418 :
A. I. R. 1923 Rang. 12.

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———S. 195 (6) (7)—Sanction to prosecute granted by Sub-Judge—Appeal, forum of.

A District Court is the authority to which the Court of a Subordinate Judge is subordinate within the meaning of Sub-s. (6) of S. 195. That section only refers to Courts and makes no distinction between appellate and original jurisdiction. An appeal lies, therefore, from orders passed by Subordinate Judges under S. 195 of the Cr. P. C., whether in the exercise of original or appellate jurisdiction, to the District Court and not to the High Court. *Rapaka Viyyana v. Parakala Bajamma*.

19 Cr. L. J. 264 :
44 I. C. 120 : A. I. R. 1918 Mad. 336.

———S. 195 (6), (7)—Sanction to prosecute, Granted by Munsif—Additional District Judge, whether can revoke sanction.

A sanction to prosecute granted or refused by a Munsif can be revoked or granted by an Additional District Judge to whom the case is transferred by the District Judge. *Ram Charan v. Meva Ram*.

22 Cr. L. J. 385 (a) :
61 I. C. 513 : 19 A. L. J. 192 :
3 U. P. L. R. (A.) 39 : 43 All. 409 :
A. I. R. 1921 All. 211.

———S. 195—Sub-ss. (6) and (7)—Sanction to prosecute—Power of superior Court to revoke or grant sanction, granted or refused by a Subordinate Court, after a complaint has been lodged in pursuance of the sanction—Sanction granted to a private individual—Private individual not preferring complaint—Police preferring a charge-sheet on the basis of the sanction.

Under S. 195, Cr. P. C., a Subordinate Magistrate granted sanction to prosecute for offences under Ss. 193 and 211, Indian Penal Code, to a private individual. No complaint having been preferred by the private individual, the Police, relying upon the sanction, preferred a charge-sheet under S. 211, Indian Penal Code, to the Joint Magistrate who was authorised to entertain appeals under S. 407 (2) of the Cr. P. C. The Joint Magistrate struck the case off his file, revoking *suo motu* the Subordinate Magistrate's sanction under Sub-s. (6) of S. 195, Cr. P. C. : *Held*, that the Joint Magistrate, though authorised to entertain appeal from the Court of a Subordinate Magistrate under S. 407 (2) is not the Court to which appeals from the Court of the Subordinate Magistrate ordinarily lie within the meaning of S. 195 (7) and, therefore, he had no authority to act under Sub-s. (6). The District Magistrate alone can revoke or grant sanction under this sub-section. He cannot, on the authority of S. 407 (2), delegate his own powers under it to a Joint Magistrate. The mere fact that a complaint has been made in pursuance of a sanction would be no bar to a Court competent, under Sub-s. (6), to deal with an application for revoking such sanction, entertaining such application and disposing of it according to law, even if the complaint in pursuance of the sanction has been preferred to itself. The course pursued by the Police in sending

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a police report in the case was contrary to law; and, therefore, the Joint Magistrate's action in striking the case off his file was legal and proper. *In the matter of : Subbamma*

1 Cr. L. J. 422 :

I. L. R. 27 Mad. 124 : 2 Weir 461.

—S. 195 (7)—Sanction to prosecute granted by Sub-Judge—Forum of appeal—Appal—District Judge or High Court—Jurisdiction.

Where a sanction to prosecute is granted or refused by a Subordinate Judge, an appeal against the order lies to the District Judge, and not to the High Court, even where the value of the suit out of which the proceeding for sanction has arisen is beyond the appellate jurisdiction of the District Judge. *Bhairo Prasad v. Harihar Prasad*.

19 Cr. L. J. 631 :

45 I. C. 679 : A. I. R. 1918 Pat. 312.

—S. 195 (7)—Sanction to prosecute—Whether High Court can grant—Judge of High Court exercising Original Civil Jurisdiction, refusing to grant sanction—Appeal, forum of.

A Judge of a High Court sitting in the exercise of Original Civil Jurisdiction is a Court subject to the Appellate Jurisdiction of that High Court, so where a Judge in the exercise of such jurisdiction grants, or refuses to grant, sanction to prosecute, an appeal lies by virtue of Cl. (7) of S. 195, Cr. P. C., to the same High Court on the Appellate Side. *Quare*.—Whether an order refusing to grant sanction to prosecute under S. 195, Cr. P. C., is a judgment within the meaning of Cl. 15, Bombay High Court Letters Patent. *Abdul Latif v. Tar Mahomed*.

23 Cr. L. J. 497 :

68 I. C. 33 : 24 Bom. L. R. 817 :

A. I. R. 1922 Bom. 455.

—S. 195 (7)—Sanction to prosecute—Small Cause Court—District Judge, power of.

A District Judge has no power to grant sanction to prosecute under S. 209, Penal Code, in respect of a case instituted in a Small Cause Court and with regard to which sanction has already been refused by the Small Cause Court Judge. *Sukhdeo Singh v. District Magistrate of Muzaffarpur*.

18 Cr. L. J. 370 :

38 I. C. 754 : 2 P. L. J. 1 :

3 P. L. W. 333 : A. I. R. 1916 Pat. 53.

—Ss. 195, 476—Sanction without application, legality of.

An application is a necessary condition precedent to the grant to a private person of sanction to prosecute. *Ladha Singh v. Emperor*.

16 Cr. L. J. 251 :

28 I. C. 107 : 13 P. R. 1915 Cr. :

20 P. W. R. 1915 Cr. : 184 P. L. R. 1915 :

A. I. R. 1915 Lah. 259.

—S. 195—Sanction—Power to grant—Sending persons to Magistrate for abetting escape from custody.

A Court has no power to accord sanction for prosecution of a person under S. 225-B, Penal Code, for snatching away a judgment-

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debtor from the custody of one of its process peons, as S. 225-B, Penal Code, is not mentioned in S. 195, Cr. P. C. *Taru Babu v. Emperor*.

18 Cr. L. J. 117 :

37 I. C. 469 : 21 C. W. N. 125 :

A. I. R. 1918 Cal. 967.

—S. 195—Scope.

A Deputy Commissioner passed an order dismissing a complaint and saying that the accused was at liberty to prosecute the complainant if he so wished : *Held*, that this was not a sanction within the meaning of S. 195. *Nga Kyaw Zan v. Nga Kyi Dan*.

17 Cr. L. J. 59 :

32 I. C. 651 : U. B. R. 1915 II, 91.

—S. 195—Scope—Court, meaning of.

A District Judge, when acting under S. 22, Bombay District Municipal Act, is a "Court" within the meaning of S. 195 (b), Cr. P. C. The word "Court" in the Cr. P. C. has a wider meaning than the words "Courts of Justice" as defined in the Penal Code. Having regard to the obvious purpose for which S. 195 was enacted, the widest possible meaning should be given to the word "Court" as occurring in that section. *In re : Nanchand Shivchand*.

14 Cr. L. J. 72 :

18 I. C. 408 : 15 Bom. L. R. 45.

—S. 195—Scope—Court, meaning of.

A Land Acquisition Deputy Collector is not a 'Court' and cannot make a complaint under S. 195, Cr. P. C., in respect of an offence under S. 207 of the Penal Code committed before him, and a complaint by him is not, therefore, necessary for prosecution for an offence under the section. *Galstam v. Banku Behary Dhar*.

28 Cr. L. J. 809 :

104 I. C. 249 : 31 C. W. N. 825 :

A. I. R. 1927 Cal. 621.

—S. 195—Scope.

A revocation of a sanction is a refusal of a sanction in the same way as an order confirming a grant of a sanction is a giving of a sanction for the purposes of the section. *Muthusami Mundali v. Veeri Chetti*.

6 Cr. L. J. 102 :

17 M. L. J. 266 : 2 M. L. T. 238 :

I. L. R. 30 Mad. 382.

—S. 195—Scope.

A sanction under S. 195, Cr. P. C., is not a condition of the competency of the Tribunal, it is only a condition precedent for the institution of proceedings before the Tribunal. The fact that at the time of the previous trial sanction had not been obtained for the institution of proceedings under S. 182, does not prevent the operation of S. 403. *Ganapathi Bhatta v. Emperor*.

14 Cr. L. J. 214 :

19 I. C. 310 : 24 M. L. J. 463 :

13 M. L. T. 360 : 36 Mad. 308.

—S. 195—Scope—Attorney proceeded against making affidavit—Alleged false statements—Public Prosecutor applying for sanction—What Bench to give sanction—Discretion to be free and untrammelled—Court to see that no abuse of criminal justice takes place—Attorney, if can make affidavit in answer to rule against him

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under Court's disciplinary powers—Liability for false statement in affidavit.

S. 195 is expressed in the widest terms and vests in the Court an absolute and unqualified discretion. Not one jot or one tittle can be taken away from or added to the plain and express provisions of the Legislature by any decision of the Court, nor can this discretion vested by the section in the Court, be crystallised or restricted by any series of cases and it remains free and untrammelled to be fairly exercised according to the exigencies of each case. An application for sanction is not to be conducted on the same lines as the criminal trial which may be its sequel. When a Tribunal is invested by an Act or by rules with a discretion, without any indication in the Act or the rules of the grounds upon which the discretion is to be exercised, it is a mistake to lay down any rules with a view to indicate the particular grooves in which the discretion should run. When exercising discretion, the Court will be astute to see that there should be no abuse of the administration of criminal justice. Therefore, no one should be permitted to use a Penal Law merely to satisfy his own private ends or personal spite. An Attorney can make an affidavit by way of answer to a Rule issued against him under the Court's disciplinary jurisdiction, and for a false statement in the affidavit, he is criminally liable. *Hume v. Poresli Chunder Ghose*.

15 Cr. L. J. 49 :
22 I. C. 321 : 41 Cal. 446 :
A. I. R. 1914 Cal. 597.

—S. 195—Scope.

An application was made to a Munsif for sanction to prosecute under Ss. 209, 210, 193 and 465, Penal Code; the Munsif refused the application on the ground that it was undesirable to grant sanction to a private prosecutor, and his order was upheld on appeal: *Held*, that in the circumstances of the present case it would be improper to grant sanction to the private prosecutor. *Raghumandan Prosad Singh v. Ram Narain Singh*.

13 Cr. L. J. 4 :
13 I. C. 97.

—S. 195—Scope.

An Official Assignee is not a 'Court' and his sanction does not meet the requirements of S. 195, Cr. P. C. *Beardsell and Co. v. Abdul Gunni Sahib*.

13 Cr. L. J. 241 :
14 I. C. 593 : 14 M. L. T. 391 :
1912 M. W. N. 536.

—S. 195—Scope.

An order granting sanction to prosecute should be an order either under S. 195 or S. 476, Cr. P. C. A Magistrate passing such order should not mix up the two sections but, choosing either, should follow procedure laid down in the section adopted. *Jiwan Mal v. Beli Ram*.

18 Cr. L. J. 298 :
38 I. C. 330 : 11 P. R. 1917 Cr. :
10 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 91.

—S. 195—Scope—Complaint for offence under S. 182, Penal Code—Order making complaint, whether appealable.

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An order by which a complaint is made by a Court for an offence under S. 182 of the Penal Code is not appealable, but a Court to which the Court making the complaint is subordinate may order withdrawal of the complaint. *Brijendra Nath v. Emperor*. 28 Cr. L. J. 547 (1) : 102 I. C. 483 : A. I. R. 1927 All. 828.

—S. 195—Scope—Complaint under S. 195—Cognizance, if should be taken of whole case.

What S. 195, Cr. P. C., prohibits is taking cognizance of an offence of a certain class except on a complaint of a Court; but where a Court has complained of an offence specified in this section, *i. e.*, cognizance is to be taken of the whole case, prosecution will go forward as against all the persons found to be concerned in the offence and also under any sections found applicable to the facts which are the subject-matter of the complaint. But cognizance having been taken of an offence, the inquiry will proceed against all the persons whom the evidence shows to have been concerned in it provided that the Court making the complaint and naming some persons therein has not expressly considered and decided in the negative, the question whether other persons should also be prosecuted on the same facts. *Jugeshwar Singh v. Emperor*.

37 Cr. L. J. 893 :
164 I. C. 86 : 15 Pat. 26 :
17 P. L. T. 234 : 2 B. R. 702 :
9 R. P. 84 : A. I. R. 1936 Pat. 346.

—S. 195—Scope—Costs.

Costs ought not to be allowed in a proceeding under S. 195, Cr. P. C., even though the inquiry for the purpose of that section, is made by a Civil Court. *Karupiah Naidu v. Muthuswami*.

24 Cr. L. J. 511 :
72 I. C. 975 : 11 L. B. R. 418 :
A. I. R. 1923 Rang. 12.

—S. 195—Scope—Disobedience to order promulgated by public servant—Magistrate, whether can try offence for disobedience of his own order.

No Magistrate can take cognizance of an offence under S. 88, Penal Code, except in the manner prescribed by S. 195, Cr. P. C., even where the offence arises out of a disobedience of the Magistrate's own order. A Magistrate whose order has been disobeyed cannot, under S. 487, Cr. P. C., try the person guilty of the disobedience. *Mritunjoy Gou v. Emperor*.

20 Cr. L. J. 557 :
51 I. C. 845 : 23 C. W. N. 520 :
29 C. L. J. 382 :
A. I. R. 1919 Cal 336.

—S. 195—Scope—Income-tax Collector, whether Revenue Court.

An Income-tax Collector is a 'Revenue Court' within the meaning of S. 195. *In re : Punam Chand Manek Lal*.

15 Cr. L. J. 581 :
25 I. C. 333 : 16 Bom. L. R. 446 :
38 Bom. 642 : A. I. R. 1914 Bom. 138.

—S. 195—Scope—Offence committed in suit before Assistant Collector—Prosecution directed by District Magistrate—Illegality.

Where offences under Ss. 193, 465, 471, were

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alleged to be committed before Assistant Collector and the District Magistrate directed the prosecution regarding the offences: *Held*, the District Magistrate's order was without jurisdiction and could not be justified either under S. 195 or 476, Cr. P. C. *Tota Ram v. Emperor*. 9 Cr. L. J. 180 : 1 I. C. 220.

—S. 195—Scope.

Once a sanction is given by competent authority, there is nothing in S. 195, Cr. P. C. to restrict the sanction to the particular individual to whom it is granted. *Gopal Singh v. Emperor*. 24 Cr. L. J. 185 : 71 I. C. 601 : A. I. R. 1922 Lah. 221.

—S. 195—Scope—Penal Code (Act XLV of 1860), S. 211—Dismissal of complaint under S. 203, Cr. P. C., no bar to granting sanction under S. 211, Penal Code.

A dismissal of complaint under S. 203, Cr. P. C. is no bar to granting sanction for prosecuting the complainant under S. 211, Penal Code. *Chiragh Din v. Zahur Din*. 6 Cr. L. J. 258 : 9 P. W. R. Cr. 63.

—S. 195—Scope—Person not party to proceedings but connected by abetting or conspiring—Court, if can take action against him.

It is to the taking cognizance of the offence that S. 195 (1) (b) and (c), Cr. P. C. refers to, it is the offence, not the offender which is referred to. Even if a person is not a party to proceedings in respect of which the Court wishes to inquire and make a complaint under S. 211, Penal Code, the Court can take action against such person if he is connected with the offence by abetting or conspiring. *Emperor v. Ivor Henry Bridgnell*. 38 Cr. L. J. 1002 : 170 I. C. 891 : 10 R. S. 81 : A. I. R. 1937 Sind 193.

—Ss. 195, 476—Scope.

Proceedings under S. 195, Cr. P. C. are judicial proceedings for the purposes of S. 476 of the Code. *Bikarama Prasad v. Emperor*. 25 Cr. L. J. 387 : 77 I. C. 435 : A. I. R. 1922 All. 292.

—S. 195—Scope.

Proceedings under S. 195 are not appellate proceedings though they may in some respects, resemble them. At each stage they are constituted by the grant or revocation of the sanction which some inferior Court has refused or granted and not with direct reference to the setting aside of their inferior authority's order. *Narayanan Chettiar v. Kadiraya Goundan*. 24 Cr. L. J. 337 : 72 I. C. 337 : 44 M. L. J. 320 : 17 L. W. 311 : 1923 M. W. N. 223 : A. I. R. 1923 Mad. 504.

—S. 195—Scope—Registrar not a Court—Registration Act, S. 82.

A Registrar is not a Court within the meaning of S. 195, Cr. P. C., though he is entitled to institute a prosecution for any offence falling under S. 82, Registration Act. *Talewand v. Emperor*. 9 Cr. L. J. 54 : 11 O. C. 358.

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—S. 195—Scope—Sanction for offence—Charge for different offence.

Sub-s. 5 of S. 195 provides that, when a sanction is given in respect of any offence referred to therein, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts. This means that, if the facts disclose other offence besides the one sanctioned, say an offence under S. 195, such an offence might be charged, but it does not authorise the taking up of wholly different statements, the prosecution for which has not been sanctioned, and the framing a charge on such statement. *Ahmed Esoof Bhaymeah v. Crown*. 1 Cr. L. J. 370 : 10 Bur. L. R. 77.

—S. 195—Scope—Sanction to prosecute granted to private individual—Power of Court to institute proceedings under S. 478 after grant of sanction.

The existence of a previous sanction, granted to a private individual under S. 195, Cr. P. C., upon which no action has been taken, is no bar to the institution of proceedings by the Civil Court under S. 478, through its karkun. *Emperor v. Nagji Ghelabhai*. 10 Cr. L. J. 431 : 3 I. C. 962 : 11 Bom. L. R. 855.

—S. 195—Scope—Sanction to prosecute other than parties.

A Court has power to sanction the prosecution of a person for forgery committed with respect to proceedings in Court, whether that person is a party to those proceedings or not. *Josaballi v. Ayub Karim Kachhi*. 28 Cr. L. J. 305 : 100 I. C. 529 : 10 N. L. J. 70 : A. I. R. 1927 Nag. 14.

—S. 195—Scope.

Sanction to prosecute should not be given under S. 195 without an application. *Emperor v. Nathu*. 15 Cr. L. J. 662-(a) : 25 I. C. 990 : 8 S. L. R. 21 : A. I. R. 1914 Sind 159.

—S. 195—Scope—Scope of S. 195, whether restricted to Courts detailed in S. 476.

The scope of S. 195, Cr. P. C., as regards the making of complaints is not restricted to the Courts detailed in S. 476. *Hari Charan Kundu v. Kanshi Charan Dey*. 41 Cr. L. J. 662 : 188 I. C. 686 : 44 C. W. N. 530 : I. L. R. 1940 2 Cal. 14 : 13 R. C. 44 : A. I. R. 1940 Cal. 286.

—S. 195—Scope.

S. 195, Cr. P. C., cannot be construed as allowing a prosecution under S. 211, Penal Code, without any previous sanction, if the false charge relates to a serious offence and does not lead to proceedings in Court. *Emperor v. Mi Wa*. 18 Cr. L. J. 758 : 41 I. C. 134 : 8 L. B. R. 534 : A. I. R. 1917 L. Bur. 65.

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———S. 195—Scope.

S. 195, Cr. P. C., contemplates that where an order is to be made to the prejudice of a party, that party is to be first heard by the Court. *Uchil Jha v. Barhmo Singh*.

18 Cr. L. J. 759 :
41 I. C. 135 :
A. I. R. 1917 Pat. 342.

———S. 195—Scope.

S. 195, Cr. P. C., does not remove from the cognizance of Criminal Courts an offence described in S. 463, Penal Code, when such an offence has been committed by an ordinary individual. *Lalla Prosad v. Emperor*.

13 Cr. L. J. 863 :
17 I. C. 799 : 10 A. L. J. 294 :
34 All. 654.

———S. 195—Scope.

S. 195, Cr. P. C., does not require any enquiry as a necessary antecedent to the grant of sanction. An inquiry, if held under S. 195, Cr. P. C., need not be a judicial inquiry. *Muthuvarapu Seshiah v. Gattram Ramiah*.

13 Cr. L. J. 19 :
13 I. C. 211 : 1911 M. W. N. 526.

———S. 195—Scope.

S. 195 of the Cr. P. C., should be so used as to give the person, against whom sanction is asked for or granted, means of knowing precisely of what the alleged criminal act consists. It is right, therefore, in such cases, that the particular statements, alleged to be false, should be specified. *Rakhal Chandra v. Emperor*.

10 Cr. L. J. 150 :
2 I. C. 697 : 9 C. L. J. 690.

———S. 195—Scope.

S. 195 (6) does not limit the right of appeal to the superior Court only. *Lalu v. Gurdasmal*.

13 Cr. L. J. 768 :
17 I. C. 80 : 6 S. L. R. 81.

———S. 195—Scope.

Ss. 195 and 476, Cr. P. C., must be read together, S. 195 lays down the bar and S. 476, the method of removing the bar. *Emperor v. Kushal Pal Singh*.

32 Cr. L. J. 1105 :
134 I. C. 225 : 1931 A. L. J. 697 :
53 All. 804 : I. R. 1931 All. 801 :
A. I. R. 1931 All. 443.

———S. 195—Scope.

The intention of the Legislature in enacting S. 195, Cr. P. C., was, *inter alia*, to give authority to a certain Court for giving or refusing sanction when sanction had been given or refused under this section. Cl. 7 was inserted to point out the authority to which such power was given, it was never intended to be a clause creating or disestablishing any Court. To guard against confusion which might arise round the use of the word "subordinate", the term was limited for the purposes of this section and the interpretation was made to refer to three different classes of cases (1) cases in which appeals lay to more than one Court; (2) cases in which appeals lay to a Court of Revenue and a Civil Court, (3) cases in

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which no appeals lay. *Chidda Lal v. Bhajan Lal*.

18 Cr. L. J. 935 :
42 I. C. 167 : 15 A. L. J. 721 :
39 All. 657 : A. I. R. 1917 All. 405.

———S. 195—Scope.

The provisions of S. 195, Cr. P. C., apply to "any proceeding" and are not necessarily restricted to a "judicial proceeding." *Abdul Aziz v. Maung Tin*.

24 Cr. L. J. 874 :
75 I. C. 74 : 2 Bur. L. J. 5 :
A. I. R. 1923 Rang. 225.

———S. 195—Scope.

The words "in relation to an offence" in S. 195, Cr. P. C., are wide enough to include evidence which was adduced before a Court and which was heard by the Court. *In re: Mahadev Yadneshwar Joshi*.

13 Cr. L. J. 751 :
17 I. C. 63 : 14 Bom. L. R. 715.

———S. 195—Scope.

Where an order granting sanction for the prosecution of the accused ran as follows:—"Record seen, sanction allowed:" Held, that this was not a substantial compliance with the letter of the law. *Sheo Ghulam Sahu v. Kheyali Thakur*.

20 Cr. L. J. 132 :
49 I. C. 164 : 1918 Pat. 366 :
A. I. R. 1919 Pat. 416.

———S. 195—Scope.

Where, therefore, prosecution of an accused is ordered only under S. 471, Penal Code, without reference to any other section, but he is tried and convicted under Ss. 471 and 467, Penal Code, conviction under the latter section is not sustainable. *Ram Samujh v. Emperor*.

27 Cr. L. J. 969 :
96 I. C. 521 : 3 O. W. N. 614 :
A. I. R. 1926 Oudh 485.

———Ss. 195, 476—Scope.

Proceedings arising out of an application for copies of the judgment and decree in a case must be deemed to be proceedings pending in the Court which passed the decree for the purposes of Ss. 195 and 476, Cr. P. C. *Faqir Singh v. Emperor*.

29 Cr. L. J. 1028 :
112 I. C. 356 : A. I. R. 1928 Lah 759 (b).

———Ss. 195, 476—Scope.

S. 195, Cr. P. C., lays down a rule to be followed by the Court which is to take cognisance of an offence specified therein while S. 476 of the Code contains directions for the guidance of the Court which desires to initiate a prosecution in respect of an offence alleged to have been committed in, or in relation to proceedings before it. *Emperor v. Qadir Bakhsh Shah*.

27 Cr. L. J. 98 :
91 I. C. 530 : 1 L. Cas. 477 : 6 Lah. 134 :
A. I. R. 1925 Lah. 312.

———Ss. 195, 476—Scope.

There is a difference between the procedure under S. 195 and S. 476 of the Cr. P. C. Under S. 195 the responsibility for prosecution really rests upon the private person to whom sanction is given, while under S. 476, it rests upon the Court which orders the prosecution. *Girwar Prashad v. Emperor*.

9 Cr. L. J. 219 :
1 I. C. 306 : 6 A. L. J. 392.

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—S. 195 (1) (a)—Scope.

An offence under S. 182 of the Penal Code can be taken cognizance of by a Court only on the complaint of the public servant concerned or of some other public servant to whom he is subordinate. *In the matter of: Berhamdeo Singh v. Emperor.* 28 Cr. L. J. 902 :

105 I. C. 230 : 9 P. L. T. 151 :
A. I. R. 1928 Pat. 102.

—S. 195 (a)—Scope.

The expression "that is to say" in S. 195, (a), is not comprehensive but is only illustrative, and to some extent, limits the effect of the preceding words. The correct construction of the section is that power to revoke sanction is granted to a Court which ordinarily hears appeals from the sanctioning Court, and where there are two Courts having the function of hearing appeals, or where there is no Court, power to revoke is given to that Court to which the sanctioning Court is subordinate. *Muniswami Mudaliar v. Rajaratnam Pillai.*

24 Cr. L. J. 78 :
71 I. C. 126 : 16 L. W. 365 : 43 M. L. J. 375 :
1922 M. W. N. 594 : 31 M. L. T. 287.

—S. 195 (1) (b)—Scope.

False statements of witnesses which are brought to the notice of the Sessions Court trying the case are made in relation to the proceedings of the latter Court within the meaning of S. 195 (1) (b), Cr. P. C. *Narayan Nadan v. Palaniappa Nadan.* 18 Cr. L. J. 143 :
37 I. C. 495 : 1917 M. W. N. 141 :
5 L. W. 218 : A. I. R. 1918 Mad. 1200.

—S. 195 (b)—Scope—Additional District Magistrate whether can make a complaint in respect of such offence—Statutory bar, whether fatal.

Under S. 195 (b), Cr. P. C., the essential preliminary to taking cognizance of an offence under S. 193, Penal Code, committed in a proceeding in any Court is that there should be the complaint in writing of such Court or some other Court to which such Court is subordinate. Consequently the Additional District Magistrate cannot make a complaint under S. 193, Penal Code, for offence committed in the Court of Second Class Magistrate, the reason being that Second Class Magistrate cannot be deemed to be subordinate to the Additional District Magistrate within the meaning of S. 195 (b), Cr. P. C. Where a statute says that a particular thing shall not be done unless a bar is removed, the statutory prohibition stands, and everything done in contravention of the prohibition is bad. *Ramdin Lal v. Emperor.* 38 Cr. L. J. 97 :
165 I. C. 970 : 18 P. L. T. 91 :
3 B. R. 117 : 9 R. P. 246 :
A. I. R. 1937 Pat. 176.

—S. 195 (b)—Scope.

Where a Subordinate Judge refuses to grant a sanction under S. 195 of Cr. P. C. a District Judge has, on appeal, jurisdiction to pass an order under S. 476 of the Code, but in doing so, he should himself proceed according to S. 195 (b) read with S. 476 of the Code. *In re: Lakshmidas Lalji.* 7 Cr. L. J. 35 :
10 Bom. L. R. 28 : 32 Bom. 184.

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—S. 195 (1) (c)—Scope—Complaint of offence under S. 193, Penal Code—Power to prosecute whether confined to parties.

Court has power to file a complaint of an offence under S. 193, Penal Code, against a witness even if when he gave his evidence he was not doing so as a party to the suit but as a witness. Nothing in S. 195 (1) (b), Cr. P. C., confines the power of the Court to persons who are parties to the proceedings. It is S. 195 (1) (c) which confines the power of the Court to parties to the proceedings, and there it is in respect of documents and not of oral evidence. *Emperor v. U Kaddoc.* 37 Cr. L. J. 1008 :

164 I. C. 769 : 9 R. Rang. 139 :
A. I. R. 1936 Rang. 369.

—S. 195 (1) (c)—Scope.

S. 195 (1) (c) of the Cr. P. C. refers only to an offence committed by a party to the proceedings. *Shabir Hasan v. Emperor.*

28 Cr. L. J. 986 :
105 I. C. 810 : 26 A. L. J. 46 :
1 L. T. 40 All. 26 : A. I. R. 1928 All. 21.

—S. 195 (1) (c)—Scope.

The expression "produced or given in evidence" in S. 195 (1) (c) of the Cr. P. C. means tendered or admitted in the antecedent judicial proceedings. Mere mention of a document in the affidavit of documents and that it is filed in the office of the Court Translator for translation does not amount to its being "produced or given in evidence". *Munuswamy Mudaliar v. Rajaratnam Pillai.*

24 Cr. L. J. 340 :
72 I. C. 340 : 16 L. W. 505 :
45 Mad. 928 : 44 M. L. J. 774 :
A. I. R. 1923 Mad. 136.

—S. 195 (1) (c)—Scope.

The mere filing of a forged document as an annexure to a petition to a Court is a sufficient 'production' of the document in Court under S. 195 (1) (c), Cr. P. C. *Tularam Marwadi v. Emperor.* 28 Cr. L. J. 388 :

100 I. C. 1044 : A. I. R. 1927 Nag. 184.

—S. 195 (c) (7)—Scope.

The words "that is to say" in S. 195 (7) (c), Cr. P. C. indicate not that a supplementary provision is to be found in Cl. (c), but merely an explanation of the words "to which appeals ordinarily lie." *Sukhdeo Singh v. District Magistrate of Muzaffarpur.* 18 Cr. L. J. 370 :

38 I. C. 754 : 2 P. L. J. 1 : 3 P. L. W. 333 :
A. I. R. 1916 Pat. 53.

—S. 195 (c)—Scope.

A Counsel, however, is not a party within the meaning of the section. *Ganda Singh Kochar v. Emperor.* 29 Cr. L. J. 1061 :

112 I. C. 565 : A. I. R. 1929 Lah. 125.

—S. 195 (c)—Scope.

Cl. (c) of S. 195, applies only to cases where an offence is committed by a party, as such, to proceeding in any Court in respect of a document which has been produced or given in

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evidence in such proceeding. *Emperor v. Kushal Pal Singh*. (F. B.) 32 Cr. L. J. 1105 : 134 I. C. 225 : 1931 A. L. J. 697 : 53 All. 804 : I. R. 1931 All. 801 : A. I. R. 1931 All. 443.

———S. 195 (c)—*Scope—Document produced in proceedings—Forgery—Complaint by Court, whether necessary.*

The language of S. 195 (c), Cr. P. C., is wide enough to include any document produced or given in evidence in the course of a proceeding, whether produced or given in evidence by the party who is alleged to have committed the offence or by any one else. The intention of the Legislature is to give authority only to the Court in which a proceeding was pending, to file a complaint in respect of documents which were produced or given in evidence before it. *In re : Bhau Vyankatesh Chakorkar*.

27 Cr. L. J. 69 :
91 I. C. 245 : 27 B. L. R. 607 :
49 Bom. 608 : A. I. R. 1925 Bom. 433.

———S. 195 (2)—*Scope—City Survey Officer, if a Court.*

A "City Survey Officer" is a Court within the meaning of S. 195 (2), Cr. P. C. *Emperor v. Rachappa Yellappa*. 37 Cr. L. J. 814 : 163 I. C. 279 : 38 Bom. L. R. 440 : 60 Bom. 756 : 8 R. B. 445 : A. I. R. 1936 Bom. 221.

———S. 195 (4)—*Scope.*

Under S. 195 (4), Cr. P. C., an "offence" under the section includes abetments and attempts, so that if a complaint of the Court is necessary in the case of the substantive offences, it is also necessary in the case of an abetment. *Assudomal Ramdas v. Jhamandas Hotchand Mali*.

41 Cr. L. J. 861 :
190 I. C. 222 : 1940 Kar. 435 :
13 R. S. 73 : A. I. R. 1940 Sind 100.

———S. 195 (6)—*Scope—Court exercising jurisdiction under Cr. P. C. is a "Criminal Court"—Revision—Order under S. 195 (6) cannot be revised but by High Court—Power given by S. 195 (6) should be sparingly used.*

An order under S. 195 (6), Cr. P. C. once made by a competent Court, exhausts the power of that Sub-section, and such order cannot itself be made the subject of further revision under the same Sub-s. *Shankar Rao Sheikh Daud*.

4 Cr. L. J. 351 :
5 N. L. R. 140.

———S. 195 (6)—*Scope of—Application to superior Court, whether appeal.*

S. 195 (6), Cr. P. C. simply confers on a superior Court power to revoke or grant a sanction given or refused by a Subordinate Court. An application made to a superior Court under this provision is not, however, an appeal. *Nawab Ali Khan v. Emperor*.

22 Cr. L. J. 649 :
63 I. C. 409 : 24 O. C. 165 :
A. I. R. 1921 Oudh 108.

———S. 195 (7)—*Scope.*

The expression "that is to say" in S. 195

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(7), means "in particular". *Muniswami Mudaliar v. Rajaratnam Pillai*.

24 Cr. L. J. 78 :
71 I. C. 126 : 16 L. W. 365 :
43 M. L. J. 375 : 1922 M. W. N. 594 :
31 M. L. T. 287.

———S. 195, Cl. 7 (3)—*Scope—Mamlatdars' Court Act (Bom. Act II of 1906), S. 23—Perjury in a possessory suit—Sanction to prosecute not given by Mamlatdar—Appeal to District Judge—Collector has no jurisdiction to hear the appeal.*

An appeal from an order passed by a Mamlatdar refusing sanction to prosecute for perjury in a possessory suit under the Mamlatdars' Court Act (Bom. Act II of 1906) lies to the District Court. The Collector has only the reversionary power granted to him, by S. 23 of the Mamlatdars' Courts Act, 1906, for the limited purpose specified in the clause. He does not, on that account, become the principal Court of jurisdiction within the meaning of the expression as used in Sub-cl. (3) of Cl. (7) of S. 195, Cr. P. C. *Narayan v. Tukaram*.

6 Cr. L. J. 225 :
9 Bom. L. R. 896.

———S. 195 (7) (c)—*Scope—Sanction to prosecute granted by Collector in an unappealable case—Revocation of sanction by District Judge.*

A sanction to prosecute granted by a Collector in a case in which no appeal lies, can be revoked by a District Judge whose Court is the principal Court of Original Jurisdiction within the meaning of S. 195 (7) (c), Cr. P. C. That clause is not limited to the Court of Small Causes, but applies to every Court, where there is no appeal from its decision. *Wazir Muhammad v. Hub Lal*.

9 Cr. L. J. 504 :
2 I. C. 182 : 6 A. L. J. 231 :
31 All. 313.

———S. 195 (7) (c)—*Scope.*

The opening words "where no appeal lies" refer to cases in which no appeal lies and not to Courts against the decision of which there is no appeal. *Ajodhia Parshad v. Ram Lal*.

13 Cr. L. J. 44 :
13 I. C. 284 : 9 A. L. J. 124 :
34 All. 197.

———S. 195—*Subordinate.*

A Commissioner is a public servant subordinate to the Court which appointed him. *Nana Khanderao Ghadge v. Emperor*.

28 Cr. L. J. 1021 :
106 I. C. 109 : 29 Bom. L. R. 1476 :
I. L. T. 40 Bom. 12 :
A. I. R. 1927 Bom. 647.

———S. 195—*Subordination.*

A Joint Magistrate empowered under S. 407 (2), to hear appeals from Sub-Divisional Magistrates, is not a Court to which appeals ordinarily lie from such Magistrate within the meaning of S. 195 (8) and has no power to make a complaint under S. 476-B on an appeal from an order of a Sub-Divisional Magistrate refus-

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ing to make a complaint. *Mohim Chandra Nath v. Emperor.* 30 Cr. L. J. 658 :

116 I. C. 638 : 33 C. W. N. 285 :

49 C. L. J. 342 :

I. R. 1929 Cal. 494 :

56 Cal. 824 : A. I. R. 1929 Cal. 172.

—S. 195—Subordination.

A Magistrate of the first class is not subordinate to the District Magistrate for the purposes of S. 195. Consequently, the District Magistrate has no jurisdiction to sanction the prosecution of a complainant in respect of a complaint which has been finally disposed of by another Magistrate of the first class. A complainant should be examined specifically in respect of a complaint, and in the absence of any such examination, his complaint cannot, in law, be dismissed. *Ali Muhammad v. Emperor.*

12 Cr. L. J. 539 :

12 I. C. 515 : 2 P. R. 1912 Cr. :

11 P. L. R. 1912.

—S. 195—Subordination—Munsif, when subordinate to Subordinate Judge.

A Munsif is subordinate to a Subordinate Judge within the meaning of S. 195 if appeals from the Court of the former are preferred to the Court of the latter and "ordinarily lie" to his Court. *Jagrup Shukul v. Emperor.*

19 Cr. L. J. 4 :

42 I. C. 915 : 15 A. L. J. 844 :

40 All. 22 : A. I. R. 1918 All. 332.

—S. 195—Subordinate.

A Sessions Judge has no jurisdiction to quash, on appeal, a sanction granted by a Sub-Magistrate for an offence under S. 182, Penal Code, if the latter is not "subordinate" to the Sessions Judge within the meaning of that term used in S. 195 (b). *Reddi Rami Reddi v. Public Prosecutor of Kurnool.*

15 Cr. L. J. 612 :

25 I. C. 524 : 1914 M. W. N. 793 :

27 M. L. J. 586 :

A. I. R. 1915 Mad. 508.

—S. 195—Subordination.

Accordingly, where sanction to prosecute under S. 195 is refused by a Magistrate of the Second Class, it is not open to a Magistrate specially empowered under S. 407 (2) of the Code to hear appeals to grant the sanction on appeal. *Jiwani v. Emperor.*

23 Cr. L. J. 572 :

8 I. C. 412 : 2 L. L. J. 660.

—S. 195—Subordination—Bench of Honorary Magistrates with Second Class powers—Order granting sanction—Appeal, when lies.

An appeal against an order granting sanction to prosecute passed by a Bench of Honorary Magistrates exercising the powers of a Magistrate of Second Class lies to the District Magistrate to whom the Bench of Honorary Magistrates is subordinate. *Ahmad Husain v. Rahman.*

26 Cr. L. J. 423 :

85 I. C. 39 : 26 Oudh 358 :

A. I. R. 1924 Oudh 239.

—S. 195—Subordination.

Cl. (c), Sub-s. 7 of S. 195 cannot be construed as if it were an independent sub-section.

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The whole Sub-s. (7) is confined to Courts against whose decision or some of whose decisions appeals do lie. The words 'where no appeal lies' in Cl. (c) of the sub-section do not refer to Courts against none of whose decisions an appeal lies, but refer to particular cases in which no appeal lies. *Ambica Tewari v. Emperor.*

17 Cr. L. J. 208 :

34 I. C. 320 : A. I. R. 1916 Pat. 372.

—S. 195—Subordination—Letters Patent, Cl. 10—Order of sanction to prosecute by Single Judge of High Court—Appeal, maintainability of—"Judgment," meaning of—Single Judge of High Court, power of—Civil Procedure Code (Act V of 1908), S. 151—Inherent jurisdiction.

No appeal lies from an order of a Judge of the High Court sanctioning a prosecution under S. 195. Under S. 151 of the C. P. C., a High Court has inherent jurisdiction to make orders to prevent a miscarriage of justice. *Ramjas v. Mahadeo Pershad.*

17 Cr. L. J. 537 :

36 I. C. 585 : 14 A. L. J. 1230 :

A. I. R. 1917 All. 474.

—S. 195—Subordination—Provincial Small Cause Court, whether subordinate to District Judge.

A Provincial Small Cause Court is under Sub-clause (c) of Cl. 7 of S. 195, to be deemed subordinate, for the purposes of that section, to the Court of the District Judge and the latter has, therefore, jurisdiction to entertain an appeal or application under Cl. (6) of S. 195 against an order of a Provincial Small Cause Court granting or refusing sanction for prosecution. *Nibaran Chandra v. Akshoy Kumar Banerjee.*

18 Cr. L. J. 791 :

41 I. C. 311 : 21 C. W. N. 948 :

26 C. L. J. 138 :

A. I. R. 1918 Cal. 910.

—S. 195—Subordination—Sanction—Munsif exercising Small Cause Court powers, whether subordinate to District Judge.

A Subordinate Judge or Munsif exercising the powers of a Small Cause Court is subordinate to a District Judge for the purposes S. 195. *Bhag Singh v. Emperor.*

23 Cr. L. J. 480 :

67 I. C. 832 : 4 U. P. L. R. Lah. 89 :

A. I. R. 1922 Lah. 401.

—S. 195—Subordination—Sanction to prosecute—Munsif, whether subordinate to District Judge or Senior Sub-Judge.

For the purposes of S. 195, a Munsif is subordinate only to the Senior Subordinate Judge and not to the District Judge. The latter has, therefore, no jurisdiction to grant sanction for a prosecution for offences committed in the Court of a Munsif. *Kanhaya Lal v. Roshan Mal.*

23 Cr. L. J. 720 :

69 I. C. 448.

—S. 195—Subordination—Sanction to prosecute, refusal of—Magistrate specially empowered to hear appeals, if can grant sanction.

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A Magistrate of the First Class upon whom special powers of the appeal have been conferred by the provisions of S. 497 (2) is not a Court to which an appeal "ordinarily" lies under S. 195 (7) of the Code from the orders of a Magistrate exercising Second Class powers. *Jiwani v. Emperor*.

23 Cr. L. J. 572 :
8 I. C. 412 : 2 L. L. J. 660.

———S. 195—Subordination—Sanction to prosecute—Sanction granted or refused by Small Cause Court—Appeal to District Judge—Where no appeal lies, meaning of, in S. 195 (7) (c).

A District Judge cannot entertain an appeal under S. 195 (6) against an order granting or refusing sanction by a Small Cause Court situate within the local limits of his jurisdiction. *Ambica Tewari v. Emperor*.

17 Cr. L. J. 208 :
34 I. C. 320 :
A. I. R. 1916 Pat. 372.

———S. 195—Subordination—Sanction to prosecute under S. 183—Rules for guidance to Courts making complaints laid down—Process-server whether subordinate to Court issuing process.

In considering whether a prosecution is to be ordered or not, it is desirable to have regard to the interests of public justice rather than to the gratification of private spite. Regard may also be had to the question whether the prayer for prosecution is a manoeuvre to obtain an undue advantage by embarrassing the defence in a pending civil proceeding. Another point which might well be considered is whether there is evidence of any criminal act against each individual person against whom it is proposed to take proceedings and with reference to the general question whether there is a *prima facie* case at all, it may be examined whether the person offended against was in fact following a lawful procedure. The process-serving staff were not under the rules then in force subordinate to the individual Courts issuing process for service by them. But the position has since been altered by an amendment of R. 24, at p. 16, Vol. I of the Patna High Court's General Rules and Circular Orders (Civil). *Bajrang Marwari v. Durga Prosad Sao*.

38 Cr. L. J. 292 (2) :
166 I. C. 870 : 9 R. P. 350 :
3 B. R. 226 :
A. I. R. 1937 Pat. 31.

———S. 195—Subordination—Sub-Magistrate, Court of, whether 'subordinate' to Court of Joint Magistrate.

A Sub-Magistrate is 'subordinate' to the District Magistrate within the meaning of S. 195, and is not subordinate to a Joint Magistrate who hears appeals from orders of Sub-Magistrates only in such cases as are made over to him by the District Magistrate. *Kompello Anantaramayya v. Chikkalla Tukkadu*.

19 Cr. L. J. 483 :
45 I. C. 147 : 34 M. L. J. 404 :
1918 M. W. N. 280 : 23 M. L. T. 285 :
7 L. W. 533 : 41 Mad. 787.

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———S. 195—Subordination of Courts.

The High Court is not, for the purposes of S. 195, Cr. P. C., the Court to which the Small Cause Court Judge is subordinate, and, therefore, the High Court cannot sanction the prosecution under S. 195 (1) (b). *Ram Prosad Malla*.

10 Cr. L. J. 454 :
4 I. C. 6 : 13 C. W. N. 1038.

———S. 195 (1)—Subordination.

Although Police Officers in a district are generally subordinate to the District Magistrate, that is not the subordinate contemplated by S. 195 (a) (1), Cr. P. C. That clause contemplates subordinate to some superior Officer of Police. *Khazan Singh v. Kirpa Singh*.

24 Cr. L. J. 683 :
73 I. C. 779 : 4 Lah. 130 : 5 L. J. 372 :
A. I. R. 1923 Lah. 341.

———S. 195 (1) (a)—Subordination—Public servant, order of, disobeyed—Public servant also Court—Sanction to prosecute—Subordination for purposes of sanction.

Under clause (a), sub-s. (1) of S. 195, if a public servant making the order is a Court, in respect of that order, the Court to which that Court would be subordinate would be the Court to which appeals would ordinarily lie. *In re : Badiuddin Sarfuddin*.

23 Cr. L. J. 576 :
68 I. C. 416 : 24 Bom. L. R. 810 :
A. I. R. 1922 Bom. 453.

———S. 195 (a)—Subordination of Court.

A Village Munsiff is not an officer subordinate to the Sub-Magistrate within the meaning of S. 195 (a). *Penkatasami v. A. Narasimhayya*.

8 Cr. L. J. 400 :
4 M. L. T. 214 : 18 M. L. J. 584.

———S. 195 (a) — Subordination — Village Magistrate as public servant, whether subordinate to Sub-Magistrate—Offence of false information to Village Magistrate—Grant of sanction by Sub-Magistrate—Revocation by District Magistrate—Application to High Court—Revision.

A Village Magistrate is not a "Public Servant" subordinate to a Sub-Magistrate within the meaning of S. 195, clause (a) of the Cr. P. C., and the latter is, therefore, not competent to grant sanction for prosecution, in respect of an alleged offence under S. 182, Penal Code, for giving false information to the Village Magistrate. Where a sanction for prosecution for an offence under S. 193, Penal Code, is granted by a Sub-Magistrate but is revoked by the District Magistrate, a further application for sanction should be made to the Sessions Judge and not to the High Court direct. Where no such application is made to the Sessions Judge, the High Court would decline to interfere. *Pallikuduthan v. Buddu Goundan*.

25 Cr. L. J. 215 :
76 I. C. 647 : 45 M. L. J. 553 :
1923 M. W. N. 745 : 47 Mad. 229 :
A. I. R. 1924 Mad. 387.

———S. 195 (1) (b)—Subordination—Subordinate Magistrate transferred after disposing of a case and acquitting accused—Application for sanction to prosecute complainant—Sanction given by District Magistrate—Legality of sanc-

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tion—Subordinate Magistrate, whether subordinate to District Magistrate.

After the accused had been acquitted and the First Class Deputy Magistrate, who had disposed of the case, transferred from the District, one of the acquitted persons applied for sanction to prosecute the complainant under S. 211, Penal Code. The application was made to and granted by the District Magistrate: *Held*, that although the cases pending in the Court of the transferred Deputy Magistrate on the date of his transfer were placed before the District Magistrate either for disposal by himself or for redistribution among his subordinate Magistrates, he never became the presiding Judge in the Deputy Magistrate's Court and, therefore, was not competent to grant sanction as he did: *Held*, further, that for the purposes of S. 195, Cr. P. C., the Court of the Subordinate Magistrate was not subordinate to the District Magistrate but to the Sessions Judge. *Mofizuddin Ahmed v. Basanta Kumar Ghose*.

16 Cr. L. J. 640 :

30 I. C. 464 : A. I. R. 1915 Cal. 674.

———S. 195 (3)—*Subordination—Court 'to which appeals ordinarily lie', meaning of—Change of ordinary forum by notification of Government under statutory power, effect of—Bengal, Agra and Assam Civil Courts' Act (XII of 1887), S. 21.*

The Bengal, Agra and Assam Civil Courts' Act, 1887, provided that appeals from a decree or order of a Munsif shall lie to the District Judge but the said Act contained a provision that the High Court may direct by notification that appeals lying to the District Judge from Munsif shall be preferred to any Subordinate Judge and the Government in pursuance of this provision published a notification that appeals lying to the District Judge of Manbhum from the District of Sambalpur should be preferred to the Subordinate Judge of Sambalpur: *Held*, that the Court of the Subordinate Judge of Sambalpur was the Court to which appeals ordinarily lay from the District Munsifs in the District of Sambalpur, within the meaning of S. 195 (3), and was, therefore, the superior Court which was empowered under S. 476-B of the Code to make a complaint which the Munsifs might have made. *Ramchandra Padhi v. Emperor*.

30 Cr. L. J. 834 :

117 I. C. 878 : 8 Pat. 428 :

I. R. 1929 Pat. 478 : A. I. R. 1929 Pat. 367.

———S. 195 (3)—*Subordination—Order for complaint by Subordinate Judge in exercise of Small Cause powers—Appeal to the District Judge, competency of—Oudh Courts Act (IV of 1925), S. 7, effect of.*

An appeal lies to the District Judge against an order under S. 476-B, passed by a Subordinate Judge in the exercise of his powers of a Judge of a Small Cause Court. The original jurisdiction conferred on the Oudh Chief Court by S. 7 of the Oudh Courts Act, 1925, is not an 'ordinary'

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original jurisdiction within the meaning of S. 195 (3). *Panchu v. Jumman*.

31 Cr. L. J. 205 :

121 I. C. 90 : 6 O. W. N. 848 :

A. I. R. 1929 Oudh 515.

———S. 195 (6)—*Subordination—Appellate Court, power of, to remand case for further inquiry—Inherent power of Court to make inquiry.*

Although a Court, before which an application comes under S. 195 (6) for re-consideration of orders passed by a subordinate Court has no power to remand the case for further inquiry; it, nevertheless, has inherent power to make an inquiry itself and to proceed in accordance with law. *Baldeo Kocri v. Lakshmi Narayan Kuer*.

21 Cr. L. J. 479 :

56 I. C. 511 : 1 P. L. T. 627 :

A. I. R. 1920 Pat. 632.

———S. 195 (6)—*Subordination—Sanction—Superior Court—Collector superior to Tahsildar.*

An application was made for sanction to prosecute in respect of a statement made in a mutation proceeding before a *Tahsildar*. The *Tahsildar* refused to grant the sanction. An application was then made to the District Magistrate to set aside the order of the *Tahsildar*: *Held*, that neither the District Magistrate as such nor the High Court has jurisdiction in the matter, and that the application to set aside the order of the *Tahsildar* should have been made to the Collector whose Court is superior to that of the *Tahsildar* within the meaning of S. 195 (6). *Kulsum Khanum v. Ghani Ahmed*.

12 Cr. L. J. 109 :

9 I. C. 635.

———S. 195 (6)—*Subordination—Sanction to prosecute—Appeal—Order of Single Judge of Chief Court—Power of Division Bench to hear appeal.*

S. 195 (6), Cr. P. C., contemplates that a sanction may be revoked only by a Court which is distinct from and superior to the Court granting sanction. A Bench of the Chief Court is not a superior Court as regards a Single Judge of that Court but is a section of the same Court specially empowered to hear appeals from a Single Judge. *Than Pe v. Ba Than*.

12 Cr. L. J. 469 :

11 I. C. 1005 : 4 Bur. L. R. 206.

———S. 195 (6), (7)—*Subordination—Additional Sessions Judge—Magistrate—Subordination—Sanction to prosecute—Reasons.*

S. 408, Cr. P. C., makes sentences of a Magistrate appealable to the Court of Sessions and under S. 409, read with S. 9 of the Code, an additional Sessions Judge has jurisdiction to hear such appeals. For the purpose of S. 195 (7), therefore, a Magistrate is subordinate to an additional Sessions Judge and consequently an Additional Sessions Judge has jurisdiction to grant sanction refused by a Magistrate. A Court should give reasons for granting or refusing sanction. *Nishi Chandra Chaudhury v. Romesh Chandra Sen*.

14 Cr. L. J. 195 :

19 I. C. 195.

———S. 195 (6) (7)—*Subordination—Sanction*

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given by Munsif—Appeal, forum of—Munsif's Court, whether subordinate to that of Senior Subordinate Judge.

A Munsif granted sanction for the prosecution of one S. for an offence under S. 210, I. P. C. On appeal the Senior Subordinate Judge, maintained the order, S. filed an application for revision in the High Court : *Held*, (1) that as appeals from the order of decree of a Munsif ordinarily lie to the District Court and only in special cases to the Senior Subordinate Judge the Munsif is subordinate to the District Court within the meaning of S. 195 (6), Cr. P. C. : (2) that consequently the Senior Subordinate Judge had no power to hear the appeal. *Sunder Singh v. Phuman Singh*.

21 Cr. L. J. 495 :
26 I. C. 591 : 122 P. L. R. 1920 :
A. I. R. 1920 Lah. 29.

—S. 195 (6), (7)—*Subordination—Sanction to prosecute—Bengal Tenancy Act (VIII of 1885), Ss. 69, 70, Collector acting under, whether Court subordinate to District Court.*

A Collector acting under Ss. 69 and 70, Bengal Tenancy Act, is a Court within the meaning of S. 195, Cr. P. C. Proceedings under Ss. 69 and 70, Bengal Tenancy Act, are of a civil nature and the Collector's Court trying such proceeding must be deemed to be subordinate for the purpose of S. 195, Cr. P. C., to the principal Court of original civil jurisdiction in the District, *i. e.*, the Court of the District Judge. *Per (Richardson, J., hesitating).*—The principal Court of original jurisdiction within the meaning of S. 195, Cl. 7, does not necessarily refer to a Court of any particular class. It is a Civil or Criminal or Revenue Court as the case may be. The words "where no appeal lies," in cl. 7, S. 195, Cr. P. C., are wide enough to include both a particular case or class of cases in which no appeal lies as well as a Court from which no appeal lies in any case, *e. g.*, a Small Cause Court. Although these words in Cl. 7, S. 195, Cr. P. C., are capable of such a wide meaning, yet the Legislature referred to Courts whose decisions are made final by law, *e. g.*, Small Cause Court. *Chandi Charan Giri v. Gadadhar Prodhan*.

19 Cr. L. J. 273 :
44 I. C. 177 : 22 C. W. N. 165 : 27 C. L. J. 316 :
45 Cal. 336 : A. I. R. 1918 Cal. 927.

—S. 195 (7) (a)—*Subordination—Sanction to prosecute, refusal of, by Munsif—Munsif's Court, whether subordinate to District Judge for purposes of S. 195—Appeal to District Judge, whether competent—Procedure—Punjab Courts Act (III of 1914), S. 39 (4).*

S. 195 (7) (a) lays down that where appeals lie to more Courts than one, the Appellate Court of inferior jurisdiction is the Court to which the lower Court is deemed to be subordinate for the purposes of the section. Where, therefore, on a Munsif's refusal to sanction a prosecution, an appeal was preferred to the District Judge : *Held*, that as under S. 39 (4) of the Punjab Court Act and Chief Court Notification No. 4424G, dated 20th July 1914, certain appeals from the Munsif's decrees lay to the Subordinate Judge, the District Judge had no jurisdiction to hear the appeal which ought to

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have been preferred to the Subordinate Judge. *Labhu Ram v. Nand Ram*. 19 Cr. L. J. 975 B :
47 I. C. 875 : 29 P. R. 1918 Cr. :
40 P. W. R. 1918 Cr. : A. I. R. 1918 Lah. 400.

—S. 195 (7)—*Subordination—Court of Subordinate Judge whether subordinate to District Judge.*

The Court of Subordinate Judge must, for the purposes of S. 195, Cr. P. C. be held to be subordinate only to the Court of the District Judge. *Hubdar Khan v. Sajjad Ali Khan*.

20 Cr. L. J. 766 :
53 I. C. 494 : 22 O. C. 189 :
A. I. R. 1919 Oudh 181.

—S. 195 (7)—*Subordination—Order by Judge in Chambers sanctioning prosecution—Appeal, whether lies.*

No appeal lies from an order of a Judge in Chambers of the Punjab Chief Court sanctioning the prosecution of a person in respect of allegations made by him in an affidavit presented to the Judge. *Ramji Das v. Emperor*.

21 Cr. L. J. 608 :
57 I. C. 176 : 1 Lah. 259 :
A. I. R. 1920 Lah. 104.

—S. 195 (7) (c)—*Subordination—Sanction to prosecute—Presidency Small Cause Court—Appeal—Contradictory statements—Penal Code (Act XLV of 1860), S. 193—Perjury—Jurisdiction—High Court—Appellate Bench.*

A Bench of Judges sitting on the appellate side of the High Court has power under S. 195 (7), to hear an appeal against an order of the Presidency Small Cause Court, Madras, granting sanction to prosecute. The original side of the High Court is not a different Court from the appellate side. The effect of S. 195 (7) (c), is merely to designate the Court to which an appeal lies under that clause and not to describe the nature of the jurisdiction. When one Court deals with a judgment of another Court having power to confirm or to set it aside, the jurisdiction it exercises is appellate jurisdiction. *Jamna Das v. Sahapathy Chetti*.

12 Cr. L. J. 545 :
12 I. C. 521 : 10 M. L. T. 278 :
1911 2 M. W. N. 259 : 21 M. L. J. 1074.

—S. 195 (1) (c)—*Subordination of Courts.*

The Court to which a village *Panchayat* when it is exercising jurisdiction in civil matters, is subordinate within the meaning of S. 195 (1) (c), Cr. P. C., is the principal Civil Court of the District and not the Collector. *Emperor v. Salig Ram*.

32 Cr. L. J. 558 :
130 I. C. 488 : 1930 A. L. J. 1520 :
52 All. 1016 : I. R. 1931 All. 280 :
A. I. R. 1931 All. 141.

—S. 195 (6)—*Subordination of Courts.*

For the purpose of S. 195 (6), Cr. P. C., a Judge sitting on the Original Side is subordinate to the Bench hearing appeals from him. *Muniswami Mudaliar v. Rajaratnam Pillai*.

24 Cr. L. J. 78 :
71 I. C. 126 : 16 L. W. 365 : 43 M. L. J. 375 :
1922 M. W. N. 594 : 31 M. L. T. 287.

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—S. 195 (6), (7) (c)—*Subordination of Court.*

A District Munsif acting as a Small Cause Court is "subordinate" to the District Judge within the meaning of S. 195 (7), (c), Cr. P. C. *In re : Appavu Kavun.*

18 Cr. L. J. 46 :
38 I. C. 878 : A. I. R. 1917 Mad. 749.

—S. 195 (7) (c)—*Subordination of Courts.*

As no appeal lies from the decrees of a village Munsif, that Court, under S. 195 (7) (c), Cr. P. C. is deemed to be subordinate to the principal Court of Original Jurisdiction within whose jurisdiction it is situated. *Sundar Lal v. Emperor.*

10 Cr. L. J. 437 :
3 I. C. 966 : 6 A. L. J. 796 :
6 M. L. T. 98.

—S. 195 (7)—*Subordination of Courts—Magistrate, First Class, whether subordinate to Sessions Judge.*

First Class Magistrates, when acting as a Court, are, for the purposes of S. 195 (7), Cr. P. C. subordinate to the Sessions Judge. *Sant Ram v. Diwan Chand.*

24 Cr. L. J. 913 :
75 I. C. 289.

—S. 195—*Summonses and orders, issue of — Judicial proceedings — Disobedience—Sanction—Court, meaning of.*

The summonses and orders referred to in the group of offences mentioned in Cl. (a) of Sub-s. 1 of S. 195, when issued by a Magistrate or Judge, are issued judicially and where sanction is given to prosecute for disobedience of such summonses or orders, such sanction is issued by the same authority, namely, the Court. The word 'Court' in Sub-s. 7 of S. 195, is not confined to Cls. (b) and (c) of Sub-s. 1 of the section. Sub-s. 7 is enacted for the purpose of explaining what is subordinate within the meaning of Sub-s. 6, where the authority giving or refusing is a Court, and does not purport to confine its operation to Cls. (b) and (c) of Sub-s. 1. Where, therefore, sanction is given with reference to an offence against a Court, the appeal is governed by Sub-s. 7. *Arunachalam Pillai v. Ponnuswami Pillai.*

20 Cr. L. J. 78 :
48 I. C. 878 : 35 M. L. J. 454 :
8 L. W. 422 : 24 M. L. T. 396 :
42 Mad. 6 : 1908 M. W. N. 224 :
A. I. R. 1919 Mad. 610.

—S. 195—*Superior Court—Power of.*

Per *Mookerjee, J.*—Where a subordinate Court refuses sanction under S. 195, the superior Court is authorized either to confirm that order, or to grant sanction, but it has no power to remand the case for further inquiry and for final disposal in accordance with the result thereof. In the case of an Act which creates a new jurisdiction, a new procedure, new forms and remedies there in prescribed and no others must be followed. *Budhu Lal v. Chottu Gope.*

18 Cr. L. J. 497 :
39 I. C. 465 : 21 C. W. N. 269 :
5 C. L. J. 193 : 44 Cal. 816 :
A. I. R. 1918 Cal. 850.

Cr. P. CODE (1898), S. 195

—S. 195, 526—*Transfer of application for sanction.*

Assuming that a petition under S. 195, is a petition in a criminal case, a transfer under S. 526, can only be made to a Court to which the Court before which the application is pending is subordinate. *Ekambareswara Iyer v. Veerabadra Thevan.*

11 Cr. L. J. 534 (a) :
7 I. C. 861 : 1 M. W. N. 459.

—S. 195 (1) (b), 476—*Trial without complaint.*

Suit by C for declaration that recital in deed executed by B to A is false—Recital held false—Trial of A for fabricating false evidence, without complaint by Court is legal. *In re : Mohaniraj Krishna Korbalkar.*

32 Cr. L. J. 589 :
I. R. 1931 Bom. 181 :
129 I. C. 581.
A. I. R. 1930 Bom. 337.

—S. 195 (6)—*Use of power.*

The power conferred by S. 195 (6), should be most sparingly used, especially in the direction of granting a sanction to prosecute which has been refused by a lower Court on reasonable grounds. *Shankar Rao v. Shaik Daud.*

8 Cr. L. J. 351 :
4 N. L. R. 140.

—S. 195—*Vague sanction.*

Where a sanction order said that the accused were to be prosecuted in respect of the complaint of a certain date and as a matter of fact there was no complaint of that date : *Held*, that the order was bad for vagueness. *Bholu v. Emperor.*

11 Cr. L. J. 438 :
7 I. C. 51.

—S. 195—*Validity—Sanction for prosecution—Prosecution begun under old Code—Proceedings after introduction of new Code.*

The alteration in S. 195, Cr. P. C., as to the procedure relating to the grant of sanction for prosecution introduced by Act XVIII of 1923 cannot invalidate proceedings validly begun under the old procedure. *Wasudeo v. Emperor.*

27 Cr. L. J. 181 :
91 I. C. 997 : A. I. R. 1927 Nag. 71.

—S. 195 (1) (c)—*Village Munsif complaint—Sanction.*

Under S. 195, (i), (a) sanction for prosecution is not necessary when a public servant, like a Village Munsif, against whom the offence has been committed, is himself the complainant. *Public Prosecutor v. Mari Mudali.*

25 Cr. L. J. 221 :
19 L. W. 30 : 76 I. C. 653 : 12 Lah. 30 :
1924 M. W. N. 145 : A. I. R. 1924 Mad. 730.

—S. 195—*Want of complaint.*

The provisions of S. 195 (5), only apply when a Court has, on the application of some person, sanctioned the trial of any of the offences named in S. 195, and cannot apply to a case sent to a Magistrate under S. 476, for an order under the latter section is not a sanction. Though want of sanction under S. 195, may not vitiate a trial, yet where there has been no complaint under S. 195, as

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regards the offence of which the applicant has been found guilty, the absence of a complaint is not a mere irregularity but is fatal to the trial. *Nanakram v. Emperor*.

20 Cr. L. J. 770 (b) :
53 I. C. 610.

————S. 195 (1)—Want of complaint—Effect of.

Where action under S. 467, I. P. C., against the party to the proceeding before a Court has been quashed for want of complaint of Court in which the offence was committed, there is no reason to quash proceeding against his co-accused for abetting offence under S. 467. *Assudomal Ramdas v. Jhamandas Hotchand Matli*.

41 Cr. L. J. 861 :
190 I. C. 222 : 1940 Kar. 435 :
13 R. S. 73 : A. I. R. 1940 Sind 100.

————S. 195—Want of sanction—Penal Code (Act XLV of 1860), S. 193—Complaint for fabricating false evidence, whether sufficient for taking cognisance of offence of giving false evidence—Complaint under S. 193, essentials of—Order for prosecution under S. 476, whether makes up for absence of complaint—Want of complaint, whether curable by S. 537.

A complaint merely quoting S. 193, but alleging fabrication of false evidence without any allegations of having given false evidence can, in no sense, be deemed to be a complaint for an offence of intentionally giving false evidence. The want of a complaint for a particular offence is quite a different thing from an error, omission or irregularity in the complaint. It affects the jurisdiction of the Court and the legality of the trial and is not curable by S. 537, Cr. P. C. *Satti Reddy v. Emperor*.

31 Cr. L. J. 1060 :
126 I. C. 530 : A. I. R. 1930 Rang. 153.

————Ss. 195 (b), 476 — Want of sanction (b)—Sanction and trial by same court in different capacities — Irregular sanction proceedings—Notice necessary in sanction proceedings—Indian Penal Code, Ss. 206, 421, 494.

A decree-holder applied for execution against the produce of a *giras*. The produce was attached, but the attachment was removed under order of the Agent. Meanwhile the judgment-creditor presented a criminal complaint to the executing court, in its capacity as a Magistrate, alleging fraudulent removal of the produce, and charging the judgment-debtors under Ss. 206, 421, 424, I. P. C., and their creditors with abetment. Process was issued, but, before its hearing, the complainant asked for the sanction necessary under S. 195 (b), Cr. P. C. It being granted without hearing, the judgment-debtors approached the Agent's Court, alleging that the complaint was entertained without sanction, and that no notice had been given them before the sanction was granted: *Held* (in revision) that (1) as all civil appeals from that court lay to the Agent's Court, it was that court which should be approached to get the sanction revoked; (2) that the Magistrate had no jurisdiction to issue

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process, he being bound to examine the complainant at once on oath under S. 200, Cr. P. C., and that there was no option in the matter and that his writing must be distinct from the written complaint: (3) that the complaint was bad for want of sanction, sanction being a condition precedent to the complaint and so there was no jurisdiction to hear the complaint in respect of S. 206, I. P. C. (4) that, while it was not legally necessary that notice should be given, nevertheless it was highly desirable that notice should be given: that, when a court has given sanction upon legal evidence, recorded by itself, or upon judicial records (which were themselves a guarantee of due enquiry) it was perhaps not always necessary to give the accused a chance of clearing himself: that, as there was no final order in this case, the provision in S. 537 (b), Cr. P. C., did not apply; the principle being that where a final order or decision had been given, want of sanction would not be a good plea, unless the accused had been materially prejudiced; and that if there was no final order, there was no reason why an error of this kind should not be corrected while there was still time: *Held*, also that the Magistrate could have acted under S. 476, Cr. P. C., but that, as he did not do so, that section did not apply; and that though there were rulings to show that sanction given and trial conducted by the same authority in two different capacities, was not illegal, the accused might reasonably apply for transfer (to the District Magistrate). *Bhagat Jethsur Jiva v. Sha Amrattal*. 4 Cr. L. J. 375 : 16 K. L. R. 195.

————S. 195 (1) (a)—Want of complaint—Effect of.

The fact that no complaints required by the mandatory provisions of S. 195 (1) (a), Cr. P. C., were made, makes the trials nugatory. *Babu v. Emperor*.

41 Cr. L. J. 228 :
185 I. C. 745 : 1940 O. L. R. 43 :
1940 O. W. N. 118 : 15 Luck. 344 :
12 R. O. 278 : A. I. R. 1940 Oudh 241.

————S. 195—Withdrawal of complaint by Civil Court—Duty of Magistrate.

Where a Civil Court, making complaint for offences under Ss. 183, 185, Penal Code, being satisfied that there was sufficient cause for the disobedience of its order, requests that the complaint may be withdrawn, the Criminal Court to which the complaint was made will not ordinarily be justified in refusing to allow withdrawal. *Emperor v. Ram Nath Bux Singh*.

27 Cr. L. J. 1247 :
98 I. C. 63 : 3 O. W. N. 757 :
A. I. R. 1927 Oudh 51.

————S. 195 (1) (a)—Withdrawal—Petition to withdraw complaint.

Petition to District Magistrate to withdraw complaint made by Joint Magistrate—Summary dismissal, is not legal Petition

Cr. P. CODE (1898), S. 196

lies to District Magistrate. *In re: Nagu Servai*. 35 Cr. L. J. 1134 :

150 I. C. 773 : 1934 M. W. N. 483 (2) :

40 L. W. 90 : 67 M. L. J. 195 :

57 Mad. 1101 : 7 R. M. 29 :

A. I. R. 1934 Mad. 473.

—S. 196.

See also (i) Cr. P. C., S. 215.

(ii) Penal Code, 1860, S. 171 (1).

—Ss. 196, 235, 237—Amending Act—Effect—Operation of Ss. 196, 235, 236, 237, if barred by Criminal Law Amendment Act.

Anything contained in the Criminal Law Amendment Act, does not bar the operation of the provision of the Code of Criminal Procedure as contained in S. 196, or Ss. 235, 236 and 237 to which latter provisions, reference is made in S. 403 of the Code. *Jiten-dra Nath Gupta v. Emperor*. (S. B.)

38 Cr. L. J. 818 :

169 I. C. 977 : 10 R. C. 69 :

A. I. R. 1937 Cal. 99.

—S. 196—Applicability (as amended)—Complaint regarding the falsity of Return of Election Expenses without order of or under the authority from Government—Cognizance by Magistrate—Punjab Electoral Rules, R. 5 (4)—Words “in a judicial proceeding,” whether affect S. 196, Criminal Procedure Code, as amended.

In R. 5 (4) of the Punjab Electoral Rules, the words “in a judicial proceeding” by a Magistrate do not override or amplify the clear provisions of the amended S. 196, Cr. P. C., and, therefore, do not empower a Magistrate to take cognizance of a complaint regarding the falsity of a Return of Election Expenses, unless the complaint is filed by the order of or under the authority from the Governor-General in Council, etc., as laid down in the amended S. 196, Cr. P. C. *Labb Singh Narinjan Das*.

26 Cr. L. J. 1234 :

88 I. C. 850 : 6 Lah. 188 :

A. I. R. 1925 Lah. 449.

—S. 196—Authority.

The authority under S. 196 need not in the case of “Local Government” be signed personally by the Lieutenant-Governor; it is enough if it is signed by one of his accredited and Gazetted Officers. *Apurba Krishna v. Emperor*.

7 Cr. L. J. 10 :

7 C. L. J. 49 : 35 Cal. 141 :

2 M. L. T. 500.

—S. 196—Complaint—Sanction.

S. 196, Cr. P. C. requires that no case under S. 124-A, Penal Code, shall be taken cognizance of except upon complaint made with the authority of the Local Government. Where the letter of authority did not specify the name of the accused but he was indicated from the first and his name was supplied at the commencement of the Police Court proceedings : *Held*, it was a sufficient compliance with the section. *Apurba Krishna v. Emperor*.

7 Cr. L. J. 10.

7 C. L. J. 49 : 35 Cal. 141 :

2 M. L. T. 500.

Cr. P. CODE (1898), S. 196**—S. 196—Construction—Complaint.**

There is nothing in S. 196 to warrant the construction that the actual complaint must be authorised by the Local Government. The only question which the Court has to consider with reference to the section is : Whether the complaint it is asked to entertain is a complaint made by order or under authority of Government. *In re : Subramania Siva*.

9 Cr. L. J. 108 :

3 I. C. 22 : 5 M. L. T. 1 :

32 Mad. 3.

—S. 196—Contents of sanction—Order of Government sanctioning prosecution—Form of order.

No special mode is laid down in the Criminal Procedure Code whereby under S. 196 the order or sanction of Government to prosecute for certain offences is to be conveyed to the officer who puts the law in motion. It need not contain the charge of the offence. All that the Court has to see is, whether the complaint was made by the order or under the authority of Government. *In re : Narayana Menon*.

25 Cr. L. J. 401 :

77 I. C. 481 : A. I. R. 1925 Mad. 106.

—S. 196—Contents of sanction—Sanction to prosecute—Form of sanction.

The Law does not lay down any particular form in which the sanction to prosecute for an offence under S. 124-A of the Penal Code should be accorded. The sanction is sufficient if it names the persons to be prosecuted and specifies the sections under which they are alleged to have committed the offence, as also the period of their activity. The mere fact that the sanction does not specify the utterances of the accused would not affect its validity. *Kishen Singh v. Emperor*.

25 Cr. L. J. 279 :

76 I. C. 871 : A. I. R. 1923 Lah. 333.

—S. 196—Examination of Complainant.

The person who signs the letter of authority is not the complainant and it is not necessary to examine him. The person who armed with the authority makes the application to the Court for the apprehension of the accused is the complainant and his examination is to be taken. A Presidency Magistrate need not at this stage administer an oath to the complainant nor reduce his complaint into writing. *Apurba Krishna v. Emperor*.

7 Cr. L. J. 10 :

7 C. L. J. 49 : 35 Cal. 141 :

2 M. L. T. 500.

—S. 196—Initiation and cognizance—Magistrate initiating proceedings, if disqualified to receive complaint.

There is no bar to a Magistrate receiving a complaint by reason of the fact that he submitted a report to Government for the purpose of obtaining the sanction required under S. 196. *Mohammad Oziullah v. Beni Madhab Chowdhury*.

24 Cr. L. J. 111 :

71 I. C. 239 : 26 C. W. N. 878 :

36 C. L. J. 180 : 50 Cal. 135 :

A. I. R. 1922 Cal-2.

Cr. P. CODE (1898), S. 196

———S. 196—*Powers of Court—Penal Code (Act XLV of 1860), Ss. 121-A, 124-A—Prosecution order by Government for waging war—Sedition, conviction for.*

Where on a prosecution instituted against certain persons on a complaint filed by the Local Government that "they committed offences punishable under S. 121-A of the Penal Code, in that they at diverse places", within a certain district, "and at various times and on various occasions" during certain months "conspired to wage war against His Majesty the King-Emperor", the Court finds that the facts proved do not constitute the offence to wage war punishable under S. 121-A, Penal Code, but that they do constitute an offence punishable under another section comprised in Chap. VI of the said Code, viz., sedition under S. 124-A, the Court is not competent to take cognizance of such other offence and to convict the accused persons thereof. *U. Nyay Nein Da v. Emperor.* 27 Cr. L. J. 107 : 97 I. C. 51 : 4 Rang. 131 : A. I. R. 1926 Rang. 169.

———S. 196—*Powers under.*

S. 196, Cr. P. C. reserves to the local Government the power of determining whether cognizance shall be taken by the Court of any offence punishable under Chap. VI of the Penal Code except S. 127. It is beyond the competence of the Government to delegate to any other body or person the discretion it implies. *Barindra Kumar v. Emperor.*

11 Cr. L. J. 453 :
7 I. C. 359 : 37 Cal. 467.

———S. 196—*Powers of Court.*

The provisions of the Cr. P. C., allowing the Court to frame a charge of the offence it finds to be proved, to alter the charge or to convict of an offence of which a charge has not actually been framed, must be read subject to the provisions of S. 196 of the Code. *Nyan Nein Da v. Emperor.* 27 Cr. L. J. 107 : 97 I. C. 51 : 4 Rang. 131 : A. I. R. 1926 Rang. 169.

———S. 196—*Presumption.*

It must be presumed that all official acts have been duly performed and S. 114 of the Evidence Act amply supplies all omissions in the method of communication of the sanction to the Prosecuting Officer and the Magistrate, where the sanctions as they originally stood contained a misdescription of the articles on which the prosecution was based and this was rectified by a subsequent sanction filed in course of the trial : *Held*, the petitioner was not prejudiced and the defect was cured by S. 537 of the Cr. P. C. *Apurba Krishna v. Emperor.*

7 Cr. L. J. 10 :
7 C. L. J. 49 : 35 Cal. 141 :
2 M. L. T. 500.

———S. 196—*Sanction by Government—Sanction for actual words of complaint, whether necessary.*

Cr. P. CODE (1898), S. 196

The Government authorized the District Magistrate by telegram to prosecute the accused under S. 124, Penal Code, after consultation with the Public Prosecutor and directed the District Magistrate to submit the complaint prepared 'for issue of supplemental sanction' : *Held*, (1) that the last clause of the telegram should be read apart from the rest of the order and that it was intended to refer back to the first portion of the telegram or to limit the authority given : (2) that the telegram contained sufficient sanction under S. 196, Cr. P. C. *In re : Varadarajulu Naidu.*

20 Cr. L. J. 186 :
49 I. C. 602 : 36 M. L. J. 64 :
25 M. L. T. 15 : 1918 M. W. N. 926 :
42 Mad. 180 : A. I. R. 1919 Mad. 968.

———S. 196—*Sanction of Local Government, absence of, effect of.*

Where the law says that it is a condition precedent to a prosecution in respect of certain offences that a sanction must be obtained from the Local Government, it is not open to any subordinate authority to override the provisions of the law by saying that the offence also falls under a different definition and that, therefore, the offender may be prosecuted without any sanction. *Ram Nath v. Emperor.*

26 Cr. L. J. 362 :
84 I. C. 714 : 22 A. L. J. 1106 :
47 All. 268 : A. I. R. 1925 All. 230.

———S. 196—*Sanction—Sedition—Sanction by Government for prosecution, requisite of—Sanction by telegram—Proof that telegram was sent by Local Government, absence of—Presumption—Evidence Act (I of 1872), S. 88—Supplementary sanction after filing of complaint, legality of.*

The sanction of a Local Government to prosecute a person for an offence under S. 124-A, Penal Code, communicated by telegram must be proved to have emanated from the Government. The Court is forbidden by the express provisions of S. 88 of the Evidence Act to make any presumption as to the person by whom the telegram is sent. A sanction given after the filing of a complaint does not fulfil the requirements of S. 196, Cr. P. C. The sanction must, in order to satisfy the section, have been the act of the Local Government and not of a single member of such Government. *Varadarajulu Naidu v. Emperor.*

20 Cr. L. J. 455 :
51 I. C. 343 : 37 M. L. J. 81 :
1919 M. W. N. 669 :
42 Mad. 885 : A. I. R. 1920 Mad. 928.

———S. 196—*Sanction—To be specific.*

A sanction under S. 196, to prosecute an accused should be specifically directed to the particular sections of Chap. VI of the Code in respect of which proceedings are to be taken and the order should be preceded by and be the result of a deliberate determination that proceedings shall be taken in respect of a particular section or sections and no other. It is opposed to the true intention of S. 196, to give a roving power to determine under

Cr. P. CODE (1898), S. 196

what sections proceedings should be taken.
Putten Veetil Kunhi Kadir v. Emperor.

23 Cr. L. J. 203 :
65 I. C. 859 : 1922 M. W. N. 71 :
15 L. W. 311 : 30 M. L. T. 135 :
52 M. L. J. 108 : A. I. R. 1922 Mad. 126.

———**Ss. 196, 537—Contents of sanction—Order under S. 196 sanctioning prosecution—Omission to address Magistrate concerned—Irregularity.**

An order of the Government sanctioning, under S. 196, the prosecution of a person for a political offence did not say in its body to whom the order was given but the District Magistrate, the Special Magistrate and the Public Prosecutor concerned were designated below it. It was objected that the order was open to objection on the ground that it was not given to any determinate person: *Held*, (1) that the order must be taken as addressed to the persons designated below who were the persons concerned in the holding of the trial; (2) that even if the objection was valid, the omission was a mere irregularity covered by S. 537. *In re : Mandayapurath Eresakutty.*

24 Cr. L. J. 539 :
73 I. C. 155 : 17 L. W. 100 :
44 M. L. J. 166 : A. I. R. 1923 Mad. 328.

———**S. 196, scope of.**

Under S. 196 it is not necessary that the actual words of the complaint should be sanctioned. *In re : Varadarajudu Naidu.*

20 Cr. L. J. 186 :
49 I. C. 602 : 25 M. L. T. 15 :
36 M. L. J. 64 : 1918 M. W. N. 926 :
42 Mad. 180 : A. I. R. 1919 Mad. 968.

———**S. 196—Scope.**

Per *Napier, J.*—S. 196 is not an enabling section. It is a disempowering section and must be read simply as requiring the specific authority of Government for institution of the proceeding and nothing more: *In re : Varadarajudu Naidu.*

20 Cr. L. J. 186 :
49 I. C. 602 : 25 M. L. T. 15 :
36 M. L. J. 64 : 1918 M. W. N. 926 :
42 Mad. 180 : A. I. R. 1919 Mad. 968.

———**S. 196—Who is to sign sanction—Evidence Act (I of 1872), S. 78—Application of—Sanction to prosecute signed for Chief Secretary, if evidence of authority of Local Government—Presumption.**

A letter issued from the office of the Chief Secretary to the Government conveying sanction, under S. 196, Cr. P. C., to a prosecution under S. 294-A, Penal Code, which is not signed by the Chief Secretary, but by some other officer on his behalf is no legal proof that the Local Government has ordered or authorised the prosecution. The capacity of the Chief Secretary being that of a delegate of the head of the Local Government the order could not be certified on his behalf. In such a case the order must be proved according to the provisions of S. 78

Cr. P. CODE (1898), S. 196

of the Evidence Act. *Muhammad Oziullah v. Beni Madhab Chowdhury.*

24 Cr. L. J. 111 :
71 I. C. 239 : 26 C. W. N. 878 :
36 C. L. J. 180 : 50 Cal. 135 :
A. I. R. 1922 Cal. 298.

———**S. 196-A—Conspiracy—Charge of cheating—Forgery committed to cheat—Object of conspiracy—Abetment of forgery—Sanction of Local Government.**

Where the object of a conspiracy is to commit forgery, there can be no prosecution for such a criminal conspiracy without the sanction of the Local Government under S. 196-A of the Cr. P. C. But this is not so, where the main charge is that of cheating, in which it is not necessary at all to mention, as the object of the conspiracy, forgery committed not for its own sake but in order to cheat a person in a way in which, if he had known the fact, he would not have parted with the money. If cheating is carried out by means of forgery, it does not follow that the provisions of S. 196-A of the Cr. P. C. would apply. For a prosecution of an offence of forgery, no sanction is necessary under S. 196-A and no distinction can be drawn between the offence of forgery and the offence of abetment thereof. *Bishambhar Nath Tandan v. Emperor.*

26 Cr. L. J. 1602 :
90 I. C. 706 : 2 O. W. N. 760 :
A. I. R. 1926 Oudh 161.

———**Ss. 196-A, 239—Conspiracy to obstruct Police and stop sale of certain goods—Unlawful assembly—Rioting—Murder committed in course of rioting—Responsibility of members of unlawful assembly—Sentence—Same transaction—Joint trial, liability of.**

A large crowd of men assembled at a village and agreed among themselves to proceed in a body to a certain Police Station there to threaten and to obstruct the Sub-Inspector of Police and the Policemen with him in the discharge of their duty and then to proceed to a certain bazar and stop the sale of intoxicants, meat, fish, etc. It was also agreed that if the Sub-Inspector of Police did not act in a certain manner and offered resistance, he and the Policemen with him would be assaulted. The crowd then proceeded towards the Police Station and on arrival there, started an altercation with the Sub-Inspector of Police. Their behaviour and attitude was such that if they had been called upon to disperse they would not have done so. During the course of the altercation, the members of the crowd began to throw stones at the Police. The Police then fired, killing two men and wounding several others. The mob inflamed to fury then murdered the Police Inspector and several other Police and *chaukidars*. Some of the members of the crowd were charged with offences under Ss. 120-B and 302 read with S. 149 of the Penal Code and were convicted of the latter offence at one trial: *Held*, that the charge against the accused being that the events which occurred at the Police Station followed upon the alleged criminal conspiracy arrived at between the accused at the village and were so connected

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therewith, not merely by sequence of time but by the link of causation, as to make the conspiracy at the village and the subsequent assault on the Policemen at the Police Station parts of the same transaction, within the meaning of that expression in S. 239 of the Cr. P. C., the joint trial of the accused was perfectly justified; that in order to decide whether the joint trial of the accused was or was not legal, the Judge had to look to the case for the prosecution as set forth in the charges themselves and that it was not necessary for him to consider what the position would be if he eventually came to the conclusion either that no offence punishable under S. 120-B was committed by any of the accused or that if any offence was so committed, it was one excluded from his cognizance by S. 196-B of the Cr. P. C. *Abdullah v. Emperor*.

27 Cr. L. J. 193 :
92 I. C. 145 : A. I. R. 1924 All. 233.

———S. 196-A—Consent.

A Chief Presidency Magistrate has no power to give consent to the initiation of proceedings for an offence under S. 120-B, Penal Code, without being empowered in this behalf by the Local Government. *In re : Alexander George Gray*.

35 Cr. L. J. 1330 :
151 I. C. 476 : 36 Bom. L. R. 320 :
58 Bom. 480 : 7 R. B. 65 :
A. I. R. 1931 Bom. 183.

———S. 196-A—Consent—Penal Code (Act XLV of 1860), S. 120-B—Opium Act (I of 1878) S. 9—Conspiracy for illicit transport of opium—Warrant issued for offence under Opium Act only—Charge for conspiracy—Consent of Government obtained after warrant but before framing of charge—Trial, legality of—Cognizance, what amounts to.

Proceedings against the accused were started upon a report made by an Excise Inspector in which the nature of the case was set out as one under S. 9 of the Opium Act read with S. 120-B of the Penal Code. Warrants for arrest were issued for offence under S. 9 of the Opium Act, and the proceedings went on as being under the said section only. The Excise Superintendent when examined as a prosecution witness, produced an order of the Government, dated 12th September, 1925, consenting to initiation of proceedings against the accused under S. 120-B of the Penal Code read with S. 9 of the Opium Act. A charge under S. 120-B, Penal Code, with S. 9 of the Opium Act, was then framed and the accused convicted: *Held*, that the Magistrate took cognizance of the case under S. 120-B of the Penal Code not when he issued the warrant, but only when he framed the charge and inasmuch as the date of framing the charge was subsequent to the order of the Government giving consent to the prosecution, the trial was not illegal for want of previous consent under S. 196-A, Criminal Procedure Code. *Ali Mia v. Emperor*.

28 Cr. L. J. 466 :
101 I. C. 594 : 54 Cal. 155 :
A. I. R. 1927 Cal. 296.

Cr. P. CODE (1898), S. 196**———S. 196-A—A consent.**

Where the consent is obtained only after the initiation of proceedings and the accused have not been prejudiced in their defence, the defect is merely technical and does not render the trial illegal. *Abdul Rahman v. Emperor*.

36 Cr. L. J. 982 t
8 R. C. 21 : 62 Cal. 749 :
156 I. C. 678 : A. I. R. 1935 Cal. 316.

———S. 196-A—Interpretation of—Non-cognizable offence—District Magistrate, whether can sanction prosecution.

The words "not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards" in S. 196-A govern only a cognizable offence and have no application to the case of a non-cognizable offence. A District Magistrate empowered under the section has, therefore, authority to sanction prosecution for a non-cognizable offence without regard to the amount of punishment provided therefor. *Thakar Das v. Emperor*.

19 Cr. L. J. 12 :
42 I. C. 924 : 15 A. L. J. 841 :
40 All. 41 : A. I. R. 1918 All. 345.

———S. 196-A—Object—Committal after magisterial inquiry or conviction after full trial on charge of conspiracy—No previous sanction—No prejudice to accused—Want of sanction if makes conviction improper.

It was with a view to safeguarding citizens against prosecution on frivolous charges of criminal conspiracy that S. 196-A, Cr. P. C., was enacted at the same time as S. 120-B, Penal Code, insisting upon the previous approval of Government or of some senior and specially empowered Magistrate before such proceedings can be even initiated. If this safeguard is ignored by Magistrates, they should be suitably admonished. But when a case has been initiated and has ended in conviction, it is obvious that there never was any innocent person to be protected from persecution. In other words S. 196-A was designed not as a loophole of escape for persons committed after full magisterial inquiry on a charge of criminal conspiracy or convicted after full trial of criminal conspiracy. If proceedings are initiated without formal sanction and end in the conviction of certain persons for criminal conspiracy, the conviction should be upheld unless it can be shown that any one of the persons convicted was prejudiced by the formal defect complained of. *In re : Mallimoggala Venkataramiah*.

39 Cr. L. J. 266 :
173 I. C. 26 : 46 L. W. 709 :
1937 2 M. L. J. 862 :
1937 M. W. N. 996 :
10 R. M. 515 : A. I. R. 1938 Mad. 130.

———S. 196-A—Object.

S. 196-A does not alter the former law. It only prohibits entertainment of certain complaints for conspiracy under S. 120-B, I. P. C., without sanction. *Muhammad Bachal Abdullah v. Emperor*

35 Cr. L. J. 812 :
148 I. C. 687 : 6 R. S. 200 :
A. I. R. 1934 Sind 4.

Cr. P. CODE (1898), S. 196**———S. 196-A—Sanction.**

Absence of sanction—Magistrate should dismiss complaint but should not ask Public Prosecutor to get it. If moved can grant him time to get sanction. *Muhammad Bachal Abdullah v. Emperor.* 35 Cr. L. J. 812 : 148 I. C. 687 : 6 R. S. 200 : A. I. R. 1934 Sind 4.

———S. 196-A—Sanction.

Conspiracy to commit cognizable offence—Simply because accused have committed non-cognizable offences for such purpose, sanction under S. 196-A is not necessary. *In re : Patri Venkata Hanumantha Rao.* 35 Cr. L. J. 631 : 148 I. C. 281 : 1933 M. W. N. 1409 : 39 L. W. 91 : 66 M. L. J. 193 : 57 Mad. 545 : 6 R. M. 456 : A. I. R. 1934 Mad. 88.

———S. 196-A—Sanction.

For a prosecution under S. 120-B, Penal Code, where the object of the conspiracy was to commit an offence under S. 60 (a) of the U. P. Excise Act, sanction under S. 196-A (2), Cr. P. C., is not necessary. *Emperor v. Mohamad Yakub.* 33 Cr. L. J. 373 : 137 I. C. 73 : I. R. 1932 All. 270 : A. I. R. 1932 All. 73.

———S. 196-A—Sanction.

Object to commit cognizable offence punishable with rigorous imprisonment for over two years—Sanction, is not necessary. *Ramjanam Tewari v. Emperor.* 36 Cr. L. J. 856 : 155 I. C. 866 : 14 Pat. 717 : 16 P. L. T. 348 : 7 R. P. 634 : A. I. R. 1935 Pat. 357.

———S. 196-A—Sanction.

Prosecution not alleging that the conspiracy, subject-matter of charge, was to commit illegal act other than the offence—offence cognizable and punishable with imprisonment for 2 or more years—Sanction of Local Government to prosecute, is not necessary. *Ram Das v. Emperor.* 35 Cr. L. J. 1349 : 151 I. C. 442 : 1934 A. L. J. 852 : 7 R. A. 163 : A. I. R. 1934 All. 61.

———S. 196-A—Scope.

S. 196-A applies only to a prosecution for conspiracy punishable under S. 120-B of the Penal Code and not for abetment of conspiracy punishable under S. 109 of the latter Code. *Abdul Rahman v. Emperor.*

26 Cr. L. J. 1329 : 89 I. C. 305 : 3 Rang. 95 : A. I. R. 1925 Rang. 296.

———S. 196-A, Cl. (2)—Direction by Magistrate whether Sanction—Penal Code (Act XLV of 1860) S. 120 (b)—Conspiracy—Sanction, nature of—Magistrate, direction by, whether amounts to sanction.

One D presented a petition to a District Magistrate making certain allegations against a Tahsildar. D stated before a Junior Magis-

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trate, who was sent for local inquiry, that he really had no complaint to make but that he had been instigated by certain other persons to make a false complaint. The District Magistrate dismissed the complaint under S. 203 and ordered another Magistrate to make an enquiry as to the origin of the complaint. The Magistrate reported that D and certain other persons had conspired to defame the *Tahsildar*. The District Magistrate, thereupon, directed the prosecution of D and the other persons for an offence under S. 120 (b) of the Penal Code and sent the case for trial to a Magistrate. The accused pleaded that there was no proper sanction within the meaning of S. 196-A, Cl. (2) Cr. P. C. for their prosecution : *Held*, that the direction by the District Magistrate, who was empowered by a Government Notification to give sanction, was a valid sanction within the meaning of S. 196-A, Cr. P. C. *Thakur Das v. Emperor.* 18 Cr. L. J. 634 : 39 I. C. 1002 : A. I. R. 1917 All. 438.

———S. 196-A, Cl. (2)—Transfer.

Transfer of the case to some other Magistrate is not justified because the Magistrate had to examine the papers of the case before granting his consent under S. 196-A, Cl. (2). *Hiralal Das v. Emperor.* 35 Cr. L. J. 714 : 148 I. C. 558 (2) : 38 C. W. N. 581 : 6 R. C. 468 : A. I. R. 1934 Cal. 391.

———Ss. 196-A (2), 195—Criminal conspiracy.

The proviso to S. 196-A lays down that where the criminal conspiracy is one to which the provisions of Sub-s. (4) of S. 195 apply, no sanction is necessary. *Emperor v. Nund Lal.* 39 Cr. L. J. 765 : 176 I. C. 654 : 40 P. L. R. 815 : 11 R. L. 221 : A. I. R. 1938 Lah. 526.

———S. 196-A (2)—Consent.

Previous consent of Local Government not obtained—No objection taken during inquiry or trial—Verdict of jury and conviction not illegal. *Hanif v. Emperor.* 34 Cr. L. J. 56 : 140 I. C. 723 : I. R. 1933 Cal. 29 : A. I. R. 1932 Cal. 786.

———S. 196-A (2)—Sanction—Conspiracy to commit non-cognizable offence—Some accused parties to proceedings in which offence is committed—Sanction for prosecution under S. 120-B, Penal Code (Act XLV of 1860), is not necessary in case of such accused but is necessary in case of others.

Where a non-cognizable offence is committed and several persons are charged for conspiracy to commit the offence but some only are parties to the proceedings in which the offence was committed, no sanction is necessary for prosecution under S. 120-B, Penal Code, in the case of such accused but is necessary in the case of others who are not parties to the proceedings. *Emperor v. Nand Lal.*

39 Cr. L. J. 765 : 176 I. C. 654 : 40 P. L. R. 815 : 11 R. L. 221 : A. I. R. 1938 Lah. 526.

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———S. 196-A (2)—Sanction—Object of conspiracy, to commit non-cognizable offence—Sanction under S. 196-A (2), whether essential to give jurisdiction to Court—Object of conspiracy when and how to be determined.

The jurisdiction of the Court to take cognizance of an offence of conspiracy under S. 120-B, Penal Code, depends according to the terms of S. 196-A (2), Cr. P. C., upon the object of the conspiracy. If the object is to commit non-cognizable offence, undoubtedly sanction under that section is essential to give jurisdiction to the Court. The object of the conspiracy has to be determined at the initial stage not only by reference to the sections of the penal enactment referred to in the complaint but also upon the facts narrated therein and the evidence tendered before the Magistrate. There is a cognizable difference between the object of a conspiracy and the means adopted to realize the object. If they are separable, then, even if the object is sought to be attained by resort to non-cognizable offences, no sanction is necessary. It does not matter if the object is erroneously mixed up with the statement of method of attaining it in the body of the complaint. It is perfectly open to the Magistrate upon the evidence to dissect the facts in order to decide the question of sanction. *Ramchandra Rango Sawkar v. Emperor*. 40 Cr. L. J. 579 : 181 I. C. 870 : 41 Bom. L. R. 98 : 11 R. B. 356 : A. I. R. 1939 Bom. 129.

———S. 197.

- Absence of sanction.
- Accountant.
- Acting as such Public Servant.
- Addition of Parties Charge.
- Applicability.
- Authority.
- Canal Zaildar.
- Cane Inspector.
- Chairman Municipality.
- Chairman of Union Committee.
- Chairman, Union Panchayat.
- Contents of Sanction.
- Effect of Amendment.
- Excise Inspector.
- Forest Ranger.
- Form of Sanction.
- Inspector of Police.
- Irregularity.
- Judge.
- Karnam.
- Liquidator.
- Magistrate.
- Manager.
- Material time.
- Member of Debt Settlement Board.
- Member of District Council.
- Member of Non-City Municipality.
- Member of Notified Area.
- Member of Village Panchayat.

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- Mistake.
- Mukhtarkar.
- Municipal Chairman.
- Municipal Commissioner.
- Municipal Secretary.
- Notice.
- Object.
- Officiating Kulkarni.
- Order.
- Police Constable.
- Polling Officer.
- Power of Local Government.
- President of Panchayat Court.
- President of Taluka Board.
- Procedure.
- Prosecution of Public Servant.
- Protection under.
- Provision Mandatory.
- Public Servant.
- Question of fact.
- Receiver.
- Revenue Patil.
- Revision.
- Sanction.
- Scope.
- Sub-Inspector.
- Sub-Inspector of Police.
- Subordinate.
- Sub-Registrar.
- Taking Cognizance.
- Talayari.
- Taluk Board President.
- Union Chairman (Madras).
- Vakalatnama.
- Vatandar Patil.
- Village Magistrate.
- Village Munsif.
- Village Police Patil.

———S. 197.

See also (i) Bengal Municipal Act, 1884, Ss. 28 (1), 21 (1).

(ii) Cr. P. C., 1898, S. 195 (b).

(iii) Penal Code, 1860, Ss. 19, 21.

———S. 197—Absence of sanction—Effect.

Where the sanction obtained by S. 197 of the Cr. P. C. is not obtained prior to the proceedings, the proceedings are void. *Kalu Mahadu Patil v. Emperor*. 28 Cr. L. J. 534 : 102 I. C. 342 : 29 Bom. L. R. 707 : A. I. R. 1927 Bom. 432.

———S. 197—Accountant.

Government transferring power to appoint assistant accountant, to Deputy Commissioner—Such accountant committing breach of trust : Held, that no previous sanction of Government was necessary, and that offence committed was not in discharge of official duty. *Emperor v. Maung Ba Maung*. 36 Cr. L. J. 1272 : 157 I. C. 1034 : 13 Rang. 540 : 8 R. Rang. 134 : A. I. R. 1935 Rang. 263.

———S. 197—'Acting as such public servant,' meaning of.

Where the initial jurisdiction is wanting and a jurisdiction is assumed by an official who, in such assumed capacity, acts to the prejudice of a person, he is not acting 'as such public servant' within the meaning of S. 197. Where,

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however, the official has jurisdiction to take cognizance of a matter and in professedly exercising that jurisdiction commits an offence or acts *ultra vires* of his powers, he is acting 'as such public servant' within the meaning of the section. If he simply uses his position as a public servant to commit an illegal act, he is not within the protection afforded by the section. The test is not whether the particular act is within his powers, but whether he acted in the capacity with which he is clothed. *Sankaralinga Tevan v. Arudai Ammal*.

17 Cr. L. J. 394 :

35 I. C. 826 : A. I. R. 1917 Mad. 657.

S. 197—Addition of Parties charge.

The considerations which arise in a case to which S. 197 is applicable are essentially different from those considerations of policy which underlie the grant of sanction under S. 196. *Girdhari Lal v. Emperor*.

12 Cr. L. J. 217 :

10 I. C. 156 : 11 P. R. 1911 Cr. :

32 P. W. R. 1911 Cr. : 146 P. L. R. 1911.

S. 197—Applicability—Acting or purporting to act in the discharge of official duty, meaning of.

The words 'while acting or purporting to act' in the discharge of his official duty in S. 197, imply that there must be something in the nature of an official character attached to the act itself, that the act must in fact be done or purported to be done as an official act in pursuance of the public office held by the public servant. *Amanat Ali v. Emperor*.

31 Cr. L. J. 430 :

122 I. C. 627 : 33 C. W. N. 1058 :

A. I. R. 1929 Cal. 724.

S. 197—Applicability.

For the application of S. 197, it is not sufficient that the accused should be a public servant at the time of the offence. The accused must also be a public servant at the time when he is accused, that is at the time when the accusation is made against him either by a complaint or a Police report. Where, therefore, the accusation was made against the accused before the Magistrate at the time when he had ceased to be a public servant, the sanction is not necessary. *Suraj Narain Chaube v. Emperor*.

39 Cr. L. J. 925 :

177 I. C. 462 : 1938 A. L. J. 649 :

11 R. A. 201 : I. L. R. 1938 All. 776 :

A. I. R. 1938 All. 513.

S. 197—Applicability.

In order to attract the provisions of S. 197, the act must be so connected with the official duty as to become inseparable from it. It must be so connected with the official act as to form part of the same transaction. *Ram Singh v. S. R. Rizvi*.

36 Cr. L. J. 650 :

155 I. C. 126 : 15 P. L. T. 775 :

14 Pat. 299 : 7 R. P. 552 : A. I. R. 1935 Pat. 52.

S. 197—Applicability—It is enough if the act is done under cloak of office.

S. 197 applies to acts committed by a public officer, although these acts were not part of his public duty. If he committed the act under

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the cloak of his official position, then he is protected. To hold otherwise would be to narrow down the protection almost to a vanishing point. *In re : S. Y. Patil of Amroati*.

39 Cr. L. J. 146 :

172 I. C. 669 : 10 R. N. 272 :

A. I. R. 1937 Nag. 293.

S. 197—Applicability—Offence by public servant—Prosecution—Necessity of sanction.

In the case of a criminal breach of trust by a public servant, it would be essential to show before S. 197 would be applicable, that misappropriation had taken place as an official act or at least under the cloak of what purported to be an official act. The mere fact that property was entrusted to the accused as a public servant and his position as a public servant afforded him an opportunity for the commission of the offence is not enough. *Amanat Ali v. Emperor*.

31 Cr. L. J. 430 :

122 I. C. 627 : 33 C. W. N. 1058 :

A. I. R. 1929 Cal. 724.

S. 197—Applicability.

Where a Kulkarni and a Revenue Patil forcibly removed an alleged encroachment without making any report to their superior officers with a view to orders being issued for the removal of the encroachment, and assaulted the person who had encroached: *Held*, that their actions were not done in the discharge of their official duties as public servants and S. 197 had no application. *Hanmant Shrinivas v. Emperor*.

31 Cr. L. J. 353 :

122 I. C. 118 : 31 Bom. L. R. 789 :

A. I. R. 1929 Bom. 375.

Ss. 197, 195, 196—Applicability.

There is a marked distinction between the classes of offences dealt with in S. 195, clauses (b) and (c), and those dealt with in S. 197. A Court granting sanction under S. 195, Cls. (b) and (c), does so in connection with offences committed in or in relation to any proceeding in such Court, and it therefore acts in its judicial capacity in granting or refusing the sanction upon legal evidence. But the Government in according or withholding sanction under S. 197 for the prosecution of a public servant in respect of an offence alleged to have been committed by him as such public servant, acts purely in its executive capacity, and the sanction need not be based upon legal evidence. The Government does not act in a judicial capacity, nor does it exercise a judicial function in authorising or sanctioning a prosecution under S. 196 and 197. There is nothing in the word "sanction" to "import a judicial element into the act of the executive." *In re : Kalagava Bapiiah*.

1 Cr. L. J. 275 :

I. L. R. 27 Mad. 54 : 2 Weir 227.

S. 197 (1)—Applicability—Delegation by Government of its power to appoint and remove officer—Sanction to prosecute officer, if necessary.

The delegation by the Local Government of its power to appoint an officer only

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means that the Local Government performs that act itself through the medium of a particular officer as the channel through which it is done. It is an ordinary case of *qui facit per alium facit per se*. It is, no doubt, done in accordance with the delegation; but nevertheless it remains the act of the Local Government. The sanction of the Local Government is, therefore, necessary under S. 197 (1), for the prosecution of the officer. *Tunya v. The King*.

29 Cr. L. J. 614 :
175 I. C. 442 : 1938 Rang. 104 :
10 R. Rang. 505 (2) :
A. I. R. 1938 Rang 181.

—S. 197—*Authority*.

The authority which gives sanction to prosecute a public servant should specify the offence for which sanction is accorded, and not leave that responsibility to any authority subordinate to it. *In re : Abdul Qadir Sahib*.

17 Cr. L. J. 168 :
33 I. C. 643 : 1916 1 M. W. N. 384 :
A. I. R. 1917 Mad. 344.

—S. 197—*Canal Ziladar—Sanction necessary*.

A Canal Irrigation Department Ziladar appointed by the Local Government, before the right to appoint such Ziladars was given to the Chief Engineer of the Department, cannot be prosecuted without the previous sanction of the Local Government under S. 197. *Emperor v. Khan Chand*.

24 Cr. L. J. 411 :
72 I. C. 523 : A. I. R. 1922 Lah. 337.

—S. 197—*Cane Inspector—Criminal Procedure Code (Act V of 1898), S. 197—Offences under Ss. 500, 504, 506, Penal Code (Act XLV of 1860), by Cane Inspector while investigating conduct of complainant in selling cane—Cognizance of case without sanction of Local Government*.

Where a complaint of offences under Ss. 500, 504 and 506, I. P. C., committed by a Cane Inspector while investigating into the conduct of the complainant in selling cane is made against the Cane Inspector, the Magistrate cannot take cognizance of the complaint without the previous sanction of the Local Government. *Mukti Narayan Gir v. Emperor*.

41 Cr. L. J. 349 :
186 I. C. 627 : 20 P. L. T. 947 :
6 B. R. 377 : 12 R. P. 534 :
A. I. R. 1940 Pat. 97.

—S. 197—*Chairman of Municipality—Public Servant—Chairman of Municipality in Bengal*.

The Chairman of a Municipality under the Bengal Municipal Act is a public servant within the meaning of S. 197, Cr. P. C., who is not removable from his office save by or with the sanction of the Local Government. *Ram Narayan Sarora v. Parswanath Sen*.

30 Cr. L. J. 348 :
114 I. C. 785 : 32 C. W. N. 1035 :
I. R. 1929 Cal. 273 :
56 Cal. 227 :
A. I. R. 1928 Cal. 516.

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—S. 197—*Chairman of Union Committee—Prosecution—Sanction of Local Government, whether necessary*.

A Chairman of a Union Committee who can, under certain circumstances, be removed from his office by the Commissioner, cannot be said to be not removable from his office save by the Local Government, within the meaning of S. 197. Consequently the sanction of the Local Government is not necessary for the prosecution of such a person under S. 197. *Mohammad Yasin v. Emperor*.

26 Cr. L. J. 1178 :
88 I. C. 602 : 29 C. W. N. 650 :
52 Cal. 431 :
A. I. R. 1925 Cal. 782.

—S. 197—*Chairman, Union Panchayat—Sanction to prosecute public servant "not removable from office without the sanction of local Government"*.

A Chairman of a Union Panchayat formed under the Local Boards Act is a public servant. He does not cease to be a public servant "not removable from office without the sanction of the Local Government," within the meaning of S. 197, Cr. P. C., by the mere fact that the Government delegated their powers of appointment to Presidents of Taluk Boards under S. 60 of the Local Boards Act. The delegation merely means that the Local Government performs that act through the medium of a particular officer as the channel through which it is done, and it is an ordinary case of *qui facit per alium facit per se*. *In re : Abdul Khadir Saheb*.

17 Cr. L. J. 168 :
33 I. C. 643 : (1916) 1 M. W. N. 384 :
A. I. R. 1917 Mad. 344.

—S. 197—*Contents of Sanction*.

In granting sanction under the section, the Government need not specify the offence with the same degree of precision as in a charge. *Jehangir Ardeshir Cama v. Emperor*.

28 Cr. L. J. 1012 :
106 I. C. 100 : 29 Bom. L. R. 996 :
A. I. R. 1927 Bom. 501.

—S. 197—*Contents of sanction—Sanction, if should be addressed to any particular Court or officer—Sanction giving facts and prosecution under any section disclosed thereby permitted—One section specifically mentioned—Prosecution under that section—Sanction held valid*.

There is nothing in S. 197, Cr. P. C., which requires that the sanction should be addressed to any particular Court or officer or that orders under the second part of the section should necessarily be passed in every case. Where the preamble to the Government resolution in which the sanction for prosecution under S. 197 as given, sets out the whole of the facts, the sanction being given for a prosecution for any offence which those facts might be held to disclose, S. 477, Penal Code, being specifically mentioned and the accused are prosecuted under that

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and no other section, the sanction is valid. *Desaibhai Khushalbai Patel v. Emperor.*

39 Cr. L. J. 214 :
172 I. C. 873 : 39 Bom. L. R. 1056 :
I. L. R. 1937 Bom. 918 :
10 R. B. 298 :
A. I. R. 1938 Bom. 50.

———S. 197—*Contents of sanction—Sanction to prosecute public servant—Offence, designation of, whether necessary.*

Where a Collector sanctioned the prosecution of a Kulkarni and a Patil "for cheating or for such other offence with which it may be necessary to prosecute them in connection with obtaining money from *ryots*": *Held*, that the offence or offences which might be established in connection with obtaining money from *ryots* were sufficiently designated in the sanction, and that the sanction was not invalid on account of vagueness. *Emperor v. Madhav Laxaman.*

20 Cr. L. J. 71 (B) :
48 I. C. 871 : 20 Bom. L. R. 607 :
43 Bom. 147 :
A. I. R. 1918 Bom. 117.

———S. 197—*Contents in sanction—Specification of offence with precision.*

The Government need not, in granting sanction under S. 197, specify the offences with the same precision as is necessary in a charge. *Girwardhari Lal v. Emperor.*

10 Cr. L. J. 463 :
4 I. C. 13 : 13 C. W. N. 1062.

———S. 197—*Sanction—Effect—Sanction under S. 197—Sanction to prosecute under S. 161, or any other section of Penal Code—Valid.*

The Local Government granted sanction for the prosecution of one of its servants of an offence under S. 161, Penal Code, "or any other section of the Code that may be found to be applicable to the offence in respect of the offence briefly described in the schedule annexed." In the schedule the alleged facts of the offence were briefly set forth: *Held*, that the sanction was not vague or indefinite. The Local Government had not delegated its function under S. 197, Cr. P. C., to any other person or body. It sanctioned the prosecution of one of its servants upon a given set of facts; and while the Government was itself of opinion that the said facts constituted an offence under S. 161, Penal Code, it left it to the Court (which alone could decide the matter) to determine whether upon these facts the offence fell under S. 161 or any other section of the Penal Code. *Girdhari Lal v. Emperor.*

12 Cr. L. J. 217 :
10 I. C. 156 : 11 P. R. 1911 Cr. :
32 P. W. R. 1911 Cr. :
146 P. L. R. 1911.

———S. 197—*Effect of amendment.*

The decisions under the Code of 1898 can no longer be authority on the changed

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language of Act XVIII of 1923. *Jujavarapu Gangaraju v. Kandiboyina Venki.*

30 Cr. L. J. 264 :
118 I. C. 102 : 30 L. W. 116 :
57 M. L. J. 31 : 52 Mad. 602 :
I. R. 1929 Mad. 742 : 1929 M. W. N. 387 :
A. I. R. 1929 Mad. 659.

———S. 197, 530—*Excise Inspector—Duty of Excise Sub-Inspector to sign certificate for goods imported in bond to Afghanistan—He signing knowing that goods were not so imported—Act, whether in discharge of official duty—Previous sanction necessary—Trial along with other accused—Sanction for his prosecution not obtained—Whole trial held without jurisdiction and void.*

It was part of duty of an Excise Sub-Inspector to sign certificates in respect of goods imported in bond into Afghanistan; he did sign the certificates knowing that the goods to which they referred had never been so imported and not only was he enabled to do this by his official position but it was essential to the success of his conspiracy to deceive the Treasury Officer that he should purport to do so in his official capacity and that he should lead the Treasury Officer to believe that he had done so: *Held*, that in signing the certificates in the manner he purported to act in discharge of his official duty. Accordingly before he could be prosecuted for doing so, it was necessary that sanction should have been given by the authority empowered to remove him from office, namely the Local Government. For want of sanction, the trial Magistrate acted without jurisdiction when taking cognizance of his alleged offence: *Held*, further, that where a Magistrate tried all the accused in a joint trial, though he was not empowered to try one of them, the sanction of the Local Government being necessary for his prosecution and such sanction not having been obtained, the proceedings of the Magistrate were void not only against such accused but the whole trial against all the accused was void as being without jurisdiction. *Emperor v. Fazal Rahman.* 38 Cr. L. J. 1042 :
170 I. C. 772 : 10 R. Pesh. 23 :
A. I. R. 1937 Pesh. 52.

———S. 197 (1)—*Excise Inspector—U. P. Excise Act (IV of 1910), S. 10 (f)—Excise Inspector, whether removable from office by Excise Commissioner—Sanction for prosecution, whether necessary.*

An Excise Inspector in the U. P. is removable from his office by the Excise Commissioner and the sanction of the Local Government is not, therefore, necessary under S. 197 (1), for the prosecution of such Inspector. *Jalal ud-Din v. Emperor.* 27 Cr. L. J. 345 :
92 I. C. 857 : 24 A. L. J. 230 :
48 All. 264 : A. I. R. 1926 All. 271.

———S. 197—*Forest Ranger removable from office by Conservator, sanction under S. 197 for prosecution of, not necessary.*

A Forest Ranger in the Central Provinces is not a public servant not removable from his office without the sanction of the Government of India or the Local Government.

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Consequently the previous sanction of the Government to prosecute a Forest Ranger for an offence committed by him in his official capacity is not necessary under S. 197. *Kirpasingh v. Emperor*. 23 Cr. L. J. 397 : 67 I. C. 349 : A. I. R. 1922 Nag. 174.

———S. 197—*Form of sanction—Order for prosecution, form of.*

No form is necessary for an order for sanction to prosecute under S. 197. *P. M. Sarwan v. Emperor*. 21 Cr. L. J. 584 : 57 I. C. 104 : A. I. R. 1920 Pat. 237.

———S. 197—*Form of sanction—Sanction, form of.*

No set form of sanction is required by S. 197 (1) of the Cr. P. C. *Heymardingner v. Emperor*. 21 Cr. L. J. 760. 58 I. C. 344 : 2 U. P. L. R. Lah 170 : A. I. R. 1920 Lah. 254.

———S. 197—*Inspector of Police—Sanction under S. 197, whether necessary for prosecution of Inspector of Police under Bombay Police Act.*

An Inspector of Police cannot claim that he is removable from office only with the previous sanction of the Local Government. Sanction under S. 197, is not, therefore, necessary for the prosecution of an Inspector of Police. *Niaz Muhammad Muhammad Baksh v. Emperor*. 40 Cr. L. J. 695 : 182 I. C. 513 : 12 R. S. 18 : 1939 Kar. 652 : A. I. R. 1939 Sind 148.

———S. 197—*Irregularity—Complainant examined—Sanction obtained later on—Case transferred to another Magistrate—Such Magistrate should re-examine complainant—Failure, however held, did not vitiate proceedings.*

Where a Magistrate in a prosecution of a public servant under S. 477, Penal Code, takes the statement of the complainant and later on applies for the necessary sanction of the Local Government and after the getting of the sanction, the case is transferred to another Magistrate, the latter Magistrate should re-examine the complainant: *Held*, however, that his failure to do so, was merely a technical irregularity and did not vitiate the proceedings. *Desdibhai Khushalbai Patel v. Emperor*. 39 Cr. L. J. 214 : 172 I. C. 873 : 39 Bom. L. R. 1056 : I. L. R. 1937 Bom. 918 : 10 R. B. 298 : A. I. R. 1938 Bom. 50.

———S. 197—*Judge—Public Officer, prosecution of—Sanction of Government—High Court.*

Munsif at the hearing of the complainant's case asked him why he had not brought his witnesses, and the complainant replied that his witnesses were to attend that day before another Munsif. Upon this the Munsif broke out into the most foul abuse of his female relatives which greatly incensed the complainant. On coming out of Court after getting a date fixed in his case the complainant told the people present in the Court premises that they must have heard how he had been insulted by the Munsif and that he would take steps to get himself righted

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at the Sadar. The complainant then started for the city and had gone some distance when the Naib Sheriff and three persons seized him and took him back to the Court-room. The Munsif again abused his female relatives and made him sit in the Court-room for four hours in illegal confinement and at last told him that he would be let off if he wrote a petition asking for forgiveness or would be sent to the judicial lock-up. The complainant wrote such a petition under the undue pressure of the Munsif on which he was released. It was contended on behalf of the accused at the trial that in the absence of sanction as required by S. 197, the Magistrate had no jurisdiction in the matter and asked the Magistrate to determine the question of jurisdiction before proceeding with the trial. The Magistrate declined to do so. On revision: *Held*, that the contention urged on behalf of the accused, Munsif, was valid and the proceedings before the Magistrate in the case must be quashed as held without jurisdiction. *Chaudhry Amir Singh v. Emperor*. 2 Cr. L. J. 119 : 6 P. L. R. 53.

———S. 197—*Karnam.*

Where the Karnam of a village also acting as Village Magistrate, is charged under S. 411, Penal Code, with having dishonestly received, stolen property, sanction under S. 197 is not required for his prosecution. *Erranki Venkatasubba Rao v. Emperor*. 34 Cr. L. J. 526 (1) : 143 I. C. 102 : 1932 M. W. N. 1075 : I. R. 1933 Mad. 271 (1) : A. I. R. 1933 Mad. 270.

———S. 197—*Liquidator.*

A liquidator who misappropriates money which has come into his custody as liquidator cannot be said to be acting or purporting to act in the discharge of his official duty, and assuming that a Liquidator appointed under the Bombay Co-operative Societies Act is a Judge within the meaning of S. 19, Penal Code, no sanction under S. 197, Cr. P. C., is necessary to prosecute him for misappropriation of money received by him as Liquidator. *Gulabmiya Dagrumiya v. Emperor*. 32 Cr. L. J. 281 : 129 I. C. 344 : 32 Bom. L. R. 1134 : I. R. 1931 Bom. 152 : A. I. R. 1930 Bom. 487.

———S. 197—*Magistrate—Complaint against Magistrate—Acts done in exercise of powers vested by law.*

A Court is not competent to take cognizance of a complaint against a Magistrate under S. 219 or S. 342 of the Penal Code, without the sanction required by S. 197, Cr. P. C., if all the acts that the accused is alleged to have done were done in the exercise of the powers vested in him by law, though such power might have been abused. *Baisnab Charan Taran v. Sukhamoy Chaudhuri*. 22 Cr. L. J. 585 : 62 I. C. 825 : 25 C. W. N. 956 : A. I. R. 1921 Cal. 388.

———S. 197—*Magistrate.*

Magistrate using insulting language while

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holding Court and complainant was in witness-box—Absence of sanction, is a bar to taking cognizance of complaint. *Sukdeo v. Emperor*.

36 Cr. L. J. 331 (2) :
153 I. C. 403 : 7 R. A. 492 :
4 A. W. R. 666 : A. I. R. 1934 All. 978.

—S. 197, 215 — *Manager — Chota Nagpur Encumbered Estates Act (VI of 1876), S. 21—Manager appointed under S. 21—Public servant under S. 19, Penal Code (Act XLV of 1860)—Sanction for his prosecution for acts done in public capacity is necessary.*

While exercising the functions referred to to in Part IV of the Chota Nagpur Encumbered Estates Act, relating to the settlement of debts, the manager is a Judge within the meaning of S. 9 of the Penal Code. That being so, S. 197, Cr. P. C., debars his prosecution on a charge of any of the offences alleged to have been committed by him while acting, or purporting to act, in the discharge of his official duty. This section has been completely recast by the Amending Act of 1923. The amendment has widened the scope of the section and now protects the persons referred to in it, not only in respect of offences committed while acting in the particular capacity referred to in the section, but in respect of offence committed while acting, or purporting to act, in the discharge of official duties also. That the Manager under Chota Nagpur Encumbered Estates Act, is an official there can be no doubt. S. 21 of the Chota Nagpur Encumbered Estates Act, declares that every Manager appointed under the Act shall be deemed a public servant within the meaning of the Penal Code. In his capacity as manager, it is his duty to pass bills for work done by the Contractor, so that, while passing the bill or bills, the Manager is acting in his official capacity and in discharge of his official duty, and, if it is found that he has committed an act at a time when he was doing (or purporting to do) an official duty, this will be sufficient to attract the provisions of S. 197 of the Cr. P. C. And consequently sanction for his prosecution is necessary and the proceeding without such sanction can be quashed. *Hemendra Nath Gupta v. Emperor*.

38 Cr. L. J. 94 :
165 I. C. 966 : 17 P. L. T. 932 :
3 B. R. 114 (2) : 9 R. P. 243 :
A. I. R. 1937 Pat. 160.

—S. 197—*Material time.*

It is the status of the accused at the time of the commission of the alleged offence and not his status at the time of the complaint or of the order issuing process which is material for the purposes of S. 197. *Suganchand v. Seth Naraindas*.

34 Cr. L. J. 171 :
141 I. C. 530 : I. R. 1933 Sind 60 :
A. I. R. 1932 Sind 177.

—S. 197 (1)—*Member of Debt Settlement Board—Prosecution of member of Debt Settlement Board under S. 161, Penal Code (Act XLV of 1860), for receiving bribe for showing favour to a party before Board—Sanction, if necessary.*

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Where a member of a Debt Settlement Board under the Ben. Agri. Debtors' Act, is prosecuted under S. 161, I. P. C., for receiving illegal gratification for the purpose of showing favour to a party before the Debt Settlement Tribunal, *i. e.*, for the purpose of doing something other than their duty or, in other words for turning their backs on their duty, it cannot be said that he was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. No sanction to prosecute him is necessary under S. 197 (1), Cr. P. C. *Khurshed Ahmed v. Amanulla*.

41 Cr. L. J. 854 :
190 I. C. 157 : 44 C. W. N. 735 :
I. L. R. 1940 2 Cal. 162 : 13 R. C. 156 :
A. I. R. 1940 Cal. 405.

—S. 197—*Member of District Council taking bribe before making some appointment at meeting of the Council—Sanction to prosecute him, if necessary.*

It cannot be said that a member of a District Council is acting in discharge of his duties when he accepts a bribe in order to influence his decision at a meeting of that body held for the appointment of an overseer. His accepting the bribe is an independent act committed by one whose position gives him the opportunity to commit it ; but, it is in no way bound up with the performance of his duties. No sanction of the Government is, therefore, necessary for prosecuting him. *U. Tun Kyee v. The King*.

40 Cr. L. J. 243 (b) :
179 I. C. 679 : 11 R. Rang. 337 :
1939 Rang. 72 : A. I. R. 1939 Rang. 17.

—S. 197—*Member of non-City Municipality, whether can claim protection of S. 197.*

A member of a non-City Municipal Board is removable by the Commissioner under S. 40, U. P. Municipalities Act, and hence cannot be described as a person not removable from his office save by or with the sanction of a Local Government or some higher authority. He cannot, therefore, claim protection of S. 197, Cr. P. C. At the stage when the Magistrate has to decide whether he can take cognizance of the offence or not, the question whether the offence with which the Municipal Commissioner is charged is one for which the Commissioner would or would not eventually have the power to remove him does not arise at all. *Sohan Lal v. Mubarak Ali Khan*.

41 Cr. L. J. 137 :
185 I. C. 224 : 1939 A. L. J. 640 :
I. L. R. 1939 All. 868 : 12 R. A. 309 :
1939 A. W. R. 569 :
A. I. R. 1939 All. 705.

—S. 197—*Member of Notified Area—Sanction to prosecute—Member of Notified Area Committee, whether is public servant.*

All members of Notified Area Committee are not public servants within the meaning of S. 197 of the Criminal Procedure Code. *Nathu Khan v. Muhammad Baksh*.

18 Cr. L. J. 106 (a) :
37 I. C. 314 : 48 P. W. R. 1916 Cr. :
A. I. R. 1917 Lah. 179.

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———S. 197—*Member of Village Panchayat.*

Member of Village Panchayat is a Judge—Remark made while delivering judgment—Complaint in respect of remark—Sanction of Local Government. *Kamla Patel v. Bhagwandas.* 37 Cr. L. J. 294 : 160 I. C. 423 (a) : 18 N. L. J. 177 : 8 R. N. 187.

———S. 197—*Mistake—Sanction to prosecute—Mistake as to date of offence, effect of.*

A mistake as to the date of commission of an offence in an order granting sanction under S. 197 of the Cr. P. C., for prosecution in respect of such offence will not necessarily vitiate the trial unless it has caused prejudice to the accused. *Jehangir Ardeshir Cama v. Emperor.* 25 Cr. L. J. 1012 : 106 I. C. 100 : 29 Bom. L. R. 996 : A. I. R. 1927 Bom. 501.

———S. 197—*Mukhtyar—Bombay District Municipal Act (III of 1901), S. 131—Public Government building in charge of Mukhtiarkar kept in insanitary condition—Prosecution of Mukhtiarkar—Sanction whether necessary.*

When a *Mukhtiarkar* is in charge of a public Government building and it happens to be kept in an insanitary condition, he cannot be prosecuted under S. 131 of the Bombay District Municipal Act, without previous sanction under S. 197. *Karachi Municipality v. Mukhtiarkar of Karachi.* 31 Cr. L. J. 597 : 123 I. C. 701 : A. I. R. 1930 Sind 144.

———S. 197—*Municipal Chairman—Complaint against Municipal Chairman of having threatened a voter to vote in particular manner—Sanction, whether necessary.*

A complaint against the Chairman of a Municipal Council of having threatened a voter with injury to his property with intent to induce such voter to vote for any candidate or to abstain from voting, under S. 54 (a), Madras District Municipalities Act, is not in respect of which sanction is necessary under S. 197, Cr. P. C., inasmuch as the act complained of is not committed in the discharge of his official duty although the incident of his official position might have given him the opportunity to do it. *Kamisetty Raja Rao v. Ramaswamy.* 28 Cr. L. J. 539 : 102 I. C. 347 : 25 L. W. 608 : 52 M. L. J. 647 : 1927 M. W. N. 423 : 38 M. L. T. 338 : 50 Mad. 754 : A. I. R. 1927 Mad. 566.

———S. 197—*Municipal Commissioner also elected Vice-Chairman—His prosecution in capacity as Vice-Chairman—Sanction, if necessary.*

Where a Commissioner of a Municipality is also elected a Vice-Chairman, it is impossible to divorce his position as Vice-Chairman from his position as Commissioner. He is still a Commissioner while acting as Vice-Chairman. In fact, however, in discharging the duties of that office he is working as a Commissioner. Consequently, even in his capacity as Vice-Chairman, he cannot be prosecuted without

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the sanction of the Local Government under S. 197. *Emperor v. Hiralal Das.*

40 Cr. L. J. 959 : 184 I. C. 236 : 69 C. L. J. 567 : 12 R. C. 219 : I. L. R. 1939 2 Cal. 321 : A. I. R. 1939 Cal. 636.

———S. 197—*Municipal Commissioner—Complaint on behalf of Municipal Committee by Municipal Commissioner who is also its Honorary Secretary—Prosecution of complainant for defamation—Sanction of Local Government, necessity of.*

The members of a Municipal Committee passed a resolution for the prosecution of K and by the same resolution authorised R, a member of the Committee who was also its Honorary Secretary, to conduct the prosecution. R filed a complaint and moved for a search warrant which turned out to be unnecessary. K instituted a complaint against R for defamation without complying with the provisions of S. 197, and contended that no sanction was necessary as R had acted only as the Secretary of the Committee and not as a Municipal Commissioner: *Held*, that in lodging the complaint and moving for search warrant R acted in his capacity as a Municipal Commissioner and he could not be prosecuted without complying with the provisions of S. 197. *Mohammad Rafiq v. Emperor.*

31 Cr. L. J. 691 : 124 I. C. 345 : 31 P. L. R. 479 : A. I. R. 1930 Lah. 147.

———S. 197—*Municipal Commissioner—Sanction of Local Government, when necessary.*

A complaint was made against a member of a Municipal Committee that he, by exercising undue influence on a Sub-Overseer of the Committee stopped that Sub-Overseer from purchasing bricks from a certain person and compelled him to give his assent to the purchase of bricks from the accused himself. There was no allegation in the complaint that the accused obtained this advantage to himself, acting or purporting to act in the discharge of his official duty as a Municipal Commissioner and in fact, the suggestion in the complaint was that, taking advantage of his position, he went out of his official duty to obtain the contract himself: *Held*, that on the facts of the case it did not fall within the purview of S. 197 and sanction of the Local Government was not necessary for prosecuting the accused. *Mohammad Ismail v. Emperor.*

29 Cr. L. J. 511 : 109 I. C. 239 : 8 Lah. 647 : 29 P. L. R. 69 : A. I. R. 1928 Lah. 72.

———S. 197—*Municipal Commissioner—Sanction.*

Previous sanction of Local Government is necessary for prosecution of Municipal Commissioners for anything done while acting or purporting to act in discharge of official duty. *Nur Ahmed v. Jagesh Chandra Sen.*

36 Cr. L. J. 385 : 153 I. C. 657 : 39 C. W. N. 20 : 62 Cal. 275 : 7 R. C. 392 : A. I. R. 1934 Cal. 838.

———S. 197—*Municipal Secretary—Sanction to prosecute Municipal Secretary, whether public*

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servant not removable without sanction of Local Government.

Sanction is not necessary for the prosecution of the Secretary of a Municipal Committee for any wrong done by him, inasmuch as he is not a public servant not removable from his office without the sanction of the Local Government within the meaning of S. 197. *Shen Singh v. Girdhari Lal.*

23 Cr. L. J. 750.
69 I. C. 638.

S. 197—Notice to accused, if necessary.

It is not necessary that the accused should have notice before sanction is granted under S. 197, Cr. P. C. *Kakala Chinna Chendrayya v. Maddukkuri Subbarayudu.*

24 Cr. L. J. 116 :
71 I. C. 244 : 17 L. W. 226 :
1923 M. W. N. 77 : A. I. R. 1923 Mad. 338.

S. 197—Object, as amended by Act XVIII of 1923, S. 50.

The object of S. 197, Cr. P. C., as amended by S. 50 of Act XVIII of 1923, is to afford adequate protection to public servants, to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause and, if sanction is granted, to confer on the Local Government if they choose to exercise it, complete control of the prosecution. *Jujjavarapu Gangaraju v. Kandiboyina Venki.*

30 Cr. L. J. 264 :
118 I. C. 102 : 30 L. W. 116 :
57 M. L. J. 31 : 52 Mad. 602 :
I. R. 1929 Mad. 742 : 1929 M. W. N. 387 :
A. I. R. 1929 Mad. 659.

S. 197—Object.

The object of sanction under S. 197 is that a public servant should not be unduly harassed, and the word "institution" should not be given a very narrow meaning. In one sense it is true, a Court takes cognizance of a matter as soon as it makes any order, however formal, but, even if such formal orders are considered to have been made without jurisdiction, this flaw will not affect orders made after the defect has been removed and the Court is properly seised of the case. In dealing with all technical objections of procedure, the final test is whether or not the accused has in any way been prejudiced by the alleged irregularity. *Manzur Ali v. Emperor.*

40 Cr. L. J. 252 :
179 I. C. 778 : 11 R. L. 631 :
41 P. L. R. 154 : I. L. R. 1939 Lah. 227 :
A. I. R. 1939 Lah. 1.

S. 197—Object.

The policy of the Legislature in enacting S. 197, is to afford a reasonable protection to the public servants in the discharge of their official functions and this policy cannot be defeated by having resort to the view that : "At the time of committing the offence the public servant cannot be said to be discharging public duty." *Kali Prasad Singh, Chairman, Municipality, Buzar v. Sirikrishun Chaturvedi.*

39 Cr. L. J. 774 :
176 I. C. 725 : 4 B. R. 755 : 11 R. P. 98 :
A. I. R. 1938 Pat. 543.

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S. 197—Officiating Kulkarni of village using for his own purpose land revenue collected by him and committing offence under S. 409, Penal Code (Act XLV of 1860)—Sanction to prosecute, whether necessary.

An officiating Kulkarni of a village is a public servant who is not removable from his office save by or with the sanction of the Local Government, and so far S. 197 applies. But where the accused has collected money on account of land revenue and, instead of sending it to the Treasury, has used it for his own purposes, and thus committed an offence under S. 409, Penal Code, the offence cannot be said to have been committed by him while acting or purporting to act in discharge of his official duty and therefore sanction of the Local Government is not necessary for prosecuting him. *Gurushidayya Shantivirayya Kulkarni v. Emperor.*

40 Cr. L. J. 269 :
179 I. C. 686 : 40 Bom. L. R. 1286 :
11 R. B. 257 (2) : I. L. R. 1939 Bom. 119 :
A. I. R. 1939 Bom. 63.

S. 197—Order under S. 197, nature of—Reasons, whether should be recorded.

An order of sanction under S. 197 is more of the nature of an executive than a judicial order, and a Magistrate is not bound to record reasons for such an order, but the order should refer to some distinct offence and not be so vague as to make it obvious that the Magistrate had not come to a decision of his own that reasonable grounds existed for the prosecution. *Kakala Chinna Chindrayya v. Maddukkuri Subbarayudu.*

24 Cr. L. J. 116 :
71 I. C. 244 : 17 L. W. 226 :
1923 M. W. N. 77 :
A. I. R. 1923 Mad. 338.

S. 197—Police Constable.

Public servant referred to does not include public servant whom some lower authority has been empowered to remove. Police Constables and Sub-Inspectors do not come under the term. *Pichai Pillai v. Balasundara Mudaly.*

36 Cr. L. J. 1241 :
157 I. C. 24 : 41 L. W. 558 :
1935 M. W. N. 457 :
68 M. L. J. 608 :
58 Mad. 787 : 8 R. M. 103 :
A. I. R. 1935 Mad. 442.

S. 197—Police Constable—Sanction to prosecute public servant like Chief Constable charged under Ss. 324 and 355 not necessary.

Where a complaint charging a Fouzdar (Chief Constable) with offences under Ss. 324 and 355 was rejected for want of sanction under S. 197, Cr. P. C. : *Held*, that the words of that section meant to relate only to those acts and omissions which were declared to be offences under the Penal Law when they were committed by a public servant; that it would be inexpedient that such public servants as here mentioned, should be exempted from criminal liability for all acts amounting to offences done by them unless sanction were obtained for their prosecution; that S. 197 made sanction

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necessary in case of offences peculiar to the accused's position as a public servant, in other words, he being a public servant was necessary element in, and the gist of, the offences to prosecute which sanction was necessary; and that the charge of beating or assault fell altogether outside the special category and should be dealt with as in the case of a private individual. *Valia Mulji Lavji v. Lathi State*.

7 Cr. L. J. 163.

———S. 197—Polling Officer—Government Officer acting as Polling Officer in Municipal Election—Prosecution for offence under Madras District Municipalities Act (V of 1920)—Sanction of Local Government, whether necessary.

A Government Officer, such as a *Thasildar*, who is appointed by the Chairman of a Municipal Council as a Polling Officer under the Madras District Municipalities Act, does not, while he is acting as a Polling Officer, act or purport to act in the discharge of his official duty as a *Tahsildar*; and sanction under S. 197, Cr. P. C., need not, therefore, be obtained before instituting criminal proceedings against him for an offence committed by him while acting as a Polling Officer. *Jagannadhaswami Naidu v. Manikyam*.

28 Cr. L. J. 1038 :

106 I. C. 222 : 27 L. W. 81 :

I. L. T. 40 Mad. 20 :

51 Mad. 259 : 54 M. L. J. 570 :

A. I. R. 1928 Mad. 161.

———S. 197—Power of Local Government to specify Court of trial of public servant—Local jurisdiction—Magistrate.

The Local Government, acting under S. 197 of the Cr. P. C., sanctioned the prosecution of A., a public servant, for an offence committed in Upper Burma, and specified the Court of a Magistrate in Lower Burma as that before which the trial was to be held: *Held*, that the Magistrate so specified had power to take cognizance of the offence, although it was alleged to have been committed within the local jurisdiction of the Judicial Commissioner of Upper Burma, while the Magistrate's own jurisdiction was within the limits of the jurisdiction of the Chief Court of Lower Burma. *Emperor v. Maung Ka*.

8 Cr. L. J. 70 :

4 L. B. R. 265.

———S. 197—President of Panchayat Court, acting in his official capacity sanction under S. 197, necessary.

The accused was the President of a *Panchayat* Court. When he was about to write the Court's order, the complainant who was also the complainant before him, objected to the dictation by his clerk, of the order to be pronounced in the matter and asked the accused not to allow the clerk to dictate the judgment. On account of his objection taken by the complainant, the accused got up from his seat abusing the complainant, and slapped him on the cheek twice. When the complainant warned him that he had no business to assault him in open Court, the accused

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unlaced his shoe, took it up in his hand and raised it saying: "I will beat you, with my shoe." No actual beating with the shoe, however, followed: *Held*, that the accused was acting throughout till the very minute when the alleged offences were committed, in his official capacity. It could not be said that he immediately ceased to be acting in his official capacity, the moment his lips began to utter abusive words. The provocation, so to speak, for the acts complained of had an immediate bearing on the official duties of the accused. The acts must be deemed to have been done when he purported to act in discharge of his official duties, though it was not part of his official duties to abuse or assault. The sanction under S. 197 was, therefore, necessary. *Subbiah v. T. Ramacharlu*.

40 Cr. L. J. 853 :

184 I. C. 112 : 49 L. W. 781 :

1939 M. W. N. 741 :

1939 2 M. L. J. 117 :

12 R. M. 412 : A. I. R. 1939 Mad. 604.

———S. 197—President of Panchayat Court—Sanction, necessary.

The sanction of Government under S. 197 is necessary for the prosecution of the President of the *Panchayat* Court in respect of an act done by him in his capacity as a Judge. *Damarla Subbiah v. Muhammad Mastan Sahib*.

29 Cr. L. J. 324 :

108 I. C. 66 : I. L. T. 40 Mad. 56 :

A. I. R. 1928 Mad. 391.

———S. 197—President of Taluka Board whether "public servant"—Whether removable from office without sanction of Local Government—Trial without sanction—Conviction, legality of—Person charged with two offences—Trial of one without jurisdiction—Whole proceedings, whether vitiated.

The President of Taluka Local Board is a "public servant" as defined in S. 21, Penal Code, and S. 135, Bombay Local Boards Act, 1923. Under S. 26, Bombay Local Boards Act, he is removable from office as President of the Taluka Local Board by the Government for misconduct, or neglect of or incapacity to perform his duty. He cannot be removed from his office *qua* such President save by the Local Government. The Criminal Court had no jurisdiction to take cognizance of any offence or offences committed or alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Local Government under S. 197 of the Cr. P. C. and conviction based upon such a trial cannot stand. Where a person was charged with two offences but the trial with respect of one was without jurisdiction: *Held*, that the trial was illegal and this illegality vitiated the whole proceedings and the conviction based thereon could not stand. *Rudragouda Rachangouda Patil v. Emperor*.

38 Cr. L. J. 654 :

168 I. C. 956 : 39 Bom. L. R. 70 :

I. L. R. 1937 Bom. 256 :

9 R. B. 413 : A. I. R. 1937 Bom. 160.

Cr. P. CODE (1898), S. 197**—S. 197—Procedure.**

There is no provision in S. 197 for a sanction to be addressed to any particular officer. *Rudra Pat Bhatt v. Emperor*.

34 Cr. L. J. 1208 :
146 I. C. 149 (2) : 1933 A. L. J. 1559 :
55 All. 798 : 6 R. A. 270 :
A. I. R. 1933 All. 543.

—S. 197—Procedure when sanction not obtained.

Where sanction which is necessary has not been obtained, the order should be one of dismissal of the complaint under S. 203. *Kiyaw Hlin v. Ah Yoo*.

36 Cr. L. J. 77 :
153 I. C. 366 : 12 Rang. 520 :
7 R. Rang. 149 :
A. I. R. 1934 Rang. 238.

—S. 197—Prosecution of public servants for offence of criminal breach of trust—Sanction, if necessary.

No sanction under S. 197, Cr.P.C. is necessary for the prosecution of a public servant for an offence under S. 409, Penal Code, because in committing such an offence, the public servant cannot be said to be acting in the discharge of his official duty. In fact, in misappropriating such moneys he intends to act in direct opposition to his duty, and his office merely provides him with the opportunity of committing the offence. *Manzur Ali v. Emperor*.

40 Cr. L. J. 252 :
179 I. C. 778 : 11 R. L. 631 :
41 O. L. R. 154 :
I. L. R. 1939 Lah. 227 :
A. I. R. 1939 Lah. 1.

—S. 197—Protection under.

In order to get the protection under S. 197 the act itself must be done in pursuance of the public office. *Ganga Prasad Sinha v. Brindaban Chandra Das*.

37 Cr. L. J. 103 :
159 I. C. 421 : 39 C. W. N. 288 :
8 R. C. 312 : A. I. R. 1935 Cal. 176.

—S. 197—Provisions, mandatory.

The provisions of S. 197 are mandatory, and no sanction of Government obtained at the appellate stage can validate the proceedings. *Hidayatullah v. Emperor*.

34 Cr. L. J. 191 :
141 I. C. 583 : 27 S. L. R. 3 :
I. R. 1933 Sind 63 : A. I. R. 1933 Sind 161.

—S. 197—Public Servant.

A Magistrate who fabricates a record in which he figures as Judge, cannot properly be said to be acting as a Judge when he does so. *Palaniandi Pillai v. Arunachallam Pillai*.

9 Cr. L. J. 89 :
4 M. L. T. 473 : 32 Mad. 255.

—S. 197—Public servant—Abuse of official position—Act done not in official duty—Sanction—Principles.

The privilege of immunity of a public servant from prosecution without sanction under S. 197, only extends to acts which can be shown to be in discharge of official duty, or fairly purporting to be in such discharge. An offence arising out of abuse of official provision by an act not purporting to be official does not

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necessitate sanction under S. 197. *Kamisetty Raja Rao v. Ramaswamy*.

28 Cr. L. J. 539 :
102 I. C. 347 : 25 L. W. 608 :
52 M. L. J. 647 : 1927 M. W. N. 423 :
38 M. L. T. 338 : 50 Mad. 754 :
A. I. R. 1927 Mad. 566.

—S. 197—Public servant acting ultra vires—Sanction.

Where a Village Munsif, in the trial of a civil suit, ordered the attachment before judgment and subsequent removal of a cart belonging to the defendant, who thereupon lodged a complaint of theft against the Village Munsif : *Held*, that though the Village Munsif acted ultra vires of the powers, he acted as a Judge and could not be prosecuted without the sanction required by S. 197. *Sankaralinga Tevan v. Arudai Ammal*.

17 Cr. L. J. 17 :
35 I. C. 826 : A. I. R. 1917 Mad. 657.

—S. 197—Public servant—Chairman of District School Board, if a public servant—Prosecution—Sanction.

The Chairman of a District School Board is a public servant not removable from office save by or with the sanction of Government and he cannot be prosecuted for any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty without the previous sanction of the Local Government under S. 197. *In re : Nhandesahab Ahmedsahab*.

38 Cr. L. J. 16 :
165 I. C. 901 : 38 Bom. L. R. 956 :
I. L. R. 1937 Bom. 78 : 9 R. B. 176 :
A. I. R. 1936 Bom. 453.

—S. 197—Public Servant—Offence against public servant—Sanction of Local Government, necessity of.

When any public servant who is not removable from his office save by or with the sanction of the Local Government or some higher authority, is accused of any offence alleged to have been committed by him while acting or purporting to act, in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the Local Government. *Bhairan Prasad v. Emperor*.

30 Cr. L. J. 62 :
113 I. C. 78 : I. R. 1929 All. 105 :
1929 A. L. J. 57 : 51 All. 377 :
A. I. R. 1928 All. 756.

—S. 197—Public servant—Power to remove public servant delegated to subordinate authority—Sanction to prosecute such servant—Authority whose sanction is necessary.

Where an authority delegates the power to remove a public servant to a subordinate authority, the public servant for the purposes of S. 197, nevertheless continues to be removable by the original authority. Where the accused is a public servant in central services, Cl. II, and is, therefore, removable by the Governor-General-in-Council, a power superior to the Local Government under S. 197, the sanction of the Local Government is necessary to his prosecution. *Newbould v. Emperor*.

37 Cr. L. J. 1056 :
165 I. C. 61 : 9 R. L. 207 :
38 P. L. R. 1061 : A. I. R. 1936 Lah. 781.

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———S. 197—*Discretion—Public servant committing illegal act—Sanction of Local Government, when necessary.*

Where a public servant simply uses his position as such to commit an illegal act, he will not be acting as such public servant and no sanction under S. 197, is required for his prosecution. *Hanmant Shrinivas v. Emperor.*

31 Cr. L. J. 353 :
122 I. C. 118 : 31 Bom. L. R. 789 :
A. I. R. 1929 Bom. 375.

———S. 197—*Public servant—Sanction where necessary.*

If a public servant is actually engaged in the discharge of his duties, or is purporting or pretending to be so engaged, and commits an offence, the sanction of the Local Government is clearly required before a Court can take cognizance thereof. It is, however, not enough for a public servant to be in an official position which he may abuse, in order to bring him under S. 197, he must be purporting, or pretending to act in pursuance of the official duties. *U. Tun Kywe v. The King.*

40 Cr. L. J. 243 (b) :
179 I. C. 679 : 11 Rang. 337 :
1939 Rang. 72 : A. I. R. 1939 Rang. 17.

———S. 197—*Public Servant—Secretary of District Council in Burma does not fall under S. 197, and sanction to prosecute him is not necessary.*

Though a Secretary of a District Council in Burma is a public servant, he does not fall within S. 197 and the previous sanction of the Local Government is not required before prosecuting him. *U. Tun Kywe v. The King.*

40 Cr. L. J. 243 (b) :
179 I. C. 651 : 40 P. L. R. 934 :
11 R. L. 607 : A. I. R. 1939 Lah. 19.

———S. 197—*Question of Fact—Acting or purporting to act in the discharge of official duty.*

The question whether a person committed an act while acting or purporting to act in the discharge of his official duty is a question of fact. *Muhammad Ismail v. Emperor.*

29 Cr. L. J. 511 :
109 I. C. 239 : 8 Lah. 647 :
29 P. L. R. 69 : A. I. R. 1928 Lah. 72.

———S. 197—*Receiver—Appointment of, by Civil Court—Whether public servant—Sanction of Civil Court, if necessary to prosecute him for breach of criminal law.*

A Receiver appointed by a Civil Court is not a public servant within the meaning of S. 197 and so no sanction of the Court which appointed him is necessary for his prosecution for a breach of the ordinary criminal law of the country. *Maung Saw Maung v. Ma Mc Shree*

40 Cr. L. J. 648 :
182 I. C. 262 : 1939 Rang. 117 :
11 R. Rang. 519 : A. I. R. 1939 Rang. 202.

———S. 197—*Receiver.*

Receiver appointed in a suit not being a public servant, sanction of Court is not necessary to prosecute him for offence com-

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mitted in course of administration of estate. S. 195 does not apply. *Lukmanji v. Valibhai.*

35 Cr. L. J. 1403 :
151 I. C. 707 : 36 Bom. L. R. 649 :
7 R. B. 77 : A. I. R. 1934 Bom. 306.

———S. 197—*Revenue Patil—Bombay Hereditary Village Offices Act (III of 1874) S. 58—Revenue Patil—Embezzlement—Prosecution—Sanction of Local Government, whether necessary.*

By virtue of the provisions of S. 58 of the Bombay Hereditary Village Offices Act, a revenue Patil cannot be removed from his office without the sanction of the Local Government and consequently, no Court can take cognizance of an offence of embezzlement committed by him in the course of his duties except with the previous sanction of the Local Government. *Kalu Mahadu Patil v. Emperor.*

28 Cr. L. J. 534 :
102 I. C. 342 : 29 Bom. L. R. 707 :
A. I. R. 1927 Bom. 432.

———S. 197—*Revision—Charge of extortion against a Village Magistrate not acting in his judicial capacity—Sanction—High Court—Revision.*

No sanction is necessary for the prosecution of a Village Magistrate who was charged with extortion while not acting as a Judge. Where the conviction of the Village Magistrate on the said charge was set aside for want of sanction: *Held*, that the High Court could interfere in revision with the said order. *Kandasami Chetty v. Soli Gounden.* 23 Mad. 540 referred to. *Athanga Rayan v. Gopalan Chetty.*

11 Cr. L. J. 162 (a) :
4 I. C. 1056 : 6 M. L. T. 128.

———S. 197—*Sanction.*

Clerk in District Board Office is not mere a servant of the Local Government—Sanction for his prosecution is not necessary. *Anwar Ullah v. Emperor.*

35 Cr. L. J. 617 :
148 I. C. 218 : 1933 A. L. J. 1628 :
6 R. A. 653 : A. I. R. 1934 All. 173.

———S. 197—*Sanction—Criminal breach of trust by Chairman of Union Panchayat—Sanction by President, Taluq Board, validity of—Penal Code (Act XLV of 1860), S. 409—Madras Local Boards Act (V of 1884), Ss. 143, 160.*

Where the order sanctioning the prosecution of the Chairman of a Union Panchayat was signed by the President of the Taluq Board and ran in the following terms:—"As there is room for suspicion that the Chairman of the Pallapatti Union has embezzled Union collection amounting to about Rs. 3,000 and odd, C. Subramania Pillai, acting 2nd clerk Taluq Board's Office, Karur, is directed to proceed at once to Pallapatti, take charge of all the Union Accounts and Records pertaining to the collections, find out the actual amount collected but not remitted into the Treasury and prepare a complaint to the Police: *Held*, that as on the facts set out in the order, the accused could be complained against only for the offence of criminal breach of trust for which alone the complaint was lodged, the order clearly specified the offence for which the accused should be charged,

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Held, also, that S. 143 of Act (V of 1884) subordinates the Chairman of the Union Panchayat to the President, Taluq Board, he is a person fully subordinate to the President within the meaning of S. 197 of the Code of Criminal Procedure, and as such, the latter's sanction was quite sufficient for institution of a prosecution against the Chairman. *In re : Abdul Khadir Sahib.* 17 Cr. L. J. 168 :

33 I. C. 648 : (1916) 1 M. W. N. 384 :
A. I. R. 1917 Mad. 344.

—S. 197—Sanction—Direction to Police to prosecute, whether amounts to such order.

Where a Magistrate, after fully considering the charge against an accused person and after careful consideration of all the materials before him, makes the papers over to the Police with the object of prosecuting the accused under S. 409 of the Penal Code, the order is in substance a sanction under S. 197, *Cr. P. C. P. M. Sarwan v. Emperor.*

21 Cr. L. 584 :
57 I. C. 104 : A. I. R. 1920 Pat. 237.

—S. 197—Sanction—Government Officer summoned to give evidence before Commission appointed to investigate charges against another officer, giving false evidence—Sanction to prosecute him, if necessary.

Where a Government Officer serving under certain department being summoned to give evidence before a Commission appointed to investigate certain charges against an officer in the same department, gives false evidence, he cannot be said to be purporting to act in the discharge of his official duties and hence no sanction of the Local Government is necessary for his prosecution. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Jadu Nath Roy.* 41 Cr. L. J. 659 :

188 I. C. 681 : I. L. R. 1940 1 Cal. 590 :
44 C. W. N. 596 : 13 R. C. 43 :
A. I. R. 1940 Cal. 274.

—S. 197—Sanction obtained after institution of complaint but before recording evidence—Accused not prejudiced—Trial, held not vitiated.

In prosecution of a public servant, the sanction was not obtained before the institution of the complaint but was actually put on record before recording the evidence. The accused was in no way prejudiced : *Held*, that the trial was not vitiated. *Manzur Ali v. Emperor.* 40 Cr. L. J. 252 :

179 I. C. 778 : 11 R. L. 631 :
41 P. L. R. 154 : I. L. R. 1939 Lah. 227 :
A. I. R. 1939 Lah. 1.

—S. 197—Sanction.

Where certain Police and *mulkhi patils* authorised by the Government to recover subscriptions for an Agricultural Association compel a cultivator to pay a certain amount by means of force, and intimidation, the acts committed in recovering the subscription are not acts committed 'while acting or purporting to act in the discharge of their official duty' within the meaning of S. 197 and sanction of the Government is unnecessary. *In re : Narayana Janu Mahajan.* 32 Cr. L. J. 575 :

130 I. C. 580 : 32 Bom. L. R. 1493 :
I. R. 1931 Bom. 260 :
A. I. R. 1931 Bom. 192.

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—S. 197—Sanction by Government—Committal of the accused under S. 526—Quashing of commitment—Sanction by Government—Functions of Government and Court in according sanction—Notice—Penal Code (Act XLV of 1860), S. 168.

A committal can be quashed only when it is made under one of the sections mentioned in 215 and a committal made under S. 526 cannot be so quashed. The sanction ordered by Government under S. 197 cannot be held to be null and void for the reason that no notice was given to the accused to show cause why such sanction should not be given. It is a matter left entirely to the discretion of Government whether such opportunity should be given to the person concerned before sanctioning his prosecution and the Criminal Court before which he is prosecuted is not an appellate authority over Government in the matter of the sanction. There is a marked distinction between the classes of offences dealt with under S. 195 (1), (a), (b) and (c) and it does so in connection with offences committed in or in relation to any proceedings in such Court and the Court, therefore, acts in its judicial capacity in granting the sanction upon legal evidence. But the Government, in according or withholding sanction under S. 197 for the prosecution of a public servant, acts purely in an executive capacity and that sanction need not be based upon legal evidence. No particular form is prescribed by the Criminal Procedure Code for the sanction required under S. 197. *Acting Sessions Judge v. Kalagara Bapiiah.*

11 Cr. L. J. 527 :
7 I. C. 752 : 8 M. L. T. 205.

—S. 197—Sanction, sufficiency of.

Where sanction was accorded by the President of a Taluk Board for prosecution of the Chairman of a Union Panchayat for Criminal breach of trust under S. 409, I. P. C. : *Held (dubitante)* that the capacity of the public servant was only material to the preliminaries of the crime, that the offence of criminal breach of trust was not an offence committed by him in his capacity of public servant as such, his capacity of public servant being only that which put him in a position in which such an offence could be committed, and that no sanction was necessary. *In re : Abdul Khadir Sahib.* 17 Cr. L. J. 168 :
33 I. C. 648 : 1916 1 M. W. N. 384 :
A. I. R. 1917 Mad. 344.

—S. 197—Sanction—Who can grant—Magistrate of Second Class, offence committed by—Sanction to prosecute—District Magistrate, whether can grant sanction—Interpretation of Statutes—Dictum, erroneous, in previous order of Court, whether binding.

The accused, a Tahsildar and Magistrate of the Second Class, while enquiring into a complaint, lost his temper with a person whom he suspected of prompting a witness and gave him a beating with a stick. He was convicted by the District Magistrate of an offence under S. 323, Penal Code. On revision to the Chief Court the Judge, before whom the application came on for hearing, set aside the conviction on the ground that no sanction had been granted for the prosecution of the petitioner

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under S. 197, Cr. P. C. and remarked that the accused could not be prosecuted without the previous sanction of Local Government. On the matter again coming before the District Magistrate the latter granted sanction for the prosecution of the petitioner under S. 197 (1), Cr. P. C.: *Held*, (1) that the *dictum* of the Judge that the sanction of the Local Government was necessary for the prosecution of the accused was erroneous and that the District Magistrate was not bound by it, (2) that under S. 197 (1), Cr. P. C. the District Magistrate had power to sanction the prosecution of the accused. *Indar Singh v. Emperor*. 20 Cr. L. J. 152 :

49 I. C. 344 : 4 P. R. 1919 Cr. :
7 P. W. R. 1919 Cr. :
A. I. R. 1919 Lah. 300.

————S. 197—Sanction, who can grant.

Where an offence is committed by a Magistrate of the Second Class, sanction for his prosecution can, under S. 197, be given by the District Magistrate to whom he is subordinate and whose power to give such sanction is not limited by the Local Government. *Indar Singh v. Emperor*. 20 Cr. L. J. 152 :

49 I. C. 344 : 4 P. R. 1919 Cr. :
7 P. W. R. 1919 Cr. : A. I. R. 1919 Lah. 300.

————S. 197 (1)—Sanction, if condition precedent.

Sanction of the Local Government is a condition indispensable under S. 197 (1), to the taking of cognizance by a Magistrate, who would otherwise be incompetent to try the case. It was not the intention of the Legislature when enacting S. 197, Sub-s. (1), that the sanction of the Local Government should be requisite to the prosecution of subordinate officers, but the effect of delegation of the powers of punishment must be to make that sanction a preliminary requisite to prosecution. *Tun Ya v. The King*.

39 Cr. L. J. 614 :
175 I. C. 442 : 1938 Rang. 104 :
10 R. Rang. 505 (2) :
A. I. R. 1938 Rang. 181.

————S. 197 (1)—Sanction.

Village *Munsif* confining person on suspicion that he has committed murder—Madras Village Police Regulation, 1816, S. 13, permitting him power—Charge under Ss. 343 and 348, I. P. C. against *Munsif*—Sanction under S. 197 (1) is required. *In re : Ganapathy Goundan*.

33 Cr. L. J. 557 :
138 I. C. 133 : 35 L. W. 61 :
1932 M. W. N. 65 : 62 M. L. J. 223 :
I. R. 1932 Mad. 518 :
A. I. R. 1932 Mad. 214.

————Ss. 197, 195, 196—Sanction, form of—Notice to accused.

The sanction accorded by Government under S. 197 cannot be null and void for the reason that no notice was given to the accused to show cause why such sanction should not be given. It is a matter left entirely to the discretion of Government whether such opportunity should be given to the person concerned before sanctioning his prosecution, and the Criminal Court

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before which he is prosecuted is not an appellate authority over Government in the matter of the sanction. *Kalagava Bapiiah*.

1 Cr. L. J. 275 :
I. L. R. 27 Mad. 54 : 2 Weir 227.

————S. 197—Sanction necessary—Sale of impounded cattle—Member of District Board directed to hold sale—Purchase by such member—A Member, whether public servant not removable from office except by Local Government—Prosecution.

A member of a District Board appointed by the Board as an officer for the purpose of holding a sale by auction of cattle impounded under the Cattle Trespass Act is a public servant who, by virtue of the provisions of S. 31 of the U. P. District Boards Act is, not removable from his office save by or with the sanction of the Local Government within the meaning of S. 197, Cr. P. C. If such an officer proceeds to purchase the cattle himself through a servant, the offence committed by him is committed in the discharge of his official duty, and he cannot be prosecuted in respect of such offence except with the sanction of the Local Government under S. 197, Cr. P. C. *Emperor v. Krishna Kant*. 26 Cr. L. J. 1157 :

88 I. C. 517 : 2 O. W. N. 395 :
28 O. C. 153 : 12 O. L. J. 498 :
A. I. R. 1925 Oudh 560.

————S. 197—Sanction, necessary.

When act complained of is done by public servant while performing official duty, sanction is necessary. *Abdul Hadi Musalman v. W. P. Mishra*. 36 Cr. L. J. 1092 :
31 N. L. R. 297 : 157 I. C. 120 : 18 N. L. J. 28 :
8 R. N. 21 : A. I. R. 1935 Nag. 52.

————S. 197—Sanction, necessary.

Words used in official capacity—Complaint in respect of such words—Previous sanction of local Government is necessary. *Narumal Hotchand v. Imambux Jaloi*. 34 Cr. L. J. 819 :
144 I. C. 477 :
27 S. L. R. 36 : 6 R. S. 2 :
A. I. R. 1933 Sind 165.

————S. 197 (1)—Sanction necessary—Deputy Superintendent of Police appointed by Local Government—Whether comes within S. 197 (1)—Preliminary enquiry, if can be held without sanction.

A Deputy Superintendent of Police who is appointed by the Local Government comes within the ambit of S. 197 (1), and hence no prosecution in respect of offences alleged to have been committed by him while acting or purporting to act in the discharge of his official duty can be taken cognizance of without the previous sanction of the Local Government. The Magistrate should satisfy himself by enquiry that it is expedient in the interest of justice that an enquiry should be held into the alleged offence and this preliminary enquiry can be held without the sanction of the Local Government for it does not entail taking cognizance of any offence, and if the enquiry is held before the Local Government is approached, the Local Govern-

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ment will be in a much better position to be able to decide what action to take under S. 197. *U. Ba Hla v. Maung Tun Sein*.

38 Cr. L. J. 945 :
170 I. C. 516 : 10 R. Rang. 96 :
A. I. R. 1937 Rang. 312.

———S. 197—Sanction, unnecessary.

Canvassing of members of District Board one day prior to Election—Defamatory statements made, are not in discharge of duties as members of Board—Sanction to prosecute is not necessary. *Bajrang Bahadur Singh v. Emperor*.

34 Cr. L. J. 253 :
141 I. C. 819 : 9 O. W. N. 875 :
8 Luck. 156 : I. R. 1933 Oudh 90 :
A. I. R. 1932 Oudh 308.

———S. 197—Sanction, unnecessary—Lower Subordinate of Public Works Department, charge against, of bribery—Whether sanction to prosecute necessary.

Inasmuch as a lower Subordinate in the Public Works Department can be appointed and transferred by a Superintending Engineer, without reference to the Local Government, sanction to entertain a complaint of bribery against such lower Subordinate is not necessary. *In re : Reddy Venkayya*.

13 Cr. L. J. 770 :
17 I. C. 402 : 12 M. L. T. 351.

———S. 197—Sanction, unnecessary.

Members of Panchayat Court in forwarding election proceedings, suppressing genuine document and fabricating and forwarding false document. Sanction under S. 197 is not necessary. *Lakshmi Narayana Ayyar v. Chinnappa Goundan*.

32 Cr. L. J. 969 :
133 I. C. 3 : 1930 M. W. N. 1109 :
I. R. 1931 Mad. 690 :
A. I. R. 1931 Mad. 492.

———S. 197—Sanction unnecessary.

No sanction under S. 197 is necessary for the prosecution of an Administrative Officer of a School Board appointed under S. 9 (1) of the Bombay Primary Education Act, 1923. *In re S. S. Shirke*.

33 Cr. L. J. 78 :
134 I. C. 1240 (a) : 33 Bom. L. R. 1177 :
I. R. 1932 Bom. 24 (1) :
A. I. R. 1931 Bom. 527.

———Ss. 197, 45 — Sanction unnecessary
Village Munsif sending report under S. 45—
Prosecution of — Previous sanction of Local Government, if necessary.

In sending his report under S. 45, the Village Munsif is not acting in his capacity as Magistrate, being there called specifically a Village Headman, nor is he a public servant removable only by or with the sanction of a Local Government. Consequently, previous sanction of the Local Government is not necessary for his prosecution. *Pregada Balanagu v. Krosuru Kotayya*.

38 Cr. L. J. 950 :
170 I. C. 481 : 45 L. W. 697 :
10 R. M. 206 (1) : 1937 M. W. N. 638 :
A. I. R. 1937 Mad. 578.

———S. 197—Scope — Accused, a public servant, when alleged offence is committed but

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ceasing to be so at time of prosecution—Sanction of Local Government, if necessary.

S. 197 protects a person who is a public servant at the time of the alleged incident, even if he ceased to be a public servant before the prosecution starts. *In re S. Y. Patil of Amraoti*.

39 Cr. L. J. 146 :
172 I. C. 669 : 10 R. N. 272 :
A. I. R. 1937 Nag. 293.

———S. 197—Scope—Case requiring sanction only under S. 197—Before sanction, Magistrate only issuing process for attendance, on accused — Failure to issue fresh process after sanction — Irregularity, if curable under S. 537.

Where in a case requiring sanction only under S. 197, all that the Magistrate does before the sanction is received is to issue process against the accused and secure their attendance; his acts may well have been void for want of jurisdiction but it cannot be said that his omission to issue fresh process to the accused after the sanction had been received which enabled him to take valid cognizance of the offence has caused any failure of justice. Hence the cognizance taken after the sanction had been received is perfectly valid and the omission of the Magistrate to go back and issue fresh process is merely an irregularity curable under S. 537 of the Code. *Arjan Singh v. Emperor*.

41 Cr. L. J. 65 :
184 I. C. 680 : 42 P. L. R. 51 :
I. L. R. 1940 Lah. 102 :
12 R. L. 241 (2) : A. I. R. 1939 Lah. 479.

———S. 197—Scope—"Empowered in this behalf," meaning of—Delegation of authority by Local Government—Sanctioning officer, duty of—Offence committed by public servant "as such."

The words "empowered in this behalf" in S. 197, Cr. P. C., mean only empowered to give sanction for prosecution and not to remove the officer. *In re : Abdul Khadir Saheb*.

17 Cr. L. J. 168 :
33 I. C. 648 : 1916 1 M. W. N. 384 :
A. I. R. 1917 Mad. 344.

———S. 197—Scope—Necessity of protection arises where Judge commits offence while acting in his official capacity though he outsteps limits of his duties.

It is only where offences are committed by a Judge that the necessity for protection comes in, and the protection is limited to cases where the offences are committed while the Judge purports to act in his official capacity though undoubtedly he has outstepped the limits of his duties. Where the circumstances clearly show that throughout, the accused was acting as Judge, the protection which is meant to be given to persons in his position must be available to him. *Subbiah v. T. Ramacharlu*.

40 Cr. L. J. 853 :
184 I. C. 112 : 49 L. W. 781 :
1939 M. W. N. 741 : 1939 2 M. L. J. 117 :
12 R. M. 412 : A. I. R. 1939 Mad. 604.

———S. 197—Scope.

S. 197 is not confined merely to acts strictly within the authority of the Judge or public servant, but extends to all official acts pur-

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porting to be done under colour of that authority. *Lakshmi Narayana Ayyar v. Chinnappe Goundan*.

12 Cr. L. J. 969 :

133 I. C. 3 : 1930 M. W. N. 1109 :

I. R. 1931 Mad. 690 : A. I. R. 1931 Mad. 492.

————S. 197—Scope.

S. 197 does not protect Municipal Commissioners making false entries in Electoral Roll after its publication. *Nur Ahmad v. Jogesh Chandra Sen*.

36 Cr. L. J. 385 :

153 I. C. 657 : 39 C. W. N. 20 :

62 Cal. 275 : 7 R. C. 392 :

A. I. R. 1934 Cal. 838.

————S. 197—Scope.

S. 197 peremptorily enjoins that no Court can take cognizance of any alleged offence said to have been committed by a public servant or Judge without the previous sanction of the Local Government. *Bhagirath v. Ali Hamid Sahib*.

32 Cr. L. J. 991 :

132 I. C. 783 : 8 O. W. N. 157 :

I. R. 1931 Oudh 335 : A. I. R. 1931 Oudh 392.

————S. 197—Scope of S. 197—Protection afforded by section, applicability of.

The protection afforded by S. 197 applies to all cases where, in the professed exercise of an official's duties, an offence is committed. *Sanharalinga Tevan v. Abudai Ammal*.

17 Cr. L. J. 394 :

35 I. C. 826 : A. I. R. 1917 Mad. 657.

————S. 197—Scope.

The expression "offence alleged to have been committed while acting in the discharge of his official duty" under S. 197 does not mean "any offence committed by him while he is in office". Acting refers to the specific action which comprises the offence. *Kamisetty Raja Rao v. Ramaswamy*.

28 Cr. L. J. 539 :

102 I. C. 347 : 25 L. W. 608 :

52 M. L. J. 647 : 1927 M. W. N. 423 :

38 M. L. T. 338 : 50 Mad. 754 :

A. I. R. 1927 Mad. 566.

————S. 197—Scope.

To say that a public officer when giving evidence in a Court purports to be acting in the discharge of his official duty, would be straining the language used in S. 197, Cr. P. C. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Jadu Nath Roy*.

41 Cr. L. J. 659 :

188 I. C. 681 : I. L. R. 1940 1 Cal. 590 :

44 C. W. N. 596 : 13 R. C. 43 :

A. I. R. 1940 Cal. 274.

————Ss. 197, 190—Scope—S. 197, Criminal Procedure Code and S. 270, Government of India Act, 1935, difference between—Expression "taking cognizance."

Per *Blacker, J.*—There is a fundamental difference between S. 270, Government of India Act and S. 197, Cr. P. C. S. 270 creates a bar to the "institution" of proceedings, that is to say, to the act of a complainant making a complaint or of a Police Officer making a report as well as to the act of a Magistrate, taking cognizance upon such complaint or report. What is barred by

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S. 197, Cr. P. C., is not the making of a complaint or the submitting of a Police report but the act of a Magistrate in taking cognizance of the offence on such complaint or such report or in any other way. It is an error to regard the taking of cognizance as a single momentary act which can only be done once with regard to a particular offence. The taking of cognizance is a continuous act which commences as soon as the Magistrate applies his mind to the case and only ends when the Magistrate no longer has seisin of it. Consequently if a Magistrate has purported to take cognizance of an offence before the necessary sanction is received, it is only what he has done up till that time that is void and cannot be revived. This, however, does not mean that after the sanction has been received, he cannot commence to take valid cognizance. The complaint or Police report not being invalidated by the absence of the sanction under S. 197 is still in legal existence and can form the legal basis for the taking of fresh cognizance under S. 190. In this view all that is to be seen is whether S. 537, Cr. P. C. is applicable to the circumstances of the particular case. *Arjan Singh v. Emperor*.

41 Cr. L. J. 65 :

184 I. C. 680 : 42 P. L. R. 51 :

I. L. R. 1940 Lah. 102 : 12 R. L. 241 (2) :

A. I. R. 1939 Lah. 479.

————S. 197 (1)—Scope.

The phrase 'while acting or purporting to act in the discharge of his official duty' in S. 197 (1), (as amended in 1923) means "doing or purporting to do the sort of act which the law or rules framed under the law allow him to do by virtue of his office." *In re : Ganapatty Goundan*.

33 Cr. L. J. 557 :

138 I. C. 133 : 35 L. W. 61 :

1932 M. W. N. 65 : 62 M. L. J. 223 :

I. R. 1932 Mad. 518 : A. I. R. 1932 Mad. 214.

————S. 197—Scope (as amended in 1923)—Complaint against public servant—Sanction of Local Government, when necessary.

Under the present section it is not necessary to decide whether the fact of the accused being a Judge or a public servant was a necessary element in the offence or whether the offence was one which could not have been equally committed by a private person and if it is found that the Judge, Magistrate or public servant has committed the act at a time when he was doing, or purporting to do an official duty, this will be sufficient to attract the provisions of this section. *Jujjavarapu Gangaraju v. Kandibojina Venki*.

30 Cr. L. J. 264 :

118 I. C. 102 : 30 L. W. 116 :

57 M. L. J. 31 : 52 Mad. 602 :

I. R. 1929 Mad. 742 : 1929 M. W. N. 387 :

A. I. R. 1929 Mad. 659.

————S. 197—Sub-Inspector.

Although the Local Government has delegated the power of appointing a Sub-Inspector to Divisional Commissioners, yet the Sub-Inspector is protected by the provisions of S. 197 (1), and, therefore, sanction of the Local Government is necessary to prosecute him for an

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offence under S. 342, Penal Code. *Kyaw Hlin v. Ah Yoo*. 36 Cr. L. J. 77 :

152 I. C. 366 : 12 Rang. 520 :

7 R. Rang. 149 : A. I. R. 1934 Rang. 238.

—S. 197—*Sub-Inspector of Police—Sanction to prosecute—He is removable from office without sanction of Local Government in view of S. 7, Police Act (V of 1861)—No sanction to prosecute him is necessary.*

The expression "any public servant who is not removable from his office save by or with the sanction of the Local Government or some higher authority" in S. 197 (1), Cr. P. C., does not include public servants whom some lower authority has by law or rule or order been empowered to remove. The provisions of S. 243, Government of India Act, 1935, show that S. 7 of the Police Act is applicable in the case of a Sub-Inspector of Police and in view of S. 7 of the Police Act as amended by Government of India (Adaptation of Indian Laws) Order, 1937, it cannot be said that the Sub-Inspector of Police is a public servant "who is not removable from his office save by or with the sanction of the Provincial Government or some higher authority", and this being so, S. 197, Cr. P. C., does not apply to him and no sanction for his prosecution is necessary. The power to dismiss, suspend or reduce any Police Officer of the Subordinate rank conferred by S. 7, Police Act, on the Inspector-General and other officers is not a delegation of its power by the Provincial Government. *Maqbool Hussain v. Emperor*. 41 Cr. L. J. 695 :

188 I. C. 846 : 1940 O. W. N. 494 :

1940 O. L. R. 385 : 13 R. O. 31 :

A. I. R. 1940 Oudh 382.

—S. 197 (1)—"Subordinate," meaning of.

An official is subordinate to the authority which appoints him and which has the power to dismiss him. *Heymardinger v. Emperor*. 21 Cr. L. J. 760 :

58 I. C. 344 : 2 U. P. L. R. Lah. 170 :

A. I. R. 1920 Lah. 254.

—S. 197—*Sub-Registrar—Sanction to prosecution by Government.*

The Government in sanctioning the prosecution of a Sub-Registrar directed the Inspector-General of Registration to instruct the District Registrar to institute a prosecution, and the District Registrar who was also the District Magistrate took cognizance of the case and directed the trial to take place before a Special Magistrate to be appointed by the Government: *Held*, that although taking cognizance of the case as District Magistrate was not precisely the same thing as instituting the prosecution as District Registrar, yet the prosecution was instituted in substantial accordance with the orders of Government. *Girwardhari Lal v. Emperor*. 10 Cr. L. J. 463 :

4 I. C. 13 : 13 C. W. N. 1062 :

—S. 197—*Taking cognizance.*

When a Magistrate gets the statement of a complainant recorded by the Reader of the

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Court and forwards the same for enquiry to a Sub-Divisional Magistrate, he takes cognizance of the offence. *Bhagirath v. Ali Hamid*. 32 Cr. L. J. 991 :

132 I. C. 783 : 8 O. W. N. 157 :

I. R. 1931 Oudh 335 :

A. I. R. 1931 Oudh 392.

—S. 197—'Talayari' of village, whether Public servant under S. 197.

A Talayari is not within the protection afforded by S. 197, and no sanction is necessary under it for his prosecution. *Sankaralinga Tevan v. Avudai Ammal*. 17 Cr. L. J. 17 :

35 I. C. 826 : A. I. R. 1917 Mad. 657.

—S. 197—*Taluk Board President.*

A President of a Taluq Board is a public servant within the meaning of S. 197, Cr. P. C., and S. 21, Penal Code. *Hidayatullah v. Emperor*. 34 Cr. L. J. 191 :

141 I. C. 583 : 27 S. L. R. 3 :

I. R. 1933 Sind 63 : A. I. R. 1933 Sind 161.

—S. 197—*Taluk Board President.*

The sanction of the Local Government under S. 197, is necessary before a Taluq Board President can be tried for embezzlement in connection with the disbursements of the Municipal monies and for falsification of the payment accounts. *Hidayatullah v. Emperor*. 34 Cr. L. J. 191 :

141 I. C. 583 : 27 S. L. R. 3 :

I. R. 1933 Sind 63 : A. I. R. 1933 Sind 161.

—S. 197—*Union Chairman (Madras)—Public servant, act done as—Using abusive language in street in performance of civic duties—Complaint—Sanction, if necessary—Offence—Apology, offer of.*

Where a Union Chairman in removing an obstruction to a public thoroughfare caused by the complainant, abused the latter and was charged and convicted therefor under S. 3 (12) of the Madras Towns Nuisances Act: *Held*, (1) that though the accused was acting in his capacity as Union Chairman in removing the obstruction, he was not acting as a public servant in abusing the complainant, and that, therefore, no sanction was necessary under S. 197 for his prosecution; (2) that when the accused expressed his readiness to apologise to complainant, the same should have been accepted and the accused discharged under the exception to S. 95, I. P. C. *In re: Abdul Rahiman Khan Sahib*. 17 Cr. L. J. 462 :

36 I. C. 142 : 4 L. W. 556 :

A. I. R. 1917 Mad. 769.

—S. 197—*Vakalatnamas, authentication of, object of—Civil Rules of Practice Rr. 77, 276—Madras High Court, Appellate Side Rules, Rr. 23, 24.*

The word "shall" in Rule 23 of the Appellate Side Rules of the Madras High Court, which provides that "the judicial functionary, etc., shall certify by his signature that the vakalatnama has been duly executed" only means that there "shall" be such a signature in the vakalat or affidavit to constitute it a valid

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certificate of authentication. The object of judicial functionaries such as Village Munsifs and Village Magistrates being given powers of authentication of *vakalats*, is only for the purpose of enabling Courts, before whom the *vakalats* and affidavits are produced, to treat such authentication as *prima facie* evidence of the genuineness of the signatures of the alleged executants of the affidavits and *vakalats*, and it does not at all follow that such *vakalats* and affidavits become the judicial records of the Court of the Village Munsif or Magistrate acting as a judicial functionary in judicial proceedings instituted before him, or that they are produced before the Village Munsif in his capacity as a Court of Justice. *Vadake Peediyakkal v. Vallapally Govindan Nair*.

18 Cr. L. J. 37 :

35 I. C. 869 : A. I. R. 1917 Mad. 759.

———S. 197—*Vantandar Patil—Offence committed by Vantandar Patil—Sanction to prosecute, necessity of—Proceedings started before sanction, validity of.*

Where a Magistrate took cognizance of an offence committed by a *Vantandar Patil*, without the previous sanction required by S. 197 and proceeded to record the whole of the evidence without being aware that any such sanction existed : *Held*, that the whole of the proceedings were without jurisdiction and must be regarded as totally invalid. *Emperor v. Bhimaji Venkaji Nadgir*.

19 Cr. L. J. 342 :

44 I. C. 454 : 20 Bom. L. R. 89 :

42 Bom. 172 : A. I. R. 1917 Bom. 33.

———S. 197—*Village Magistrate preparation of false record by, in case pending before him—Sanction for prosecution, whether necessary—Proceedings, initiation of, without sanction, effect of—Penal Code (Act XLV of 1860), Ss. 167, 218, 469 and 471.*

A Village Magistrate who prepares a false record in a case pending before him acts not in a private capacity but as a Judge, and if the making of that record amounts to an offence, sanction is necessary under S. 197 before any Court can take cognizance of the offence of which he is accused in connection with it. *Subbiah Pillai v. Emperor*.

21 Cr. L. J. 233 :

55 I. C. 105 : 1920 M. W. N. 7 :

A. I. R. 1920 Mad. 23.

———S. 197—*Village Magistrate—Sanction—Village Magistrate making a false record.*

No sanction under S. 197 is necessary to prosecute a Village Magistrate for fabricating a false record of a criminal case. *Palaniandi Pillai v. Arunachallam Pillai*.

9 Cr. L. J. 89 :

4 M. L. T. 473 : 32 Mad. 255.

———S. 197 (1)—*Village Munsif, whether 'public servant not removable from office'—Complaint of bribery without sanction.*

A Village Munsif and Magistrate is not a "public servant not removable from office" without the sanction of the Local Government, within the meaning of S. 197 (1). He may be prosecuted for receiving bribes while acting as a judicial functionary in judicial proceedings

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instituted before him. *Madakke Peediyakkal v. Villapally Govindan Nair*.

18 Cr. L. J. 37 :

36 I. C. 869 : A. I. R. 1917 Mad. 759.

———S. 197—*Village Munsif—Fabrication of records by Village Munsif—Prosecution—Sanction under S. 197, necessity of.*

Fabrication by a Judge of the records of a case is an act committed by him while acting or purporting to act in the discharge of his official duty within the meaning of S. 197 even if the case is an entirely fictitious one, and cannot be taken cognizance of without the sanction of the Local Government. The essence of the offence is that an officer having as part of his official duty the correct maintenance of judicial records fraudulently falsifies them. *Sivaramakrishna Ayyar v. Seshappa Naidu*.

30 Cr. L. J. 396 :

115 I. C. 248 : 29 L. W. 17 :

1929 M. W. N. 53 :

I. R. 1929 Mad. 408 :

52 Mad. 347 : 56 M. L. J. 263 :

A. I. R. 1929 Mad. 172.

———S. 197—*Village Munsif—Madras—Village Courts Act (I of 1889), S. 48—Village Munsif, distraint by, in execution of Village Court's decree—Prosecution—Sanction under S. 197, whether necessary.*

A Village Court executing under S. 48 of the Madras Village Courts Act of 1889 a decree by way of distraint is a Village Court as defined in the Act, and the Village Munsif if he himself distrains, acts as Judge of that Court. Therefore, sanction is necessary under S. 197 of the Code of Criminal Procedure for his prosecution for any offence alleged to be committed by him in the course thereof. *Subba Naidu v. Emperor*.

30 Cr. L. J. 402 :

115 I. C. 53 : 1929 M. W. N. 67 :

29 L. W. 579 : I. R. 1929 Mad. 373 :

56 M. L. J. 600 :

A. I. R. 1929 Mad. 256.

———S. 197 (2)—*Village Police Patel, prosecution of—Sanction, if necessary.*

A Village Police Patel can give a final judgment in cases coming under S. 14, Village Police Act. When he convicts or acquits, he is giving a "definitive judgment," therefore, he is a Judge within the definition of S. 19, Penal Code, and, therefore, comes within the protection afforded to Judges and public servants under S. 197, Cr. P. C. *Emperor v. Shankar Sayaji Dalvi*.

40 Cr. L. J. 116 :

178 I. C. 682 : 40 Bom. L. R. 1106 :

11 R. B. 183 :

A. I. R. 1938 Bom. 489.

———S. 198.

See also (i) Penal Code, Ss. 494, 496, 499, Ex. 1.

———S. 198 — *Father of a lunatic, whose wife has been married a second time, if an aggrieved person in the legal sense.*

Where the complainant is the head of his family, his son is a lunatic and his daughter-in-law has been living under his protection

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and an allegation is made that she was taken away to the house of her father and subsequently married to another person, the offence, if true, seriously affects his reputation and status in society and the father-in-law is a "person aggrieved" within the meaning of S. 198 and is competent to institute the complaint. *Daem Sardar v. Batu Dhali*.

3 Cr. L. J. 187 :
3 C. L. J. 38.

———S. 198 — *Abatement—Defamation—Abatement of prosecution on the death of complainant.*

Held, that, the death of the complainant during the course of criminal proceedings for defamation necessarily terminates those proceedings. *Ishar Das v. Emperor*.

7 Cr. L. J. 290 :
3 P. W. R. Cr. 21 : 112 P. L. R. 1908.

———S. 198—*Complaint—Penal Code (Act XLV of 1860), Ss. 182, 211, 500—Complaint charging offence under S. 211—Conviction under S. 500, whether legal—Defamation of subordinate official—Official superior, complaint made by, whether acceptable—"Falsely charges," in S. 211 meaning of—Offence under S. 182—Burden of proof—Prosecution, duty of.*

Where a complaint clearly charges an offence under S. 211, Penal Code, a conviction under S. 500, I. P. C., is illegal. A complaint of an offence under S. 500, Penal Code, made not by the person aggrieved but by his official superior cannot be accepted inasmuch as such acceptance would defeat the object of S. 108. The words "falsely charges" in S. 211, Penal Code, must be restricted to a charge made to some person in authority, that is to say, to some person who is in a position to get the offender punished. The charge must be embodied either in a complaint to a Magistrate or in a report of a cognizable offence to a Police Officer. The fact that the information given by him is shown to be false does not cast upon the party who is charged with an offence under S. 182, Penal Code, the burden of showing that when he made it he believed it to be true. The prosecution must make out that the circumstances were such that the only reasonable inference was that he must have known or believed it to be false. *Gaya Barhai v. Emperor*.

23 Cr. L. J. 641 :
69 I. C. 81 : 9 O. L. J. 342 :
4 U. P. L. R. Oudh 81 :
A. I. R. 1922 Oudh 4.

———Ss. 198, 204, 215.

Complaint at suggestion of Police—Issue of process to accused, whether necessary: See Penal Code, S. 494.

———S. 198—*Defamation.*

Complaint by hereditary priest of portion of Muslim community against persons for having undergone or participated in marriage, void according to Muhamedan Law and for depriving him of his fees by celebrating marriage

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in another village—Complainant is not the person aggrieved. *In re : Muhammad Levvai*.

32 Cr. L. J. 1116 :
134 I. C. 57 : 1930 M. W. N. 694 :
I. R. 1931 Mad. 809 :
A. I. R. 1931 Mad. 247.

———S. 198—*Defamation—Complaint by relative of person defamed, validity of.*

A Magistrate can take cognizance under S. 198, Cr. P. C. of a complaint of an offence under S. 500, Penal Code, made by a person who though not directly affected and injured, is related to the person defamed and is a member of his family. *Surajmal v. Ramnath*.

28 Cr. L. J. 996 :
105 I. C. 820 : A. I. R. 1928 Nag. 58.

———S. 198—*Defamation—Complaint of perjury and false charge—Defamation, conviction for, legality of.*

In a complaint which referred specifically to Ss. 193 and 211 of the Penal Code, the complaint stated that false statements and a false charge had been made against him by the accused which had caused him injury and he asked the Court to take action under those sections or under any section which the facts disclosed might justify. The Magistrate after hearing the evidence framed a charge of defamation under S. 500 of the Penal Code and convicted the accused under the section: *Held*, that a complaint having been made by the person aggrieved by the defamatory statement, the requirements of S. 198, Cr. P. C. were satisfied and that the conviction was perfectly legal. *Naurati v. Emperor*.

27 Cr. L. J. 769 :
95 I. C. 305 : 6 Lah. 375 :
2 L. C. 53 : A. I. R. 1925 Lah. 681.

———S. 198—*Defamation.*

High Priest of community defamed. It affords no ground to member of community to complain. *Husseinbhoy Ismailji v. Emperor*.

156 I. C. 567 : 29 S. L. R. 39 :
8 R. S. 1 : A. I. R. 1935 Sind 98.

———S. 198—*Defamation.*

No Court can take cognizance of an offence of defamation except upon a complaint made by some person aggrieved by such offence. *Hossseinbhoy Ismailji v. Emperor*.

36 Cr. L. J. 408 :
153 I. C. 443 (2) : 7 R. S. 137 :
A. I. R. 1934 Sind 188.

———S. 198—*Defamation.*

The person defamed within the meaning of S. 499, Penal Code, is a person aggrieved within the meaning of S. 198. *Husseinbhoy Ismailji v. Emperor*.

156 I. C. 567 : 29 S. L. R. 39 :
8 R. S. 1 : A. I. R. 1935 Sind 98.

———S. 198—*Defamation.*

Even when objection with regard to jurisdiction has not been taken in the trial Court, this cannot confer jurisdiction on the Magistrate trying the case. *Jagdish Narain v. Shams Ara Begum*.

36 Cr. L. J. 116 :
152 I. C. 478 : 1934 O. L. R. 878 :
11 O. W. N. 1389 : 7 R. O. 288 :
A. I. R. 1935 Oudh 6.

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————S. 198—Non-compliance—Effect.

Provisions of S. 198, are mandatory—Complaint under S. 499, I. P. C. on behalf of woman who ought not to be compelled to appear in public. Leave of Court not obtained—Trial and convictions are without jurisdiction. *Jogdish Narain v. Shams Ara Begam*.

36 Cr. L. J. 116 :
152 I. C. 478 : 1934 O. L. R. 878 :
A. I. R. 1935 Oudh 6 : 11 O. W. N. 1389 :
7 R. O. 228.

————Ss. 198, 199—Object of—Offence referred in sections should not be made subjects of complaint except by aggrieved person—Husband complaining under Ss. 363, 342 and 506, Penal Code (Act XLV of 1860), but not under S. 494, Penal Code—Court cannot force upon him character of aggrieved husband.

Where a complaint under Ss. 363, 342 and 506, Penal Code, is filed by the husband who does not himself complain of an offence under S. 494, Penal Code, the Court cannot force upon him as a complainant, the character of an aggrieved husband, which he does not wish to assume. The purpose of Ss. 198 and 199, is to make sure that the offences to which they refer are not made the subject of complaint except by aggrieved persons. *Emperor v. Gulab*.

39 Cr. L. J. 686 :
176 I. C. 98 : 11 R. S. 16 :
A. I. R. 1938 Sind 141.

————S. 198—“Person aggrieved”—Bigamy—Complaint by a brother of the husband.

Held, that a brother of the husband of the woman who committed bigamy is not, such a person aggrieved within the meaning of S. 198, upon whose complaint the Court could take cognizance of an offence of bigamy. *Hanuman v. Emperor*.

7 Cr. L. J. 457 :
11 O. C. 148.

————S. 198—Person aggrieved—Complaint of bigamy—Person aggrieved—Husband.

In the case of bigamy, the person aggrieved is the husband within the meaning of S. 198. Therefore, where the father of the husband preferred a complaint under S. 498, I. P. C., and the Magistrate committed the accused for trial to the Court of Session, on a charge under S. 494, I. P. C., the High Court quashed the commitment for non-compliance with the provisions of S. 198. *Emperor v. Lala*.

11 Cr. L. J. 51 (a) :
5 I. C. 176 : 7 A. L. J. 10.

————S. 198—Person aggrieved—Defamation of a Hindu widow living with her brother—Complaint by brother—Brother, an aggrieved person.

Serious imputations were made against a Hindu widow, accusing her of immorality. She was living with and was practically under the guardianship of her brother : Held, a Hindu lady residing with her father, brother or her son is a member of his family ; and her reputation is bound up with the reputation of the person in whose house and under whose charge she is living. If any imputation is made against her character, that would affect as much the relative with whom she is living as

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herself. Having regard to the notions, manners and customs of the country, the brother with whom the lady was living was as much aggrieved by the imputations made against her as the lady herself, and that, therefore, the brother was a person aggrieved within the meaning of S. 198, and it was competent to a Court to take cognizance of the offence of defamation upon his complaint. *Thakur Dass Sur v. Adhar Chandra Misri*.

1 Cr. L. J. 445 :
I. L. R. 32 Cal. 425 : 8 O. W. N. 515.

————S. 198—Person aggrieved—Defamation of wife—Husband, whether person aggrieved.

In the case of defamation of a married woman her husband is a person aggrieved within the meaning of S. 198. *Gurdit Singh v. Emperor*.

26 Cr. L. J. 342 :
84 I. C. 646 : 5 Lah. 301.
1 L. Cas. 134 : A. I. R. 1924 Lah. 559.

————S. 198—Person aggrieved.

Master cannot sue for defamation of servant. *Til Kanchan Gir v. Emperor*.

11 Cr. L. J. 594 (b) :
8 I. C. 220.

————S. 198—Person aggrieved—Offence relating to marriage—Bigamy—Cognizance of offence—Person aggrieved, meaning of.

Per *Mookerjee, J.*—The grievance referred to in the words “person aggrieved” in S. 198, does not contemplate any fanciful or sentimental grievance ; it must be such a grievance as the law can appreciate ; it must be a legal grievance and not a *stat pro ratione voluntas* reason. *Daem Sardar v. Batu Dhali*.

3 Cr. L. J. 187 :
3 C. L. J. 38.

————S. 198—Person aggrieved—Unchastity imputed to married woman—Husband, whether aggrieved—Complaint by husband.

Where a married woman is defamed by an imputation of unchastity, her husband is a person aggrieved within the meaning of S. 198, and has the right to prefer a complaint of defamation. *Basina Appanna v. Peta Akkanna*.

26 Cr. L. J. 521 :
85 I. C. 361 : 47 M. L. J. 746 :
20 L. W. 921 : A. I. R. 1925 Mad. 320.

————S. 198—Sanction to prosecute under alternative sections.

A sanction under S. 196 to prosecute an accused in the alternative under S. 121 or 121-A of the I. P. C., is entirely specific and proper. *Puthen Veetil Kunhi Kadir v. Emperor*.

23 Cr. L. J. 203 :
65 I. C. 859 : 1922 M. W. N. 71 : 15 L. W. 311 :
30 M. L. T. 135 : 52 M. L. J. 108 :
A. I. R. 1922 Mad. 126.

————S. 198—Scope.

It is impossible to lay down any inflexible rule for determining in every case whether the complainant is a person aggrieved by the offence alleged within the meaning of S. 198, it must be determined in each case according to its own circumstances whether the complainant can be said to be in a legal sense a person aggrieved. *Daem Sardar v. Batu Dhali*.

3 Cr. L. J. 187 :
3 C. L. J. 38.

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———S. 198—Scope.

Where the editor of a paper writes an editorial which is highly defamatory of the spiritual head of a certain community, an individual of that community is not an aggrieved person within the meaning of S. 198. *Hosseinbhoy Ismailji v. Emperor*.

36 Cr. L. J. 408 :
153 I. C. 443 (2) : 7 R. S. 137 :
A. I. R. 1934 Sind 188.

———S. 199.

See also (i) Cr. P. C., 1898, Ss. 4 (h), 198, 227.

(ii) Penal Code, 1860, Ss. 366-A, 407, 498.

———S. 199, 345—Abduction of married woman—Complaint by person having care of woman—Complainant, whether can compound offence.

Although by virtue of S. 199, Cr. P. C. a person having the care of a married woman on behalf of the husband during his absence can prefer a complaint in respect of an offence under S. 498 of the Penal Code, the only person who is authorised under S. 345, Cr. P. C. to compound this offence is the injured husband. *Mahbub Ali Khan v. Emperor*.

24 Cr. L. J. 780 :
74 I. C. 444 : 4 L. L. J. 448.

———S. 199, 238 (3)—Charge under S. 366 and conviction under S. 498, Indian Penal Code, —No complaint under S. 199, Criminal Procedure Code, by husband.

A complaint within the meaning of S. 199, Cr. P. C., means a complaint made by the husband of an offence under S. 498, Penal Code, not any complaint made by the husband, where there is no complaint by the husband of an offence under S. 498, Penal Code, the Court has no jurisdiction to convict the accused of an offence under that section. *Bangaru Asari v. Emperor*.

1 Cr. L. J. 281 :
I. L. R. 27 Mad. 61 : 2 Weir 236.

———S. 199—Complaint not by husband, effect.

Where no complaint is filed by the husband of a woman before a Magistrate under S. 199, the Court cannot take cognizance of an alleged offence of adultery and in the absence of such complaint, a conviction under S. 376, Penal Code, cannot be converted to one under S. 497, Penal Code. *Baji v. Emperor*.

34 Cr. L. J. 496 :
143 I. C. 73 : 10 O. W. N. 107 :
I. R. 1933 Oudh 153 : A. I. R. 1933 Oudh 163.

———S. 199.

Complaint by father of the girl under S. 498, Penal Code—Leave of the Court not granted—Proceedings are illegal. *Luzman v. Emperor*.

35 Cr. L. J. 1032 :
149 I. C. 1106 (1) : 6 R. L. 805.
A. I. R. 1934 Lah. 86.

———S. 199.

Complaint by father for enticing away married girl—Absence of circumstances justifying complaint by father and not by husband—

Cr. P. CODE (1898), S. 199

Complaint cannot be entertained. *Mahendra Lal v. Gopal Chandra Dey*. 34 Cr. L. J. 290 :
142 I. C. 150 : I. R. 1933 Cal. 241 (1) :
A. I. R. 1933 Cal. 144 (1).

———S. 199—"Complaint," meaning of.

The word "Complaint" occurring in S. 199, is not to be construed in its ordinary sense but as defined in S. 4, Cl. (h) of that Code. *Tara Prosad Laha v. Emperor*. 1 Cr. L. J. 25 :
I. L. R. 30 Cal. 910 : 8 C. W. N. 17.

———S. 199.

Complaint need not specify the section under which accused is to be charged. *Sain v. Emperor*.

36 Cr. L. J. 789 :
155 I. C. 595 : 36 P. L. R. 209 : 7 R. L. 742 :
A. I. R. 1934 Lah. 945.

———S. 199—Complaint.

The provision in S. 199, Cr. P. C., that no Court shall take cognizance of an offence under S. 498, Penal Code, except upon a complaint made by the husband of the woman, refers to a complaint by the husband of an offence under S. 498, not to any complaint made by the husband. *Roda Singh v. Emperor*.

19 Cr. L. J. 300 :
44 I. C. 204 : 2 P. R. 1918 Cr. :
A. I. R. 1918 Lah. 385.

———S. 199—Complaint under S. 498, I. P. C. by care-taker of woman on behalf of husband—Husband's illness, effect of—"Absence," meaning of.

A person having the care of a woman on behalf of her husband, can only institute a complaint under S. 498, I. P. C., in the absence of the husband. The word "absence" means absence from the place and cannot be extended to include a case where the husband is present but is unable, owing to illness, to institute the prosecution himself. *Emperor v. Tikiomal Bulomal*.

9 Cr. L. J. 450 :
1 I. C. 941 : 3 S. L. R. 15.

———Ss. 199, 220—Complaint—Examination of complainant not part of complaint, Penal Code (Act XLV of 1860), S. 498—Illicit intercourse—Specific allegation.

The husband of a woman complained that the accused won over his wife, who had recently attained puberty, enticed her away and persuaded her to carry off certain jewels and money, the property of the complainant. The complaint contained no specific allegation of enticing away the woman with the necessary sexual purpose; but in his examination upon oath by the Magistrate he made a definite allegation that the accused took away the woman with a view to have illicit intercourse with her. The accused was convicted of an offence falling under S. 498 of the Penal Code: *Held*, per Wallis, C. J., and Ayling, J., that although the complaint contained no specific allegation of illicit intercourse, it could not be read as merely relating to a theft of jewels, and that the conviction under S. 498 of the Penal Code was not illegal: *Held*, per Wallis, C. J., and Coultis-Trotter, J., that a complaint being something anterior to and distinct from the

Cr. P. CODE (1898), S. 199

examination on oath of the complainant by a Magistrate taking cognizance of a complaint under S. 200 of the Cr. P. C., such examination cannot be regarded as part of the complaint for the purposes of S. 199 of the Cr. P. C. *In re : Pedda Anjinigadu.*

22 Cr. L. J. 762 :
64 I. C. 282 : 13 L. W. 695 :
1921 M. W. N. 514.

————S. 199—*Enticing away married woman—Husband minor—Complaint by father-in-law.*

Except where the husband of a woman is absent and she is left in the care of her father-in-law, the latter cannot lodge a complaint under S. 498 of the Penal Code in respect of enticing the woman away, even though the husband may be a minor. There is nothing to prevent a minor husband from lodging a complaint under S. 498 of the Penal Code. *Walia v. Emperor.*

23 Cr. L. J. 613 :
68 I. C. 837 :
A. I. R. 1922 Lah. 168.

————S. 199—*Enticing married woman from father's control—Right of father to complain, when husband stands by—Penal Code (Act XLV of 1860), Ss. 498, 499.*

Where, the wife was not under the care of her husband at the time when the accused enticed her away and the husband, learning of the elopement, went away and the complaint was filed by the father, without consulting the husband, the latter not being anxious to complain: *Held*, that the fact that the husband stood by, did not prevent the temporary guardian from preferring the complaint. *In re : Rathna Padayachi.*

17 Cr. L. J. 363 :
35 I. C. 667 :
A. I. R. 1917 Mad. 220.

————S. 199—*"Husband of the woman," meaning of—Marriage dissolved before complaint, effect of.*

The words "the husband of the woman" in S. 199 are simply intended to point to the particular person who has the right to start proceedings in respect of the offence mentioned in the section, and a man does not cease to be "the husband of the woman" within the meaning of that section merely because the marriage tie has been dissolved subsequent to the commission of the offence complained of. In other words: the dissolution of the marriage tie does not take away from the complainant the right to lodge a complaint in respect of an offence committed before the marriage tie was dissolved. *Dhanna Singh v. Emperor.*

23 Cr. L. J. 462 :
67 I. C. 734 : 16 P. W. R. 1922 Cr. :
A. I. R. 1922 Lah. 477.

————S. 199.

Husband of woman in prison—Husband's brother not having *de facto* or constructive care of her—Complaint by him under

Cr. P. CODE (1898), S. 199

S. 494, I. P. C., is not maintainable. *Rabnawaz Khan v. Emperor.*

37 Cr. L. J. 345 :
160 I. C. 726 : 8 R. Pesh. 128 :
A. I. R. 1936 Pesh. 32 (1).

————S. 199—"In his absence," meaning of.

The words "in his absence," in S. 199, refer to the original entrustment and not to the time of the complaint, and the restriction is not intended to afford immunity to an offender but to prevent a person unconnected with the woman from giving publicity to a matter which neither the husband nor the guardian is willing to agitate. The object of the law is not so much to afford protection to the husband or the guardian, as to inflict punishment on those who interfere with the sacred relation of marriage. *In re : Rathna Padayachi.*

17 Cr. L. J. 363 :
35 I. C. 667 : A. I. R. 1917 Mad. 220.

————S. 199—*Jurisdiction—Report to the Police—Cognizable offence—Complaint.*

A report to the police of a cognizable offence is not a complaint within the meaning of that term in S. 199. Upon a report made to them by a husband that the accused had kidnapped his lawful wife, the police placed the accused before a Magistrate for trial of an offence under S. 363, I. P. C.: *Held*, that the said report, though made by the husband, did not give the Magistrate jurisdiction to convict the accused under S. 498, I. P. C. *Emperor v. Khushal Singh.*

1 Cr. L. J. 763 :
17 C. P. L. R. 105.

————S. 199—*Magistrate directing Police inquiry—Charge-sheet preferred before another Magistrate—Jurisdiction.*

Where a Magistrate having cognizance of a case refers it to the Police for inquiry and report, the Police have no power to prefer a charge-sheet before another Magistrate and such other Magistrate has no jurisdiction to take cognizance of the case. *In re : Rukmani Ammal.*

16 Cr. L. J. 466 :
29 I. C. 98 : A. I. R. 1916 Mad. 1059.

————S. 199—*Penal Code, S. 498—Complaint and statement of complainant, nature of—Enticing away married woman—Complaint, contents of.*

Where in a complaint of an offence of enticing away a married woman, there is no allegation either in the complaint or in the sworn statement of the complainant, that the accused's purpose was to have illicit intercourse with her, there is no "complaint" of an offence under S. 498 of the Penal Code so as to give a Magistrate jurisdiction to take cognizance of that offence as provided by S. 199 of the Cr. P. C. *Arunachalam Chetty v. Emperor.*

24 Cr. L. J. 837 :
74 I. C. 949 : 45 M. L. J. 543 :
1923 M. W. N. 876 :
A. I. R. 1924 Mad. 323.

————S. 199—*Penal Code, S. 498—Enticing married woman, charge of—Complaint to Police, if sufficient.*

Cr. P. CODE (1898), S. 199

A "complaint" within the meaning of S. 4 (h) can only be made to a Magistrate. Therefore a complaint to the Police of an offence under S. 498, Penal Code, is not sufficient for the purposes of S. 199. *Arumuga Mudaliar v. Emperor*.

23 Cr. L. J. 592 :
68 I. C. 624 : 16 L. W. 491 : 31 M. L. T. 254 :
43 M. L. J. 564 : 1922 M. W. N. 801 :
A. I. R. 1923 Mad. 59.

—S. 199—*Penal Code (Act XLV of 1860), Ss. 494, 498—Complaint in respect of offence under S. 494, whether covers complaint in respect of offence under S. 498.*

In the case of an offence under S. 498 of the Penal Code, all that S. 199, Cr. P. C. requires is that there should be a complaint by the husband in respect of the facts constituting the offence. It cannot be said that there was no such complaint merely because the husband also alleged certain additional facts, which he was unable to prove and which, if proved, would have amounted to the graver offence dealt with by S. 494 of the Penal Code. *Brahma Dat v. Emperor*.

22 Cr. L. J. 742 :
64 I. C. 134 : 24 O. C. 232 :
A. I. R. 1921 Oudh 149.

—S. 199—*Penal Code (Act XLV of 1860), S. 498—Accused charged with theft whether can be convicted under S. 498.*

Where the complainant charged the accused with theft and neither in the complaint nor in his statement did he allege facts that constituted an offence under S. 498 of the Penal Code, nor did he ever ask that the accused should be dealt with under that section : *Held*, that having regard to the provisions of S. 199, Cr. P. C. the accused could not be convicted of an offence under S. 498 of the Penal Code, there being no complaint against him by the husband that he had committed such an offence. *Roda Singh v. Emperor*.

19 Cr. L. J. 300 :
44 I. C. 204 : 2 P. R. 1918 Cr. :
A. I. R. 1918 Lah. 385.

—S. 199—*Police Officer's report, if complaint.*

A report of a Police Officer is not a complaint within the terms of S. 199. *Bhana v. Emperor*.

12 Cr. L. J. 50 :
8 I. C. 1160 : 32 P. R. 1910 Cr.

—Ss. 199, 345—*Prosecution under S. 498, Penal Code—Complaint by agent of absent husband—Competency of agent to compound offence—Acquittal on composition by agent.*

An agent prosecuting under the powers granted by S. 199, Cr. P. C. for the alleged abduction of another person's wife, under S. 498 of the Penal Code, is not legally competent to compound the case under S. 345 of the Cr. P. C., on behalf of the husband, whose interests would not be affected by the composition: and an order of acquittal based on such a composition is not justified. *Harnam Singh v. Sain Dass*.

24 Cr. L. J. 120 :
71 I. C. 248.

—S. 199—*Rape—Accused convicted of rape—Acquitted—Cannot be convicted of adultery without complaint by the husband.*

Cr. P. CODE (1898), S. 200

Where a conviction for rape is set aside on the ground that it was only a case of adultery, the accused cannot be convicted of adultery, if no complaint has been made by the husband to give jurisdiction to the Court under S. 199. *Nga Po Thaw v. Emperor*.

14 Cr. L. J. 284 :
19 I. C. 716 : U. B. R. 1912 155.

—S. 199—*Scope.*

A Sessions Judge has no power to add a charge under Ss. 497 and 498, Penal Code, against a person who has been committed for an offence under S. 366. *Abdul Aziz Shah v. Emperor*.

32 Cr. L. J. 1135 :
134 I. C. 314 : 54 C. L. J. 346 :
I. R. 1931 Cal. 810 : A. I. R. 1931 Cal. 524.

—S. 199—"Some person who had care of such woman," meaning of—*Express delegation of trust by husband, whether necessary—Leave to proceed with complaint not expressly recorded—Substantial compliance, whether enough.*

The words "some person who had care of such woman" in S. 199 means a person who has the care of a woman on her husband's behalf during the latter's absence and there need be no express delegation of trust by the husband in favour of such person to enable him to lodge a complaint in his absence. In such a case, the Court must grant leave to the complainant to proceed with his complaint, and where the proceeding shows that the Magistrate did accord such leave to the complainant, the provisions of the section will be deemed to have been complied with although the leave is not expressly recorded. *Sahibrai v. Emperor*.

27 Cr. L. J. 414 :
93 I. C. 78 : A. I. R. 1926 Sind 159.

—S. 200.

See also (i) Cr. P. C., 1898, Ss. 4, 4 (b) 177, 190, 195, 202, 203, 204, 369, 439; 537.

(ii) Penal Code, 1860, S. 211.

—Ss. 200, 530—*Absence of complaint and omission to examine complainant—Validity of trial.*

Absence of a complaint and consequent failure to examine the complainant on oath is a sufficiently grave irregularity to vitiate the subsequent proceedings if it has not been waived or acquiesced in. *Golusu Appalanarasiah v. Emperor*.

31 Cr. L. J. 895 :
125 I. C. 557 : 1930 M. W. N. 413 :
A. I. R. 1930 Mad. 705.

—S. 200—*Applicability—Complaint—Absence of personal knowledge—Judicial enquiry—Cognizance—Jurisdiction.*

On the complaint of a person who had no personal knowledge of the matter complained of, a judicial enquiry was directed, and on the report thereof, proceedings were taken : *Held*, that there was no complaint under S. 200, properly so-called on which a judicial inquiry could be directed. The proceedings were quashed. *Chamroo Sahu v. Emperor*.

5 Cr. L. J. 13 :
11 C. W. N. 170.

Cr. P. CODE (1898), S. 200

———S. 200—*Complaint and examination of complainant, necessity of.*

Trial of accused under Opium Act without the complaint and without examining the complainant on oath is an illegality vitiating the trial. *Lachmi Narain v. Emperor.*

20 Cr. L. J. 742.

53 I. C. 150 : A. I. R. 1919 Pat. 452.

———S. 200—*Complaint—Citation of wrong section or Act—Validity of complaint—Wrong section or wrong Act, whether prevents Court from taking cognizance of offence under proper section or Act.*

Merely because the complainant mentions the wrong Act or mentions the wrong section, it cannot be said that there is no complaint within the meaning of S. 200. Cr. P. C. *Ram Ladakmal v. Wadhmal Assudomal.*

40 Cr. L. J. 122 :

178 I. C. 648 : 11 R. S. 100 : 1939 Kar. 230 :

A. I. R. 1938 Sind 209.

———S. 200—*Complaint—Requisites.*

The words "at once" in S. 200 clearly indicate that ordinarily a complaint must be presented in person. A complaint should never be accepted which is not signed by the complainant and is not preferred by a person duly authorized to prefer that specific complaint. *Abhoyeswari v. Kishori Mohan Banerjee.*

15 Cr. L. J. 348 :

23 I. C. 700 : 18 C. W. N. 1020 :

42 Cal. 19 : A. I. R. 1914 Cal. 479.

———S. 200—*Examination of complainant—Omission, effect of—Prejudice.*

A Court is bound to examine the complainant under S. 200, and the omission to do so, is a serious irregularity, which in general, prejudices the complainant, and justifies interference by the High Court in revision. *In re : Ramaswamy Iyengar.*

23 Cr. L. J. 691 :

69 I. C. 371 : 16 L. W. 220 :

1922 M. W. N. 681 :

A. I. R. 1922 Mad. 443.

———S. 200—*Examination of complainant.*

Complaint—Oral examination of complainant—Subsequent fuller examination on later date—Trial and conviction of accused is not vitiated by irregularity. *Makhan Lal Pal v. Sakhi.*

34 Cr. L. J. 1063 :

145 I. C. 700 : 37 C. W. N. 319 :

6 R. C. 135 : A. I. R. 1933 Cal. 552.

———S. 200—*Examination of complainant, mode of.*

When a complaint is in writing and is sufficiently clear, it would be a sufficient compliance of S. 200 if the Magistrate reads it over to the complainant and the complainant on oath is asked to subscribe and it is only when the written complaint is obscure or vague that the Magistrate is bound to examine the complainant at sufficient length for the purpose of clearly ascertaining the allegations on which the complaint is made. *Mahomed v. Mahomed Idris.*

26 Cr. L. J. 1101 :

88 I. C. 189 : 18 S. L. R. 274 :

A. I. R. 1925 Sind 328.

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———S. 200 (a)—*Examination of complainant.*

Where a complaint purports to be made by a public servant in the discharge of his official duties, his examination is not required under S. 200 (aa). *Kawal Ram v. Emperor.*

36 Cr. L. J. 1354 :

158 I. C. 324 : 1 B. R. 872 : 16 P. L. T. 693 :

13 Pat. 69 : 8 R. P. 187 :

A. I. R. 1935 Pat. 515.

———S. 200, 537 (a)—*Examination of complainant—Complaint by District Judge to District Magistrate—Failure to examine complainant—Irregularity.*

A District Judge, believing that a certain Will which had come before him in Probate proceedings was a forgery, wrote a letter to the District Magistrate suggesting that in the interests of justice there should be a prompt investigation. On receipt of the letter the District Magistrate, without sending for the District Judge and examining him on oath, ordered a Police investigation and thereafter sent the case for inquiry and trial before a competent Magistrate: *Held*, that the failure to examine the District Judge on oath was an irregularity of a kind which came within those enumerated in Cl. (a) of S. 537, Cr. P. C. and that there having been no failure of justice, the trial was not vitiated by the irregularity: *In re : Aparao Jhaverilal.*

20 Cr. L. J. 42 :

48 I. C. 682 : 20 Bom. L. R. 1018 :

A. I. R. 1918 Bom. 141.

———S. 200, 537 (a)—*Examination of Complainant—Complaint by public official against Government servant—Failure to examine Complainant—Effect.*

Where a complaint, preferred against a Government servant by a responsible public official, was reduced to writing and signed by him and was accompanied with the formal sanction by the Local Government authorising the prosecution, and the accused was actually convicted of the offence charged: *Held*, that the Magistrate's failure to observe the strict requirements of S. 200, had in no way prejudiced the accused or caused a failure or miscarriage of justice, and that the irregularity was sufficiently covered by the provisions of S. 537 (a) of the Code. *Girdhari Lal v. Emperor.*

12 Cr. L. J. 217 :

10 I. C. 156 : 11 P. R. 1911 Cr. 32 :

P. W. R. 1911 Cr. :

146 P. L. R. 1911.

———S. 200—*Examination of Complainant, whether irregularity or illegality.*

The omission to examine a complainant under S. 200 is not a mere irregularity which can be cured by S. 537 of the Code but is an illegality which vitiates the entire proceedings. *Mangu Kocri v. Emperor.*

20 Cr. L. J. 481 :

51 I. C. 465 : 1 P. L. T. 346 :

A. I. R. 1920 Pat. 670.

———S. 200 (aa)—*Examination of Complainant—Penal Code, S. 21—Calcutta Municipal Act, S. 554—Conservancy Overseer of Municipality, whether 'public servant'—Complaint by such*

Cr. P. CODE (1898), S. 200

Overscr—Examination on oath, whether necessary.

A Conservancy Overseer of the Calcutta Municipal Corporation is a 'public servant' within the meaning of S. 21, Penal Code, and it is not necessary to examine him on oath before issuing process on a complaint made by him in the discharge of his official duties. *S. C. Nandi v. Corporation of Calcutta.*

32 Cr. L. J. 138 :
128 I. C. 335 : 34 C. W. N. 449 :
I. R. 1931 Cal. 95 : A. I. R. 1930 Cal. 665 (1).

—Ss. 200, 537—*Examination of Complainant—Omission—Irregularity—Complainant, failure to examine—Irregularity.*

The failure to comply with the provisions of S. 200 is an irregularity which, unless it has occasioned a miscarriage of justice, is curable by S. 537 (a) of the Cr. P. C. *Chiragh Din v. Emperor.*

25 Cr. L. J. 125 :
76 I. C. 189 : 4 Lah. 359 :
A. I. R. 1924 Lah. 258.

—S. 200—*Examination of Complainant—Omission—Irregularity.*

Failure to examine the complainant on the back of the complaint under S. 200, is a mere irregularity cured under S. 537. *Baldewa v. Emperor.*

35 Cr. L. J. 347 :
147 I. C. 119 : 56 All. 33 : 6 R. A. 401 :
A. I. R. 1933 All. 816.

—Ss. 200, 537—*Examination of Complainant—Omission—Irregularity.*

Omission to examine a complainant before issuing process against the accused is not an illegality but a mere irregularity which will not vitiate the trial in the absence of any prejudice to the accused. *Anil Krista Das v. Badam Santro*

30 Cr. L. J. 706 :
116 I. C. 722 : I. R. 1929 Cal. 498 :
A. I. R. 1930 Cal. 175.

—S. 200—*Examination of Complainant—Omission—Irregularity.*

Omission to examine the complainant on oath is not illegality but a mere irregularity, which will not vitiate the trial unless substantial prejudice has been caused. *Bharat Kishore Lal Singh Deo v. Judishtir Modah.*

30 Cr. L. J. 1056 :
119 I. C. 413 : I. R. 1929 Pat. 589 :
10 P. L. T. 779 : A. I. R. 1929 Pat. 473.

—S. 200—*Examination of Complainant—Omission—Irregularity.*

The failure to examine a complainant under S. 200 is a mere irregularity which can be subsequently cured and does not vitiate the proceedings. *Abdul Ali v. Emperor.*

22 Cr. L. J. 9 :
59 I. C. 41 : 1 P. L. T. 446.

—Ss. 200, 537—*Examination of Complainant—Omission—Irregularity.*

The failure of a Magistrate to examine a complainant on oath under S. 200 before issuing process is an irregularity, but unless it is shown that the accused has in any way been prejudiced by the irregularity, it would

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be covered by S. 537 and a conviction would be set aside merely on the ground of such irregularity. *Phagu Sahu v. Emperor.*

18 Cr. L. J. 366 :
38 I. C. 750 : 1 P. L. J. 592 :
3 P. L. W. 29 : A. I. R. 1916 Pat. 129.

—Ss. 200, 537—*Examination of Complainant—Omission—Irregularity.*

The failure to examine a complainant under S. 200 is an irregularity curable under S. 537 of the Code. *Gopi Chand v. Emperor.*

25 Cr. L. J. 273 :
76 I. C. 865 : 1 Rang. 517 :
A. I. R. 1924 Rang. 87.

—S. 200—*Examination of complainant—Omission—Irregularity.*

The omission to examine a complainant on oath under S. 200 is a mere irregularity covered by S. 537. *In re : Ambayara Goundan.*

25 Cr. L. J. 730 :
81 I. C. 218 : 19 L. W. 461 :
A. I. R. 1924 Mad. 587.

—S. 200—*Examination of Complainant, necessity of.*

S. 200 requires a District Magistrate to examine the complainant himself unless he transfers the case under S. 192. *Nga Tha Tu v. Emperor.*

12 Cr. L. J. 385 :
11 I. C. 249 : U. B. R. 1910 I, 73.

—S. 200—*Examination of Complainant, necessity of.*

The examination of a complainant is not a matter of form. When a Magistrate directs local investigation or dismisses a complaint without making such an examination himself, the omission is a material one, and he does what he has no authority to do under the Code. *Nga Tha Tu v. Emperor.*

12 Cr. L. J. 385 :
11 I. C. 249 : U. B. R. 1910 I, 73.

—S. 200—*Examination of Complainant, necessity of.*

Under S. 200 it is illegal for a Magistrate to whom a complaint is presented to deal with it in any way without examining the complainant. *Mulchand Pamanmal v. Kessomal Ramchand.*

23 Cr. L. J. 243 :
66 I. C. 179 : 15 S. L. R. 200.

—Ss. 200, 202, 203—*Examination of Complainant—Issue of Process—Duty of Magistrate.*

If upon the facts alleged by the complainant and upon the assumption that the statement of the complainant is true; no offence is disclosed, it is the duty of the Magistrate to dismiss the complaint. Again, if the Magistrate would not be justified in issuing process unless, he could place reliance upon the statement which the complainant has made under S. 200 then, if he distrusts the statement made by the complainant or if he distrusts the complainant's statement and the distrust though not sufficiently strong to warrant him in acting upon it without further inquiry, is confirmed as the result of an inquiry or an investigation under S. 202 of the Code, in

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either case it is his duty to dismiss the complaint. On the other hand, if the Magistrate comes to the conclusion that the facts alleged by the complainant disclose an offence, and in his opinion, there is no ground for distrusting the complainant, the Magistrate would not be justified in refusing the issue of process merely because some other person has been tried and acquitted upon the same charge and the same facts, *inter alia*, it may be that at the previous trial the Magistrate had not correctly appraised the value of the evidence or for some other reason the order of acquittal cannot be supported. *Subal Chandra Namadas v. Ahadullah Sheikh*.

27 Cr. L. J. 788 :
95 I. C. 388 : 30 C. W. N. 546 :
53 Cal. 606 : 44 C. L. J. 114 :
A. I. R. 1926 Cal. 795.

—S. 200—Non-compliance—Effect.

A failure to comply with the provisions of S. 200, does not necessarily, and in every case, invalidate all subsequent proceedings. *Girdhari Lal v. Emperor*.

12 Cr. L. J. 217 :
10 I. C. 156 : 11 P. R. 1911 Cr. :
32 P. W. R. 1911 Cr. :
146 P. L. R. 1911.

—S. 200—Non-compliance—Effect—Procedure.

The procedure laid down in S. 200 ought to be strictly complied with. It is a very valuable safeguard which the Legislature has provided and must be scrupulously observed and insisted upon. Non-compliance with the provisions of S. 200, however, does not by itself vitiate a trial unless it has occasioned a failure of justice or has prejudiced the accused in his defence. *Emperor v. Heman Gope*.

21 Cr. L. J. 779 :
58 I. C. 459 : 1 P. L. T. 349 :
A. I. R. 1920 Pat. 232.

—S. 200—Objects of.

The object of the examination under S. 200, Cr. P. C., is to ascertain whether there is a *prima facie* case and to prevent the issue of process in case where the examination of the complainant would show that the complaint was clearly false, frivolous or vexatious and that further proceedings would tend merely to harass unnecessarily an accused person and waste the time of the Court. *Mahomed v. Mahomed Idris*.

26 Cr. L. J. 1101 :
88 I. C. 189 : 18 S. L. R. 274 :
A. I. R. 1925 Sind 328.

—S. 200, Pardanashin lady, complaint by—Examination of complainant—Issue of process.

Process cannot be issued against an accused person, either by the Magistrate first taking cognizance of an offence, or by the Magistrate to whom the case is transferred under the proviso to S. 200, unless and until the Magistrate issuing process has first examined the complaint. And this is perhaps more necessary in the case of a *pardanashin* lady than in other cases, to enable the Magistrate to satisfy himself that

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the complaint is really her own action. *Abbeyeswari v. Kishori Mohan Bannerjee*.

15 Cr. L. J. 348 :
23 I. C. 700 : 18 C. W. N. 1020 :
42 Cal. 19 : A. I. R. 1914 Cal. 479.

—S. 200—Pardanashin lady, complaint by—Examination of.

A *pardanashin* complainant may be examined on Commission under S. 503. *Abbeyeswari v. Kishori Mohan Banerjee*.

15 Cr. L. J. 348 :
23 I. C. 700 : 18 C. W. N. 1020 :
42 Cal. 19 : A. I. R. 1914 Cal. 479.

—S. 200—Procedure—Adultery—Desertion by wife for one year—Divorce—Complaint, dismissal of.

The desertion of the husband by the wife for one year does not *ipso facto* dissolve the marriage tie in Burma. A complaint under S. 497, Penal Code, should not be dismissed simply because it appears that the complainant and his wife have been living apart for more than a year previous to the complaint. *Maung Kala v. Nga Kin Mya*.

18 Cr. L. J. 321 :
38 I. C. 433 : A. I. R. 1917 L. Bur. 30.

—S. 200—Procedure—Case sent to Police for enquiry—Submitting of charge-sheet.

Where a District Magistrate takes cognizance of a complaint under S. 200 and refers the case to Police for inquiry under S. 202, he has to pass orders under S. 203 or S. 204; Police cannot be directed to submit charge-sheet. S. 156 does not apply. *Isaf Nasya v. Emperor*.

28 Cr. L. J. 577 :
102 I. C. 545 : 54 Cal. 303 :
A. I. R. 1928 Cal. 24.

—S. 200—Procedure—Cognizance of case—Duty of Magistrate.

A Magistrate who has taken cognizance of an offence under S. 200 is, until he is relieved if relieved at all of the case, the person who ought to make final orders in the case. He cannot relieve himself of the responsibility by shifting the burden on to the District Magistrate. *Madho Gir v. Rashid Ahmad*.

18 Cr. L. J. 765 :
41 I. C. 141 : 15 A. L. J. 642 :
A. I. R. 1917 All. 91.

—S. 200—Procedure—Complaint—Directions by District Magistrate to Subordinate Magistrates to submit cases to him.

A direction by a District Magistrate that as regards a particular class of cases Subordinate Magistrates taking cognizance of them are not to pass orders under S. 203 or S. 204, Cr. P. C., but to submit them to him, is clearly illegal. *Fani Bhushan Banerjee v. F. E. Kemp*.

4 Cr. L. J. 213 :
10 C. W. N. 1086.

—S. 200—Procedure—Cross-cases—Postponement of issue of process in one case till after disposal of other case—Revision, legality of—Interference by High Court.

Where a Magistrate postpones the issuing of process in a cross-case till after the disposal of the other case, the only question is as to whether there is any reasonable cause for such

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order. If there be such cause it is a matter of discretion and if the Magistrate does not exercise his discretion judicially in postponing the case, the High Court should interfere and set aside the order. But if the discretion is exercised in a sound and judicial manner there is no reason why the High Court should interfere with the exercise of the discretion. *Ram Saran Singh v. Nikhad Narain Singh*.

26 Cr. L. J. 1179 :
88 I. C. 603 : 6 P. L. T. 477 :
3 Pat. L. R. 134 Cr. :
A. I. R. 1925 Pat. 619.

———S. 200—Procedure—Offence under S. 498, Indian Penal Code—Magistrate requiring Police to produce accused.

Complaint under S. 498, Penal Code—It is irregular and illegal for Magistrate to direct the Police to produce accused before him for oral enquiry. *Sarju Prasad v. Ram Lal*.

35 Cr. L. J. 415 :
147 I. C. 387 : 11 O. W. N. 34 :
A. I. R. 1934 Oudh 88.

———S. 200—Procedure—Presentation of complaint—Duty of Magistrate.

The duty of a Magistrate receiving a complaint is set out in S. 200. It is the Magistrate's duty to at once examine the complainant on oath and to reduce the substance of that examination to writing. Further, it is his duty to find out whether there is any matter which calls for investigation by a Criminal Court. *Baij Nath v. Raja Ram*.

13 Cr. L. J. 704 :
16 I. C. 512 : 10 A. L. J. 79.

———S. 200—Procedure—Presentation of complaint to Magistrate—Duty of Magistrate.

It is the duty of a Magistrate, on presentation of a complaint of any offence, to immediately proceed in the manner laid down in Chap. XVI of the Cr. P. C. (S. 200 *et seq.*). The third clause of S. 150 is not intended to provide an alternative procedure to that laid down in S. 200 *et seq.* *In re : Arula Kotiah*.

12 Cr. L. J. 463 :
11 I. C. 999 : 10 M. L. T. 120 :
1911 2 M. W. N. 74.

———S. 200 (b)—Procedure—Complaint for Municipal offence—Duty of Magistrate to examine complaint.

A Municipal Magistrate of Calcutta is a Presidency Magistrate and in cases of complaints to him about Municipal offences, he is required, to examine the complainant subject to the provisions of S. 200 (b). *Ambica Prasad v. Corporation of Calcutta*.

30 Cr. L. J. 231 :
114 I. C. 82 : 32 C. W. N. 1091 :
48 C. L. J. 160 :
I. R. 1920 Cal. 187 :
A. I. R. 1929 Cal. 483.

———Ss. 200, 201, 202, 203—Procedure—Examination of accused—Preliminary inquiry, when necessary.

The procedure which a Magistrate is required to adopt on a complaint being lodged before him is laid down by Ss. 200 to 203. S. 200 makes it incumbent on Magistrate to examine the complainant forthwith at sufficient

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length to satisfy himself as to his veracity and as to any points on which the complainant is silent. If the result of such examination is that he finds no *prima facie* reason to distrust the complaint and he is satisfied that the facts alleged before him constitute a criminal offence, it is incumbent on him to issue process forthwith. If, on the other hand, he distrusts the complaint altogether or comes to the conclusion that no offence is made out, it is equally his duty to dismiss the complaint. It is only in a case where he distrusts the complainant, but his distrust is not sufficiently strong to warrant him to act upon it, that it is open to him to postpone the issue of process pending further inquiry as contemplated by S. 202, provided he records his reasons in writing for adopting this intermediate course. *Crowder v. Morrison*.

27 Cr. L. J. 711 :
94 I. C. 903 : A. I. R. 1926 Sind 194.

———Ss. 200, 202—Procedure—Magistrate taking cognizance of complaint, duty of.

A Magistrate taking cognizance of a case, who proceeds under S. 202, must record the reasons showing why he is not satisfied as to the truth of the complaint of the offence of which he is taking cognizance. *Madho Gir v. Rashid Ahmad*.

18 Cr. L. J. 765 :
41 I. C. 141 : 15 A. L. J. 642 :
A. I. R. 1917 All. 91.

———Ss. 200 and 202—Procedure—Police report—A form—Order on police to submit—Legality.

On the report of the police that one W had lodged a false information of theft against the accused, the Deputy Magistrate made an order that W should be called upon to show cause why he should not be prosecuted under S. 211, I. P. C. Subsequently on the report of a Subordinate Magistrate who held an enquiry into the matter, the District Magistrate in charge wanted to examine a certain woman, Lochu, before passing final orders; but for some unexplained reasons, on the date fixed for the examination of the woman, the said Deputy Magistrate recorded the following order :—"I have gone through the evidence and find there is a *prima facie* case against the accused. Call for A form, and Lochu being a creature of his, need not be examined;" Held, that the order passed by the Deputy Magistrate directing the police to send up A form against the accused, was without jurisdiction and must be set aside, inasmuch as the Deputy Magistrate passed the order without having proceeded in accordance with the provisions of S. 200 or 202, Cr. P. C., and as moreover, at the time the order was passed, there seems to have been before him no materials which would have warranted him in either directing the issue of process against the accused or in directing the police to send up A form. *Ram Adhin Chowdhry v. Wahed Ali*.

3 Cr. L. J. 471 :
10 C. W. N. 773.

———Ss. 200, 202, 203—Procedure—Dismissal of complaint on the result of previous Police enquiry, illegality.

There is no provision in the Cr. P. C., which

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authorises a Magistrate who receives a complaint to send for the result of a previously made Police enquiry and dismiss the complaint on the basis of the result of that enquiry. *Maung Ko v. Maung Sci.* 31 Cr. L. J. 1064 : 126 I. C. 534 : A. I. R. 1930 Rang. 226.

———Ss. 200, 202, 203, 204—*Procedure—Priority in enquiry.*

The Cr. P. C. is silent on the point as to which of two counter-cases should proceed first or whether both of them should proceed simultaneously and contemporaneously. It is not possible to lay down an absolute rule of law that a particular course must be adopted. Each case has to be decided according to its requirements. *Ram Gulam Singh v. Sarat Chandra.* 31 Cr. L. J. 262 :

121 I. C. 414 : 49 C. L. J. 388 : A. I. R. 1929 Cal. 281.

———Ss. 200, 202, 203, 204—*Procedure—Complaint, receipt of—Power of Magistrate.*

Under the law, four courses are open to a Magistrate on receipt of a complaint. He may either order an enquiry under S. 202, or dismiss the complaint under S. 203, or issue process under S. 204, or postpone the commencement of the proceeding under S. 344, Cr. P. C. In case, however, the Magistrate adopts the last alternative, he has to state his reasons for doing so. *Ram Golam Singh v. Sarat Chandra.* 31 Cr. L. J. 262 :

121 I. C. 414 : 49 C. L. J. 388 : A. I. R. 1929 Cal. 281.

———Ss. 200, 203—*Procedure—Complaint, receipt of—Duty of Magistrate—Magistrate must deal with complaint according to S. 200 and sections following.*

The question of issuing summaries is a mere administrative matter. It is merely for the maintenance by the executive authorities of a record of cases according to three classes and is not a judicial order passed under the Cr. P. C. at all. A Magistrate, when there is a complaint before him, must deal with it according to S. 200 and the following sections of the Cr. P. C. If he wishes to postpone the issue of process under S. 202, he must comply with the provisions of that section, and, if as a result of a preliminary inquiry he wishes to dismiss the complaint, then he must do so according to the provisions of S. 203. *Joomal Tikamdas v. Emperor.* 40 Cr. L. J. 807 :

183 I. C. 449 : 1939 Kar. 277 : 12 R. S. 57 : A. I. R. 1939 Sind 208.

———Ss. 200 to 203—*Procedure—Magistrate taking cognizance of complaint—Direction to Police for investigation how far legal—Complaint, whether can be treated as F. I. R.*

Having once taken cognizance of a complaint, a Magistrate cannot act otherwise than under Ss. 200 to 203, he can direct the Police to make an enquiry under S. 202, but he cannot direct the Police to treat the complaint as F. I. R., and investigate thereupon. *Uttaf Khan v. Emperor.* 29 Cr. L. J. 374 :

108 I. C. 333 : A. I. R. 1928 Pat. 359.

———S. 200-AA as amended by Act (XVIII of 1923)—*Scope.*

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Magistrates referred in S. 190 have jurisdiction to take cognizance of even non-cognizable offence upon Police report in writing without examination of the officer since the amendment of 1923. *Public Prosecutor v. Ratnavelu Chetty.* (F. B.) 27 Cr. L. J. 103 :

96 I. C. 983 : 49 Mad. 525 : 1927 M. W. N. 43 : 25 L. W. 248 : 52 M. L. J. 210 : A. I. R. 1926 Mad. 865.

———S. 201—*Procedure—Magistrate exercising two-fold jurisdiction—Cognizance of complaint under one jurisdiction—Subsequent transfer to other jurisdiction—Formality of returning complaint and re-taking, necessity of.*

Inspector-General of Police, Bhopal, with the previous sanction of Governor-General-in-Council lodged a complaint against the editor, printer and publisher of an Urdu Weekly *Riyasat*, for publishing an article tending to excite disaffection towards the Chief of Bhopal State or his Government or Administration in Bhopal in the Court of a Magistrate having two-fold jurisdiction, namely that of a Headquarters Magistrate and that of a Magistrate exercising jurisdiction over Railway lands in Bhopal State. The Magistrate in consequence of his two-fold jurisdiction was subordinate to two different High Courts. The complainant applied for amplification of his complaint by the inclusion of Itarsi as one of the places where the offending article was published. The Magistrate made the following order. "The result of this petition for amplification will be that the case will henceforward cease to be a Railway case for State-administered areas if it was one and be transferred to my ordinary file of criminal cases of this Court. This be done." On this the accused objected that the Magistrate had no jurisdiction to hear the case as he had transferred a case from a Court subordinate to one High Court to another Court subordinate to another High Court which the Governor-General-in-Council alone could do by a notification in the *Gazette of India*. Held, that the Magistrate in his capacity as a Railway Magistrate could not deal with the complaint of an offence committed at Itarsi but he could do so in his capacity as Headquarters Magistrate. Held, further, that as the original papers filed by the complainant contained material clearly amounting to an allegation of publication at Itarsi, the Railway Magistrate for Bhopal was not bound to dismiss the complaint in its entirety. He could return the complaint for presentation to the Court that could try the offence committed at Itarsi and this was what he did in substance. *Diwan Singh v. Emperor.* 32 Cr. L. J. 130 :

128 I. C. 402 : I. R. 1931 Nag. 2 : A. I. R. 1930 Nag. 291.

———S. 201—*Scope—Complaint in writing—Examination of complainant on oath.*

When a complaint is made in writing and it is sufficiently clear, it may frequently be a sufficient compliance with the provisions of S. 201, if the Magistrate reads over the complaint to the complainant and asks him to subscribe it on oath. When, however, the written complaint is obscure and vague, then the Magistrate would be bound to examine the

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complainant at sufficient length for the purpose of clearly ascertaining the allegations on which the complaint is made. *In re : Mirabai Sheikh Hussein.*

1 Cr. L. J. 750 :
6 Bom. L. R. 662.

———Ss. 201, 346—*Scope—Transfer of complaint under S. 192, or S. 528 to Third Class Magistrate—Complaint not triable by him—Whether can deal with case—S. 201, if a bar—An order under S. 250, if can be passed.*

The mere fact that in order to make his case more serious, a complainant alleges the commission of an offence which could not be tried by a junior Magistrate does not render the proceedings of that Magistrate illegal if he goes on to try the case and decide it holding that the facts disclosed show that it is lesser offence which he is competent to try. But, in any event, it is settled law that in a warrant case the trial does not commence until the charge is framed under S. 254, and there is nothing illegal or invalid in a Magistrate of the Third Class proceeding to enquire into a complaint which was not instituted in his Court but sent to him under S. 192, or S. 528 even if after hearing the prosecution case he has to come to the conclusion that a case has been made out which he himself could not try. There is specific provision in S. 346 which provides for such cases and its existence of this very provision by itself implies that a Subordinate Magistrate can legally enquire into a serious offence up to the stage at which the question of charge or discharge has to be decided. S. 201 is not a bar to the hearing of the case by the Naib-Tahsildar. *Painda v. Gulab Khalun.*

40 Cr. L. J. 515 :
181 I. C. 49 : I. L. R. 1938 Lah. 619 :
41 P. L. R. 221 : 11 R. L. 734 :
A. I. R. 1939 Lah. 122.

———Ss. 201, 530—*Scope.*

S. 201, Cr. P. C., does not cover the case of a Magistrate who is entitled to take cognizance of some of the charges named in the complaint, but is not entitled to take cognizance of a charge not named in the complaint, but which could possibly be made out from the allegations in the complaint. *Sirpat Rai v. Emperor.*

32 Cr. L. J. 360 :
129 I. C. 257 : I. R. 1931 All. 129 :
1930 A. L. J. 1422 : A. I. R. 1931 All. 10.

———S. 202.

See also (i) Cr. P. C. 1898, Ss. 4 (b),
4 (k) 96, 107, 156, 164,
167, 174, 176, 192, 195,
200, 201, 202, 203, 204,
436, 439.

(ii) Criminal trial.

———S. 202.

———Admission.
———Applicability.
———Cross-complaints.
———Cross-examination by Magistrate.
———Dismissal of complaint.

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———Duty of Magistrate.
———Evidence.
———Examination of complainant.
———Fresh complaint.
———Further enquiry.
———Granting of copies.
———Inquiry.
———Investigation.
———Irregularity.
———Issue of process.
———Jurisdiction.
———Local inquiry.
———Local investigation.
———Non-compliance.
———Notice.
———Object.
———Personal knowledge of Complainant—
Duty of Magistrate.
———Police report.
———Procedure.
———Postponement.
———Revision.
———Scope.
———Statement of accused.
———Transfer.

———S. 202—*Admission.*

Admission made by the parties in proceedings under S. 202, are relevant provided they are duly proved. *Rahmt v. Mundu.*

149 I. C. 982 (1) : 6 R. L. 774 (1) :
A. I. R. 1934 Lah. 286.

———S. 202—*Applicability to proceedings under S. 107.*

Application under S. 107, Cr. P. C. is not governed by Ss. 202 and 203. *Hari Singh v. Jagta.*

29 Cr. L. J. 666 :
111 I. C. 450 : 29 P. L. R. 666 :
A. I. R. 1928 Lah. 694.

———S. 202 — *Applicability — Application under S. 488, if can be sent for report.*

An application under S. 488 is not a complaint and cannot therefore be sent under S. 202 for report. *Makhan Singh v. Harnamo.*

29 Cr. L. J. 909 :
111 I. C. 669.

———S. 202—*Applicability.*

S. 202 applies only if the Magistrate takes cognizance upon complaint. *Imperator v. Shoukatmal.*

14 Cr. L. J. 600 :
21 I. C. 472 : 7 S. L. R. 75.

———Ss. 202, 476—*Complainant not allowed to produce his evidence—Order for prosecution based on preliminary investigation—Failure of Magistrate to record his reasons—Order, whether justified—Penal Code, S. 211.*

Where a Magistrate did not himself give any reasons for holding that a complaint was false and did not record any evidence

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except the statement of the complainant, and proceeding entirely upon the result of the investigation, under S. 202 of the Cr. P. C., ordered the prosecution of the complainant under S. 211 of the Penal Code: *Held*, that the order could not be sustained. *Maqbul Ahmad v. Emperor*. 20 Cr. L. J. 815 : 53 I. C. 719 : A. I. R. 1919 Lah. 37.

—————**S. 202—Cross-complaints — Priority—Postponement of process.**

S. 202 gives the Magistrate a power to postpone the issue of process. Where there is a complaint for adultery and a counter-complaint by the accused for defamation for having called the accused an adulterer: *Held*, that it would be better to dispose of the charge of adultery first. *Allahdino v. Emperor*. 34 Cr. L. J. 891 : 144 I. C. 943 : 6 R. S. 23 : A. I. R. 1933 Sind 254.

—————**S. 202—Cross-examination by Magistrate.**

The hands of the inquiry Magistrate are not tied in the matter of questioning the witnesses when they are produced under S. 202. It would be dangerous to lay down hard and fast rules as to how far the Magistrate should go in trying to elicit the truth from the witnesses when he is conducting an enquiry behind the back of the accused. It is commendable on the part of the Magistrate to show keenness in finding out the truth or falsity of the case before he gives the accused person the trouble of appearing before him in response to a criminal charge. Therefore, the anxiety of the trial Magistrate to get at the truth and his intensive cross-examination of the witnesses for that purpose are no grounds in law for directing a further inquiry. *Gul Mohammad v. Habibullah Karim Ullah*. 40 Cr. L. J. 674 : 182 I. C. 522 : 12 R. Pesh. 1 : A. I. R. 1939 Pesh. 16.

—————**Ss. 202, 203—Dismissal of complaint—By whom competent.**

Where a complaint was lodged before and the complainant was examined by a Deputy Magistrate, but the papers were laid before the District Magistrate and he dismissed the complaint: *Held*, that the order of dismissal was wrong. *Haladhar Bhumij v. Sub-Inspector of Police*. 2 Cr. L. J. 51 : 9 C. W. N. 199.

—————**Ss. 202, 203—Dismissal of complaint—District Magistrate's power to order trial.**

Where an Honorary Magistrate examined a number of witnesses under S. 202, and dismissed the complaint under S. 203 on the ground that it was a matter for the Civil Court and the District Magistrate allowing the motion, set aside the order of dismissal and ordered that the accused be placed on his trial before a competent Court: *Held*, that the order of the District Magistrate

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was not illegal. *Ramji Gujrati v. Emperor*. 32 Cr. L. J. 548 : 130 I. C. 529 : I. R. 1931 Pat. 177 : 12 O. L. T. 729 : A. I. R. 1931 Pat. 50.

—————**S. 202—Dismissal of complaint.**

Issue of notice without issue of process on complaint — Accused admitting facts but pleading protection under Ss. 76 and 79, I. P. C.—Magistrate cannot accept plea and discharge notice and dismiss complaint, *Emperor v. J. A. Finan*. 33 Cr. L. J. 72 : 134 I. C. 1233 : 33 Bom. L. R. 1182 : 55 Bom. 770 : I. R. 1932 Bom. 17 : A. I. R. 1931 Bom. 524.

—————**S. 202—Dismissal of complaint.**

Magistrate dismissing complaint as false and filing complaint under S. 211, Penal Code need not give opportunity to complainant to substantiate his case before process issues. *Mahabir Baitha v. Emperor*. 32 Cr. L. J. 1023 : 133 I. C. 172 : 12 P. L. T. 710 : I. R. 1931 Pat. 332 : A. I. R. 1931 Pat. 302.

—————**S. 202—Dismissal of complaint.**

The reasons for dismissing a complaint should be based on inferences or facts arising from or disclosed by (1) the complaint; (2) the examination of the complainant; (3) the investigation, if any, made under the powers conferred by S. 202. This provides a wide field. Anything outside it is extrajudicial and must be discarded. *Mustafa v. Moti Lal*. 6 Cr. L. J. 85 : 9 Bom. L. R. 742.

—————**Ss. 202, 203—Dismissal of complaint upon Police report of local investigation without hearing evidence—Dismissal, whether justified.**

In dealing with a complaint against a Police Officer, a Magistrate does not exercise a proper discretion in dismissing it under S. 203 on the mere report of a local investigation by a superior officer of Police; he should himself hear the witnesses on whom the complainant relies to establish the truth of his allegation, and give his best consideration to their statements, along with the report of the local investigation. *Harihar Prasad v. Emperor*. 21 Cr. L. J. 343 (b) : 55 I. C. 679 : A. I. R. 1920 All. 77.

—————**S. 202—Duty of Magistrate.**

In determining whether he should exercise his criminal jurisdiction, a Magistrate should apply his mind to see if there is "prima facie" evidence for the alleged offender to answer" irrespective of what the motive of the complainant was. *Crowder v. Morrison*. 27 Cr. L. J. 711 : 94 I. C. 903 : A. I. R. 1926 Sind 194.

—————**S. 202, 203—Duty of Magistrate—Complaint, delay in passing orders on.**

Orders should be passed expeditiously by Magistrates on complaints presented to them. It is, in the highest degree, improper to delay

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orders for months. *Salimullah v. Birjhan Singh*. 18 Cr. L. J. 271 : 37 I. C. 639 : A. I. R. 1917 All. 95.

———Ss. 202, 476—Evidence—Prosecution on evidence recorded under S. 202, legality of.

S. 476 is wide enough to cover the consideration of other than legal evidence and a prosecution can legally be directed upon evidence recorded under S. 202. *Bansidhar Marwari v. Emperor*. 24 Cr. L. J. 862 : 74 I. C. 1054 : A. I. R. 1924 Pat. 138.

———S. 202—Examination of complainant, absence of—Preliminary enquiry, legality of.

Unless a complainant is duly examined, an inquiry and report under S. 202, cannot be called for, and if made, are made without jurisdiction and cannot form the basis of any further action. A complainant cannot be prosecuted in respect of a complaint, in which he has not been duly examined, though the complaint has been dismissed upon inquiry and report ostensibly called for under S. 202. *Ali Mohammad v. Emperor*. 12 Cr. L. J. 539 : 12 I. C. 515 : 2 P. R. 1912 Cr. : 11 P. L. R. 1912.

———S. 202—Examination of complainant—Omission—Effect.

A Magistrate has no jurisdiction to dispose of a complaint without examining the complainant on oath antecedent to ordering an enquiry under S. 202, nor can this primary absence of jurisdiction be cured by examining the complainant subsequent to the enquiry. *Eqbal Khan v. Emperor*. 20 Cr. L. J. 413 (b) : 51 I. C. 173 : A. I. R. 1919 Pat. 319.

———S. 202 proviso—Examination of complainant—Reference to Police for inquiry—Magistrate, duty of.

Under the proviso to S. 202, a complaint cannot be sent for inquiry to the Police unless the complainant has been examined on oath under the provision of S. 200. The Court must think out for itself after the examination of the complainant, whether the complaint is true or false. Such a decision cannot be left by it to some other Court or Police authority. *Rekha Chammur v. Emperor*. 26 Cr. L. J. 176 : 83 I. C. 736 : A. I. R. 1924 All. 664.

———S. 202—Fresh complaint.

Magistrate directing inquiry of cognizable offence by Police—Charge-sheet for same offence can be put up by Police. *Atmaram v. Emperor*. 35 Cr. L. J. 891 :

148 I. C. 985 : 6 R. S. 220 : A. I. R. 1934 Sind 20.

———S. 202—Fresh complaint.

Where the previous complaint was dismissed after due inquiry, a fresh complaint based on the same facts should not be entertained. *Chaman Lal v. Emperor*. 37 Cr. L. J. 427 : 161 I. C. 308 : 38 P. L. R. 746 : 8 R. L. 716 : A. I. R. 1936 Lah. 47.

———S. 202—Further inquiry, nature of—Sessions Judge, powers of.

Sessions Judge ordering further inquiry into a

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case is restricted to making an order for inquiry of the same nature as that which has already been made. Therefore, a Sessions Judge ordering a further inquiry in respect of a complaint which has been dealt with by the Magistrate under S. 202, cannot direct the accused to be summoned. *Bachoo Mia v. Anwar Nabi*. 26 Cr. L. J. 305 :

84 I. C. 449 : 30 C. W. N. 312 : A. I. R. 1925 Cal. 576.

———Ss. 202, 203—Further inquiry—Case made over to another Magistrate—Jurisdiction of Magistrate to try case.

A complaint was dismissed by a Sub-Divisional Magistrate under S. 203. The Sessions Judge directed further inquiry into the matter by the Sub-Divisional Magistrate, but on the application of the complainant, the High Court directed that the further inquiry should be held by a competent Magistrate, other than the Sub-Divisional Magistrate, to whom the District Magistrate may make over the case. The District Magistrate made over the case to another Magistrate : Held, that the Magistrate to whom the case had been made over by the District Magistrate was competent to try and dispose of the case and was not merely meant to make an inquiry under S. 202 (1) and to report the result of the inquiry to the District Magistrate. *Madhu Sudan Dev v. Panu Parhi*. 27 Cr. L. J. 855 :

95 I. C. 935 : 7 P. L. T. 420 : A. I. R. 1926 Pat. 358.

———S. 202—Granting of Copies.

Report of Police under S. 202 being part of record, accused has a right to its copy. *M. Muthukumara Pillai v. Emperor*. 32 Cr. L. J. 689 (2) :

131 I. C. 174 (2) : 1931 M. W. N. 325 :

33 L. W. 570 : 4 Mad. Cr. Cas. 218 : I. R. 1931 Mad. 510 : A. I. R. 1931 Mad. 429.

———S. 202—Inquiry—Accused's power to cross-examine.

When a man files a complaint and supports it by his oath, rendering himself liable to prosecution and imprisonment if it is false, he is entitled to be believed, unless there is some apparent reason for disbelieving him, and he is entitled to have the persons, against whom he complains, brought before the Court and tried. Therefore, in inquiries under S. 202 of the Cr. P. C., the accused should not be allowed to cross-examine the complainant's witnesses. *Bhim Lal Shah v. Bisu Singh*. 14 Cr. L. J. 57 :

18 I. C. 345 : 17 C. W. N. 290 : 40 Cal. 444.

———S. 202—Inquiry—Accused, right of, to appear.

Proceedings under S. 202 are not proceedings *inter partes*. They are instituted and conducted by a Magistrate in order that he may be able to satisfy himself whether there is any ground for issuing process and it is not until process is issued that the matter becomes a case. An accused person, therefore, has no right to be present while a Magistrate is holding an inquiry under that

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section. It may often be a matter of convenience both to allow the accused to be present and to allow any legal adviser to watch the proceedings. But the grant of such a concession is on the part of the Magistrate a mere act of the grace and the accused has no innate right to it. It is, however, irregular to allow legal advisers of persons against whom there is a complaint to cross-examine witnesses or to allow legal advisers of complainant to examine witnesses in such proceedings. *Almaram Udhowdas v. Topandas*.

27 Cr. L. J. 494 :
93 I. C. 894 : 20 S. L. R. 43 :
A. I. R. 1926 Sind 188.

————S. 202—*Inquiry—Accused, whether can be heard.*

In a preliminary inquiry under S. 202, the Magistrate should not hear the argument of the accused. *Bachoo Mia v. Anwar Nabi*.

26 Cr. L. J. 305 :
84 I. C. 449 : 30 C. W. N. 312 :
A. I. R. 1925 Cal. 576.

————S. 202—*Inquiry—Bona fides of Police impugned in complaint—Magistrate sending it for 'report' by Police Officer—Legality.*

The action of the Magistrate in sending for 'report' by a Police Officer a complaint in which the *bona fides* of the Police are impugned is not illegal under the statute. *Kanja Ram v. Chanan Mal*.

41 Cr. L. J. 618 :
188 I. C. 524 : 42 P. L. R. 144 :
13 R. L. 33 : A. I. R. 1940 Lah. 208.

————S. 202—*Inquiry by Magistrate himself, necessity of.*

Where a person accused of a criminal offence is a member of the Police force, it is desirable that the inquiry should be conducted by the Magistrate himself. *Mahadei v. Ram Sahai*.

20 Cr. L. J. 728 :
52 I. C. 888 : 6 O. L. J. 325 :
22 O. C. 321 : 2 U. P. L. R. (J. C.) 36 :
A. I. R. 1919 Oudh 395.

————S. 202—*Inquiry by Police—Discretion of Magistrate—Revision.*

It is entirely in the discretion of the Magistrate whether or not he would send the case to the Police for inquiry and report under S. 202, the High Court will not interfere with the discretion exercised. *U Po Yone v. Emperor*.

34 Cr. L. J. 1185 :
146 I. C. 196 : 6 R. Rang. 78 :
A. I. R. 1933 Rang. 271.

————S. 202—*Inquiry—Inquiry by Police Officer—Magistrate precluded from making inquiry himself.*

When a Magistrate has once acted under S. 202 and ordered an investigation by a person other than himself, he is precluded from following up the latter's local investigation by an inquiry in the absence of the accused. *Ram Pershad v. Moti*.

14 Cr. L. J. 493 :
20 I. C. 749 : 11 A. L. J. 754.

————S. 202—*Inquiry—Complaint against Police Officer—Investigation, method of.*

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Where a complaint is made against an Officer of Police, the Magistrate should himself conduct the investigation, and not refer the matter for investigation to the superior Officer of the accused. *Shama v. Ejaz Ahmad*.

21 Cr. L. J. 649 :
57 I. C. 665 : 2 U. P. L. R. A. 177 (A) :
18 A. L. J. 731 : A. I. R. 1920 All. 91.

————S. 202—*Inquiry—Complaint against some jointly—Processes against some—Preliminary enquiry under S. 202 in respect of one—Legality.*

If a complaint is made against some three individuals jointly, the fact that the Magistrate has issued processes against two of the accused persons, would not deprive him of his power to make a preliminary enquiry in respect of the offence alleged against the third accused under S. 202. *Haroon v. Gajadhar Sukhdeo Marwari*.

41 Cr. L. J. 312 :
186 I. C. 459 : 1940 N. L. J. 43 :
12 R. N. 228 : A. I. R. 1940 Nag. 128.

————S. 202—*Inquiry—Complaint against Police Officer.*

Whenever such a course is possible, upon a complaint being made against a Police Officer of the rank of Sub-Inspector or of a higher rank charging him with having committed a cognizable offence, the Magistrate should hold an immediate local enquiry himself or direct that a local enquiry be made by a Magistrate of the first class and the Magistrate should proceed to the spot without delay. *Narain Singh v. Emperor*.

20 Cr. L. J. 396 :
50 I. C. 1004 : A. I. R. 1919 Pat. 495.

————S. 202—*Inquiry—Complaint referred by a superior Magistrate to a subordinate Magistrate for investigation—Subordinate Magistrate power of to administer oath.*

Where a Special Assistant Magistrate refers a complaint, under S. 202, Cr. P. C., to a subordinate Magistrate for investigation, the latter Magistrate is competent to administer oath to parties, and any party giving false evidence in such investigation is liable to be convicted under S. 193, Penal Code. *The Public Prosecutor v. Palliyathodi Rayan*.

1 Cr. L. J. 118 :
3 L. D. R. 1.

————S. 202—*Inquiry—District Magistrate's power to direct enquiry by Magistrate, 1st Class.*

S. 202 does not apparently contemplate the subordination of a Magistrate of the first class to the District Magistrate. They are both Magistrates of the first class and it would seem that the District Magistrate, as a Magistrate of the first class, is not competent to direct another Magistrate of the first class to make inquiry under that section. *Ali Muhammad v. Emperor*.

12 Cr. L. J. 539 :
12 I. C. 515 : 12 P. R. 1912 Cr. :
11 P. L. R. 1919.

————S. 202—*Inquiry—Failure to wait for report—Summoning accused—Magistrate instead of waiting for report, ordering issue of summons—Order is liable to be set aside.*

Where a Magistrate distrusting the truth of a complaint, directed an investigation under

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S. 202 but instead of waiting for the report, issued summons against the petitioner under S. 323, I. P. C., as he thought that the case could no longer be kept pending: *Held*, that the order was not regular and should be set aside, as the action of the Magistrate was not the result of a proper exercise of judicial discretion on his part. *Krishna Bala Dasi v. Niroda Bala Dasi*.

41 Cr. L. J. 170 :

A. I. R. 1925 Cal. 989.

—————**S. 202—Inquiry, function of.**

Inquiry under S. 202 cannot supersede regular trial. *Emperor v. J. A. Finan*.

33 Cr. L. J. 72 :

134 I. C. 1233 : 33 Bom. L. R. 1182 :

55 Bom. 770 :

I. R. 1932 Bom. 17 :

A. I. R. 1931 Bom. 524.

—————**S. 202—Inquiry—Importing of personal knowledge.**

There is nothing which prohibits a person to whom a complaint is sent for enquiry under S. 202, from importing his own personal knowledge into it or examining witnesses whom he knows to be able to throw light on the matter. *In re : Nagi Reddy*.

30 Cr. L. J. 1160 :

120 I. C. 69 :

I. R. 1929 Mad. 1020.

—————**S. 202—Inquiry.**

In proper cases there is nothing illegal in calling the accused to an enquiry. *Mahabir Baith v. Emperor*.

32 Cr. L. J. 1023 :

12 P. L. T. 710 : I. R. 1931 Pat. 332 :

A. I. R. 1931 Pat. 302.

—————**S. 202—Inquiry—Inquiry by Magistrate as well as Police.**

A Magistrate proceeding under S. 202 is not entitled to enquire into the case himself and also to authorise a previous local investigation by a Police Officer. *Madho Gir v. Rashid Ahmad*.

18 Cr. L. J. 765 :

41 I. C. 141 : 15 A. L. J. 642 :

A. I. R. 1917 All. 91.

—————**S. 202—Inquiry — Investigation by Police.**

A Magistrate should not ordinarily refer complaint to police specially when it is against individual alleging collusion with Police Officer. He should himself investigate into the matter. *Mahliomal Dansing v. Gianchand Salamatrai*.

35 Cr. L. J. 24 :

146 I. C. 263 : 27 S. L. R. 387 :

6 R. S. 61 (2) :

A. I. R. 1933 Sind 339.

—————**S. 202—Inquiry—Magistrate's power to call upon the accused to show cause.**

A Magistrate having jurisdiction to ascertain the truth of a complaint, before issuing process under S. 202 may, before issuing it, take any preliminary steps for finding out whether the complaint is true or false. He may call upon the accused to show cause

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why a process should not issue against him. *In re : Tukaram Udham*.

1 Cr. L. J. 102 :

6 Bom. L. R. 91.

—————**S. 202—Inquiry—Magistrate, whether bound to examine witnesses before dismissing complaint.**

After receiving the result of the local investigation directed under S. 202, the Magistrate is not bound to examine any witnesses or to hold any enquiry before he dismisses the complaint. *Munshi Mian v. Emperor*.

19 Cr. L. J. 126 :

43 I. C. 414 : A. I. R. 1918 Pat. 172.

—————**S. 202—Inquiry, mode of—Accused member of Police—Accused a member of Police—Investigation by Police, legality of.**

Sending a case to Police for investigation is not desirable where the accused is a member of the Police. *Jogindar Singh v. Aga Safdar Ali Khan*.

29 Cr. L. J. 958 :

111 I. C. 878 : A. I. R. 1928 Lah. 88.

—————**S. 202—Inquiry, mode of Preliminary inquiry, how to be conducted—Local investigation.**

The inquiry contemplated by S. 202 must be conducted by the Magistrate personally. He cannot pass the case on to another for inquiry unless it is one for local investigation. *Baij Nath v. Raja Ram*.

13 Cr. L. J. 704 :

16 I. C. 512 : 10 A. L. J. 79.

—————**S. 202—Inquiry, nature of.**

Dilatory and protracted proceedings in an enquiry under S. 202 are to be deprecated. It was never intended that such an enquiry should be dragged out for months. *Ajit Nath Das v. Satish Chandra Kayal*.

40 Cr. L. J. 213 :

179 I. C. 489 : 67 C. L. J. 577 :

11 R. C. 549 : A. I. R. 1939 Cal. 33.

—————**S. 202—Inquiry—Opportunity to accused to appear.**

Though what is ordinarily contemplated by S. 202 is merely a preliminary examination of the complainant and his witnesses or such of them as the Magistrate wishes to examine in the absence of the accused, it is not illegal, if the Magistrate deems it desirable for the purpose of his enquiry, to give the accused an opportunity of appearing before him and stating what he has to say about the accusation and even to accept and consider documentary evidence which the accused may produce. *In re : Virbhan Bhagaji*.

29 Cr. L. J. 975 :

112 I. C. 63 : 30 Bom. L. R. 642 :

52 Bom. 448 :

A. I. R. 1928 Bom. 290.

—————**S. 202—Inquiry—Order for investigation by Police Officer without recording reasons—Irregularity—Revision.**

Where on a complaint, a Magistrate directed a previous local investigation to be made by a Police Officer without recording his reasons under S. 202, and on the report of the investigation, allowed the accused to be represented by a Pleader to argue the points which arose in the case and to put in a detailed statement of the points and the facts upon which the

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defence relied and then dismissed the complaint: *Held*, that the procedure adopted by the Magistrate was quite inconsistent with the scheme of the Cr. P. C., and that although it was discretionary with the High Court to set aside or not the order of dismissal in such a case, the order must be set aside and the matter must go back to a different Magistrate for disposal in accordance with law. *Balai Lal Mookerjee v. Pashupati Chatterjee*.

17 Cr. L. J. 396 :
35 I. C. 828 : 21 C. W. N. 127 :
A. I. R. 1917 Cal. 462.

S. 202—Inquiry—Police inquiry, scope of—Magistrate, duty of.

The Police enquiry contemplated by S. 202 cannot take the place of such evidence as the complainant may desire to produce before an adjudication is made of his complaint. Such an enquiry can be ordered before evidence is recorded to enable the Magistrate to determine how far the complaint was *prima facie* well-founded. When the Magistrate decides to record the evidence himself, he should complete the enquiry and determine upon the evidence adduced how far the complaint is borne out. *Mahadei v. Ram Sahai*.

20 Cr. L. J. 728 :
52 I. C. 888 : 6 O. L. J. 325 :
22 O. C. 321 : 2 U. P. L. (J. C.) 36 :
A. I. R. 1919 Oudh 395.

S. 202—Inquiry—Police investigation—Report, use of.

A Magistrate is entitled after taking cognizance of complaint to order a Police investigation and to take that investigation into consideration when considering under what sections the accused should be put on their trial. *Naubat v. Emperor*.

28 Cr. L. J. 140 :
99 I. C. 348 : A. I. R. 1927 All. 136.

S. 202—Inquiry—Power of Magistrate.

A Magistrate is competent to hold an enquiry into a complaint of an offence under S. 202, Cr. P. C., to ascertain whether there is sufficient foundation to issue process against the person or persons complained against. *Gulab Khan v. Ghulam Mohammad Khan*.

20 Cr. L. J. 26 :
99 I. C. 58 : 8 L. L. J. 524 :
27 P. L. R. 779 :
A. I. R. 1927 Lah. 30.

S. 202—Inquiry—Preliminary inquiry into complaint—Complainant producing some evidence—Magistrate's duty to summon accused.

There is no warrant for the proposition that if any person, makes a complaint against an accused person, the Magistrate is bound to summon the accused if there is any evidence to support the complaint even though the Magistrate finds that evidence unsatisfactory and believes the complaint to be false. *Inayat Hasain v. Emperor*.

30 Cr. L. J. 631 :
116 I. C. 494 : I. R. 1929 All. 590 :
A. I. R. 1928 All. 684.

S. 202—Inquiry—Preliminary inquiry, when necessary.

Where upon a complaint it is doubtful whether

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an offence has been committed, the Magistrate should hold an inquiry under S. 202 before summoning the accused to ascertain whether a *prima facie* case has been made out and the accused should be summoned or not. *Gowkaran Lal v. Sarju Sarv*.

21 Cr. L. J. 519 :
56 I. C. 775 : 1 P. L. T. 200 :
1921 Pat. 31 : 3 U. P. L. R. Pat. 9 :
A. I. R. 1921 Pat. 85.

S. 202—Inquiry—Right of accused to appear.

Enquiry is not necessarily limited to preliminary examination of complainant and his witnesses. Accused may be allowed to be present or called to the enquiry in Court. *Goverdhandas v. Emperor*.

35 Cr. L. J. 1239 :
151 I. C. 108 : 1934 O. L. R. 673 :
11 O. W. N. 822 : 7 R. O. 84 :
A. I. R. 1934 Oudh 372.

S. 202—Inquiry—Right of accused to appear.

It is not right for a Court in a judicial enquiry, before process has been issued against the accused, to allow the latter to attend at the preliminary enquiry and cross-examine prosecution witnesses. *Mushari Ram Manhasi v. Raj Kishore Lal*.

19 Cr. L. J. 527 :
4 P. L. W. 307 : A. I. R. 1918 Pat. 652 :
45 I. C. 287.

S. 202—Inquiry—Right of accused to appear.

In enquiries under S. 202, the accused has no right to be present. *S. D. Vardon v. R. Harsey*.

36 Cr. L. J. 75 :
153 I. C. 344 : 7 R. Rang. 147 :
A. I. R. 1935 Rang. 167.

S. 202—Inquiry—Sending notice to accused, legality of—Duty of Magistrates to record proper order after enquiry.

A Magistrate when he passes an order after a preliminary inquiry should say plainly either that he dismisses the complaint, or that he thinks that there is ground for proceeding, and, therefore, directs the issue of a summons or a warrant as the case may be. The practice of saying notice is discharged is objectionable. *In re : Virbhan Bhagaji*.

29 Cr. L. J. 975 :
112 I. C. 63 : 30 B. L. Rom. 642 :
52 Bom. 448 : A. I. R. 1928 Bom. 290.

S. 202—Inquiry—"Watching proceedings," meaning of.

If any person interested in any legal proceeding is admitted to watch or applies to watch such a proceeding, the term "watch" does not mean that of a mere on-looker for idle curiosity, but it means instructing of legal practitioners to watch the case on behalf of the alleged offender and with the leave of the Court to assist the Court in making the preliminary investigation. Therefore, a person with regard to whom a preliminary inquiry is being held under S. 202, should be admitted to watch the proceedings, and his representative, if an Advocate or Pleader, should be allowed to act as *amicus curiae*. *Sheikh Akbar v. Prance*.

12 Cr. L. J. 207 :
10 I. C. 33.

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———S. 202—*Inquiry, when ordered.*

Ss. 202 and 259—Complaint under Ss. 406, 471 and 109, I. P. C.—Process issued to accused and date fixed—Application by complainant to refer matter to police dismissed—Complainant absent on date of hearing—Accused discharged under S. 259—Fresh complaint on same facts with prayer that case should be referred to Police—Prayer granted by Magistrate : *Held*, order of discharge was illegal and granting prayer in fresh complaint was not proper—Under S. 202 complainant has no rights or privileges to require Court to refer case to Police. *Emperor v. Morarji Jivraj.*

36 Cr. L. J. 483 :
154 I. C. 325 : 36 Bom. 1213 :
59 Bom. 171 : 7 R. B. 305 :
A. I. R. 1935 Bom. 76.

———S. 202—*Inquiry, when necessary.*

Where, upon complaint, it is doubtful whether an offence is committed, the Magistrate should hold an inquiry under S. 202, Cr. P. C., before summoning the accused to ascertain whether a *prima facie* case has been made out and the accused should be summoned. *Gowkaran Lal v. Sarju Saw.*

21 Cr. L. J. 519 :
56 I. C. 775 : 1 P. L. T. 200 :
1921 Pat. 31 : 3 U. P. L. R. Pat. 9.
A. I. R. 1921 Pat. 85.

———Ss. 202, 203—*Inquiry—Calling on accused to show cause against issuing process, legality of—Discharge of accused—Further enquiry when to be ordered.*

It is incongruous to call on a person accused of an offence, to show cause against process being issued against him when proceedings under S. 202 are in contemplation. Further enquiry after discharge is improper unless the order of discharge is manifestly perverse or foolish or is based upon a record of evidence which is obviously incomplete. *Moti Lal v. Emperor.*

29 Cr. L. J. 39 :
106 I. C. 455 : 9 L. L. J. 508 :
1 L. T. 40 Lah. 46 : A. I. R. 1928 Lah. 97.

———Ss. 202, 203—*Inquiry—Deposition of witnesses, whether must be recorded—Dismissal of complaint—Irregularity.*

The complainant lodged an information with the Police that the opposite party had committed the offence of rioting, theft and grievous hurt. The Police recorded the statement of witnesses produced by the complainant in support of his information but declined to send up the case holding the occurrence to be an affray under S. 160, Penal Code, which is a non-cognizable offence. The complainant then made complaint in Court and the Magistrate held an inquiry under S. 202, Cr. P. C. Before the Magistrate, the complainant's witnesses repeated what they had stated to the Police and the Magistrate did not record their statements and eventually dismissed the complaint under S. 203, Cr. P. C. On revision : *Held*, (1) that the Cr. P. C. makes no provision with regard to the manner in which the evidence in an inquiry under S. 202, should be recorded and that although ordinarily a summary of the statements of the witnesses produced in such inquiry should be made for further reference, there was no practical difficulty in the present case inasmuch as the

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statements of the witnesses during the inquiry were the same as those which they had made before the Police : (2) the Magistrate had not been guilty of any error of law and his order was not, therefore, liable to be set aside. *Tilakdhari Singh v. Misri Singh.*

26 Cr. L. J. 1346 :
89 I. C. 386 : 3 Pat. L. R. 70 Cr. :
A. I. R. 1925 Pat. 584.

———Ss. 202, 203—*Inquiry, order for, without recording reasons—Accused allowed to be present.*

A Magistrate should not defer the issue of process and order an inquiry under S. 202, without recording the reasons ; and it is undesirable that the inquiry under that section should be prolonged by cross-examination of complainant's witnesses and arguments *inter partes*, the reason being that if this is necessary, it is obviously advisable to follow the procedure of the trial, and for that purpose, to issue process at once. At the same time, if a Magistrate having the duty of making an inquiry under S. 202, can make his enquiry more complete and can inform himself of the facts more fully by having the accused in Court, there is no reason either in common sense or in law why the accused should not be called to inquiry. *Ram Saran Singh v. Mohammad Jan Khan.*

26 Cr. L. J. 1394 :
89 I. C. 706 : 7 P. L. T. 36 :
A. I. R. 1926 Pat. 34.

———Ss. 202, 203—*Inquiry—Penal Code, S. 211—Complaint against Police Officer—Investigation—Complaint dismissed without complainant's evidence—Complainant, prosecution of.*

Where a complaint is made against an Officer of Police, it is improper to direct another Police Officer to conduct the investigation ; the investigation should be conducted by the Magistrate receiving the complaint or by some other Magistrate. When a complaint is dismissed upon the report of the Investigating Officer without taking the complainant's evidence, it is improper to direct the prosecution of the complainant under S. 211, Penal Code. *Mewa Lal v. Emperor.*

21 Cr. L. J. 416 :
56 I. C. 64 : 18 A. L. J. 620 :
2 U. P. L. R. All. 213 : A. I. R. 1920 All. 125.

———Ss. 202, 203, 252, 253—*Inquiry—Preliminary enquiry—Dismissal of complaint—Accused summoned—Complainant's evidence, necessity of recording.*

It is open to a Magistrate to hold an enquiry under S. 202 and to dismiss the complaint under S. 203. But if once he decides to summon the accused, the complainant must be heard and his witnesses examined. *Mehtab v. Nalhu.*

31 Cr. L. J. 481 :
123 I. C. 275 : 31 P. L. R. 204 :
A. I. R. 1930 Lah. 461.

———S. 202, 204—*Inquiry, if necessary.*

A Magistrate has full power, upon receipt of a complaint, to issue a summons to the person accused if he believes in the truth of the complaint. If he finds there are good grounds for proceeding, it is not necessary for him to call for an inquiry beforehand. *Abdul Khalique v. Surja Singh.*

21 Cr. L. J. 220 :
54 I. C. 1004 : A. I. R. 1920 Pat. 270.

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———Ss. 202, 340—*Inquiry—Accused, right of, to intervene—Accused, meaning of.*

A person against whom a complaint is preferred, does not become an “accused person” for the purposes of S. 340, until the Magistrate acting under Chapter XVI of the Code has decided to issue process against him. Consequently he is not entitled to intervene in a preliminary inquiry held under Sub-s. (1), S. 202, as if he were a party to the proceedings, though he may, if he chooses, watch them like any other member of the public. *Sheikh Chand v. Mohammad Hanif.* 3 Cr. L. J. 20 : 4 N. L. R. 81.

———S. 202, 476—*Inquiry—Accused right to appear and cross-examine witnesses—Sanction to prosecute—Directing prosecution under S. 476, Cr. P. C.—Order when to be made—Order by whom to be made.*

The petitioner complained against the opposite party of having committed certain offences. On this, the following order was passed on January 2, 1912—“Complainant to prove his case. Accused may cross-examine.” Subsequently the complaint was dismissed and the prosecution of the petitioner was ordered under S. 211, Penal Code. The case then came before the High Court which held that until the accused had been properly tried, the proceedings under S. 211 should be dropped. They were tried and acquitted by Mr. McGavin, Deputy Magistrate, on August 1. Another Deputy Magistrate on August 23, directed the prosecution of the petitioner under S. 476, Cr. P. C. The District Magistrate then observed that the order ought to be passed by Mr. McGavin who thereupon under S. 476, Cr. P. C. on September 16, ordered proceedings to be drawn up under S. 211, Penal Code: *Held*, that the order of January 2, 1912, was absolutely illegal; that if Mr. McGavin had thought that action ought to be taken under S. 476, Cr. P. C., he ought to have passed the order when he acquitted the accused; that the fact that he did not do so indicated very strongly that he did not at the time think it necessary and that the belated order of the 16th September did not represent his independent judicial opinion; and that as there was no judicial proceeding before the other Deputy Magistrate, his order of August 23, was altogether beyond his jurisdiction. *Bhim Lal Shaw v. Bisa Singh.* 14 Cr. L. J. 57 : 18 I. C. 345 : 17 C. W. N. 290 : 40 Cal. 444.

———Ss. 202, 476—*Inquiry—Prosecution of complainant as result of inquiry.*

Petitioner brought a charge of extortion against a Sub-Inspector of Police. The Magistrate recorded the complaint and held a local enquiry in which he examined nine witnesses for the prosecution and three for the accused. As a result of the enquiry he dismissed the complaint as false and directed that the complainant be prosecuted: *Held*, that the procedure adopted by the Magistrate was quite regular and legal. *Narain Singh v. Emperor.* 20 Cr. L. J. 396 : 50 I. C. 1004 : A. I. R. 1919 Pat. 495.

———S. 202—*Investigation partly by Magistrate and partly by Police, legality of.*

Where a Magistrate, instead of either disposing of the case himself or refusing it for

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investigation, partly investigated the matter himself and had it partly investigated by a Police Officer, and did not state in writing his reasons for referring the matter to the Police Officer: *Held*, that the procedure adopted by the Magistrate was not in accordance with the provisions of S. 202. *Jogindar Singh v. Aga Safdur Ali Khan.* 29 Cr. L. J. 958 : 111 I. C. 878 : A. I. R. 1928 Lah. 88.

———S. 202—*Investigation—“Local investigation,” meaning of.*

The local investigation referred to in S. 202 is not restricted to the investigation of the physical features only: it means an enquiry into the truth or falsity of the allegations made in the complaint petition. The word ‘local’ is used with a view to hold the investigation in the locality for the convenience of the parties and their witnesses, and it may also necessitate in certain cases an inspection of the place of occurrence. The word ‘investigation’ is not defined in the Code. It must be taken to have been used in its ordinary sense. *Munshi Mian v. Emperor.* 19 Cr. L. J. 126 : 43 I. C. 414 : A. I. R. 1918 Pat. 172.

———S. 202—*Investigation—Magistrate competent to make.*

Obiter.—The investigation allowed by S. 202, Cr. P. C., should be a local one, and the term “investigation” as defined in S. 4 (1) of the Code expressly excludes an enquiry by a Magistrate other than the one entertaining the complaint. *Devidin v. Narayanrao.* 21 Cr. L. J. 310 : 55 I. C. 470 : A. I. R. 1920 Nag. 64.

———S. 202—*Investigation, whether judicial proceeding.*

It is doubtful whether an investigation under S. 202 can be regarded as a judicial proceeding and may be used for supporting an order under S. 476. *Magbul Ahmad v. Emperor.* 20 Cr. L. J. 815 : 53 I. C. 719 : A. I. R. 1919 Lah. 37.

———S. 202—*Investigation—Revision—Interference.*

An inquiry or investigation under S. 202, is designed to afford the Magistrate an opportunity of either confirming or removing such hesitation as he may feel in respect of issuing process against the accused. The nature of the inquiry varies with the circumstances of each case and it is certainly not contemplated that it should always be exhaustive. Such an enquiry is not a preliminary trial of the accused at which he is entitled to adduce his evidence before process can issue upon him. The provision is enabling and not obligatory. The High Court will not ordinarily interfere with the details of an enquiry or investigation under S. 202, and particularly will not do so on the ground that it was inadequate. *Parmanand Brahmchari v. Emperor.* 30 Cr. L. J. 354 : 116 I. C. 46 : I. R. 1929 Pat. 286 : 10 P. L. T. 618 : A. I. R. 1930 Pat. 30.

———Ss. 202, 203—*Irregularity—Enquiry—Cross-examination of witnesses and arguments—Inquiry.*

Cross-examination of witnesses, and arguments are out of place in an enquiry into the truth of a complaint, but even

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these departures from the letter of the law are no more than an irregularity. *Pat Ram Saran Singh v. Mohammad Jan Khan.*

26 Cr. L. J. 1394 :
89 I. C. 706 : 7 P. L. T. 36 :
A. I. R. 1926 Pat. 34.

———S. 202—Issue of process—Accused's right to oppose.

Complainant asking for process to issue—Opposite party cannot appear and argue that it should not be issued—Complainant's statement is enough. *J. K. Sinha v. Hemanta Kumar.*

33 Cr. L. J. 636 :
138 I. C. 639 : 36 C. W. N. 674 :
I. R. 1932 Cal. 473 : A. I. R. 1932 Cal. 697.

———S. 202—Issue of process, failure to give reasons for postponement.

Failure to give reasons for postponing the issue of process against the accused as required by S. 202, is at the most an irregularity. *Ajoy Krishna Sarkar v. S. G. Bose.*

30 Cr. L. J. 705 :
116 I. C. 721 : 49 C. L. J. 164 :
33 C. W. N. 369 : I. R. 1929 Cal. 497 :
A. I. R. 1929 Cal. 176.

———S. 202—Issue of process—Discretion.

In determining whether process ought to issue, a Magistrate must proceed according to the provisions of the Code, and if, after carrying out the instructions therein contained, he is of opinion, upon the materials before him, that a *prima facie* case has been made out, he ought to issue process, and in such circumstances, he is not entitled to refuse to issue process merely because he thinks that it is unlikely that the proceedings will result in conviction. *Subal Chandra Namadas v. Ahadullah Sheikh.*

27 Cr. L. J. 788 :
95 I. C. 388 : 30 C. W. N. 546 :
53 Cal. 606 : 44 C. L. J. 114 :
A. I. R. 1926 Cal. 795.

———Ss. 202, 203—Issue of process—Discretion.

Under the Cr. P. C. a wide discretion is given to Magistrates with respects to the grant or refusal of process against accused person, and in the interests of the community generally, it is essential that Magistrates should be vested with an ample discretion in respect of the issue of process. This discretion should be exercised with caution and an accused person ought not to be dragged into Court to answer a charge merely because a complaint has been lodged against him. *Subal Chandra Namadas v. Ahadullah Sheikh.*

27 Cr. L. J. 788 :
95 I. C. 388 : 30 C. W. N. 546 :
53 Cal. 606 : 44 C. L. J. 114 :
A. I. R. 1926 Cal. 795.

———Ss. 202, 181 (2)—Jurisdiction—Complaint under Ss. 403, 417. Penal Code, jurisdiction.

A resident of Ghaziabad in the District of Meerut sent nine entries addressed to the *Illustrated Weekly of India*. Commonsense Cross Word, Bombay, with a postal order

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for Rs. 6 from the Post Office of Muzaffarnagar. The case of the complainant (*i. e.*, the competitor) was that the free-entry coupon No. 2 sent by the complainant tallied exactly with correct solution published by the accused but the prize of Rs. 25,000 payable to him was never paid. It was further alleged that the complainant sent in scrutiny claim for the re-examination of the solutions sent by him and also Rs. 5 as demanded by the accused. It was stated in the complaint that the accused did not send any reply to the inquiries made by the complainant. On these facts it was alleged that the accused had criminally misappropriated the sum of Rs. 6 sent by postal order as entry fee and the sum of Rs. 5 sent by M. O. as scrutiny fee and thereby committed an offence under S. 403, Penal Code. The complaint was filed in the Court of a Magistrate of the Second Class at Muzaffarnagar: *Held*, that even if it was assumed that the postal orders were received by the accused, the postal orders continued to be the property of the *Illustrated Weekly of India*. The delivery of the same to the accused was as an agent of the *Illustrated Weekly of India*. That being so, it could not be suggested that the accused received the letter containing the postal orders at Muzaffarnagar. The post office was the agent of the addressee and not of the accused. It might be, that the accused converted the postal orders to his own use, but the conversion and misappropriation was effected at Bombay and not at Muzaffarnagar. There was yet another reason why the Magistrate at Muzaffarnagar had no territorial jurisdiction. The complainant sent the postal orders to the *Illustrated Weekly* to be allowed to enter the competition. It followed that the intention of the complainant was that the money should be appropriated by the addressee. If the accused dishonestly and fraudulently misappropriated the money which was the property of the *Illustrated Weekly of India*, he deprived the addressee of the money and not the complainant. Whatever view might be taken, there could not be the least doubt that according to the allegations of the complainant, the misappropriation took place at Bombay and not at Muzaffarnagar. Hence the Magistrate at Muzaffarnagar had no territorial jurisdiction to try the case. *G. A. St. George v. Uma Dutt Sharma.*

40 Cr. L. J. 917 :
184 I. C. 313 : 1939 A. L. J. 574 :
12 R. A. 217 : I. L. R. 1939 All. 851 :
1939 A. W. R. 570 : A. I. R. 1939 All. 602.

———S. 202—Local inquiry—U. P. Village Panchayat Act (VI of 1920), S. 72.

A Magistrate is competent under S. 72 of the U. P. Village Panchayat Act to make a local inquiry into an offence or charge covered by S. 202, Cr. P. C. *Kadhori v. Emperor.*

27 Cr. L. J. 276 :
92 I. C. 452 : 24 A. L. J. 162 :
A. I. R. 1926 All. 193.

———S. 202—Local enquiry by subordinate Magistrate.

The language of S. 202 is consistent with the

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long-standing practice under which a Magistrate receiving a complaint refers it to a Subordinate Magistrate for local enquiry and report. *Amrit Majhi v. Emperor*. 20 Cr. L. J. 508 : 51 I. C. 668 : 29 C. L. J. 322 : 23 C. W. N. 623 : 46 Cal. 854 : A. I. R. 1919 Cal. 59.

—S. 202—Local investigation, function of.

A local investigation is not intended by the Legislature to supersede a regular trial. When it is found that there is evidence in support of the complainant's charge, the function of the officer making the local investigation is fulfilled. The process should then issue and the truth or falsity of the evidence determined in a regular manner. *Nga Tha Tu v. Emperor*.

12 Cr. L. J. 385 :
11 I. C. 249 : U. B. R. 1910 I, 73.

—S. 202—Local investigation.

Local investigation before issuing process can only be directed after the complainant has been examined by the Magistrate and reasons recorded. *Nga Tha Tu v. Emperor*.

12 Cr. L. J. 385 :
11 I. C. 249 : U. B. R. 1910 I, 73.

—S. 202—Notice to accused, legality of.

It is illegal for a Magistrate to call upon a person in the position of an accused person to report as to truth or falsity of a charge preferred against him. *Har Narain Hakwai v. Kariman Ahir*.

21 Cr. L. J. 621 (b) :
57 I. C. 285 : 5 P. L. J. 61 :
A. I. R. 1920 Pat. 655.

—S. 202—Notice to accused, not proper.

The procedure of calling upon an accused person to render explanation to enable the Magistrate to decide if he should issue process is undesirable. It is not fair to the accused that he should be called upon to state his defence before the prosecution have laid all their cards on the table. Though there is no obligation on him either to appear or to render an explanation in the preliminary inquiry, a refusal or failure on his part to attend in answer to a rule *nisi* issued by a Magistrate is likely to prejudice the mind of the Magistrate and a compliance therewith to expose him to serious risks. *Crowder v. Morrison*.

27 Cr. L. J. 711 :
94 I. C. 903 : A. I. R. 1926 Sind 194.

—S. 202—Object.

It is the policy of the law that a Court should proceed to inquire into and try the case as soon as it takes cognizance of a complaint, but it is not prevented by any provision of the law from postponing the inquiry or the trial if there are sufficient and reasonable grounds for so doing. *Ram Saran Singh v. Narain Singh*.

26 Cr. L. J. 1179 :
88 I. C. 603 : 6 P. L. T. 477 :
3 Pat. L. R. 134 Cr. : A. I. R. 1925 Pat. 619.

—S. 202—Object.

The object of S. 202 is to prevent the issue of process where there is some initial ground for doubting the truth of the complaint, and where on a local investigation, there appears to be no evidence to support it. *Nga Tha Tu v. Emperor*.

12 Cr. L. J. 385 :
11 I. C. 249 : U. B. R. 1910 I, 73.

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—S. 202—Object and scope.

Magistrate making order under S. 202 retains jurisdiction to pass order under S. 344. *Rewatamal Udhomal v. Sajjanmal Mehrumal*.

36 Cr. L. J. 94 :
152 I. C. 382 : 7 R. S. 89 :
A. I. R. 1934 Sind 143.

—S. 202—Complaint—Personal knowledge of complainant—Duty of Magistrate.

Complainant need not have personal knowledge of facts—Before issuing process, Magistrate should satisfy himself that case for issue of process has been made out. *S. W. Vardon v. R. Hearsey*.

36 Cr. L. J. 75 :
152 I. C. 344 : 7 R. Rang. 147 :
A. I. R. 1934 Rang. 167.

—S. 202—Police report—Magistrate's power to take report into consideration in directing summary trial.

There is nothing improper in a Magistrate being influenced by the Police report in directing a summary trial. *Naubat v. Emperor*.

28 Cr. L. J. 140 :
99 I. C. 348 : A. I. R. 1927 All. 136.

—S. 202—Procedure—Pending case—Power of District Magistrate.

A District Magistrate ought not to direct a Subordinate Magistrate in a case pending before that Magistrate to proceed to the spot and to make a report to him. If he considers that the Magistrate is for any reason not proceeding properly with the case, he should withdraw the case, proceed with it himself and take the responsibility upon his own shoulders. *Madho Gir v. Rashid Ahmad*.

18 Cr. L. J. 765 :
41 I. C. 141 : 15 A. L. J. 642 :
A. I. R. 1917 All. 91.

—S. 202—Procedure—Accused's right to state his case.

Opponent can be allowed to state his case under S. 202. *Rewatamal Udhomal v. Sajjanmal Mehrumal*.

36 Cr. L. J. 94 :
152 I. C. 382 : 7 R. S. 89 :
A. I. R. 1934 Sind 143.

—S. 202—Procedure.

Complaint before the Magistrate—Order for Police enquiry—Police is not debarred from sending charge-sheet in respect of the offence. *Emperor v. Ghulam Nabi*.

34 Cr. L. J. 763 :
144 I. C. 409 : 27 S. L. R. 67 :
I. R. 1933 Sind 185 :
A. I. R. 1933 Sind 136.

—S. 202—Procedure—Complaint, dismissal of—Right of accused to appear before issue of process.

Magistrate should follow the procedure clearly laid down in Chap. XVI of the Cr. P. C. dealing with complaints to Magistrates. A Magistrate who is not satisfied as to the truth of the complaint of an offence of which he is authorised to take cognizance, when he takes action under S. 202, must record his reasons. An accused person cannot be represented by a Pleader before a Magistrate to argue the

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points which arise in the case of a complaint, until the Magistrate has made up his mind to issue process for compelling his attendance.

Balai Lall Mookerjee v. Pashupati Chatterjee.

17 Cr. L. J. 396 :
35 I. C. 828 : 21 C. W. N. 127 :
A. I. R. 1917 Cal. 462.

—S. 202—*Procedure—Complaint—Magistrate calling for counter-evidence—Dismissal of complaint without giving complainant opportunity to meet such evidence, legality of.*

Where a Magistrate holding an inquiry under S. 202, has before him evidence opposed to the complainant's allegations, he should give opportunity to the complainant to explain or meet such evidence. It is not open to a Magistrate to reject a complaint holding that the accused acted under a *bona fide* claim of right and that, therefore, no offence was committed by him, merely on a perusal of records sent for him from the Police or a private individual. *MacCarthy v. Shannon.*

29 Cr. L. J. 48 :
106 I. C. 464 : I. L. T. 40 Mad. 238 :
A. I. R. 1928 Mad. 135.

—S. 202—*Procedure—District Magistrate sending case to Police for enquiry—His power to send case to another Magistrate—Order of transferee Magistrate summoning accused whether legal.*

When the District Magistrate acts under S. 202, and sends the case for inquiry and report to the Superintendent of Police, he can not, on receipt of the report, send the case for disposal to another Magistrate without deciding whether the case should be dismissed under S. 203 or proceeded with under S. 204. The Magistrate to whom the case is transferred thus having never been properly seized of the case, his order summoning the accused is without jurisdiction and must be set aside. *Santokh Raj Singh Sardar Gopal Singh v. Gahwar Khan Sultan Khan.*

41 Cr. L. J. 344 :
186 I. C. 595 : 41 P. L. R. 807 :
12 R. L. 423 : A. I. R. 1940 Lah. 61.

—S. 202—*Procedure, error of—Revision.*

An error of procedure does not vitiate a proceeding or an error passed, therein, unless it occasions a failure of justice. *Mushari Ram Manhari v. Raj Kishore Lal.*

19 Cr. L. J. 527 :
45 I. C. 287 : 4 P. L. W. 307 :
A. I. R. 1918 Pat. 652.

—S. 202—*Procedure—Examination of accused.*

A Magistrate acts beyond the scope of S. 202 in examining the accused before a *prima facie* case is made out against him. *Jagindar Singh v. Aga Safdar Ali Khan.*

29 Cr. L. J. 958 :
111 I. C. 878 : A. I. R. 1928 Lah. 88.

—S. 202—*Procedure—Magistrate—Inquiry—Local investigation.*

Under S. 202 a Magistrate, when not satisfied with the truth of a complaint has the option of only one out of two alternatives, viz. either to enquire into the case himself, or direct a previous local investigation. If he proceeds to enquire into the case himself, an order

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thereafter directing local investigation is irregular and the whole proceeding against the accused vitiated if a material portion of the irregular proceedings has a share in the formation of his judgment. *Emperor v. Durga Prasad.*

23 Cr. L. J. 279 :
66 I. C. 423 : 20 A. L. J. 355 :
44 All. 550 : A. I. R. 1922 All. 211.

—S. 202—*Procedure—Magistrate referring complaint to Police for investigation—Power of Police to challan accused.*

There is nothing in S. 202, which debars the Police from exercising their powers under S. 54, and arresting the accused, merely because the Magistrate had referred a case for investigation by them under S. 202. When a Magistrate has referred a complaint of an offence to the Police for investigation under S. 202, it is not competent to the Police to investigate the offence complained of independently of the Magistrate's directions and to send up the accused for trial for the offence complained of upon a charge-sheet. *Emperor v. Bikha Moti.* (F. B.)

39 Cr. L. J. 681 :
175 I. C. 899 : 11 R. S. 13 :
A. I. R. 1938 Sind 113.

—S. 202—*Procedure—Police only to report.*

On receiving information in a complaint forwarded under the section, the Police need do no more than report. *Gopal Naick v. Alagirisami Naick.*

32 Cr. L. J. 690 (a) :
131 I. C. 176 : 33 L. W. 460 :
1931 M. W. N. 368 : 60 M. L. J. 520 :
I. R. 1931 Mad. 512 : 54 Mad. 598 :
A. I. R. 1931 Mad. 770.

—S. 202—*Procedure—Proceedings under S. 202—Magistrate, jurisdiction of, to require presence of accused.*

A Magistrate has no jurisdiction to require the presence of the accused at an enquiry or investigation under S. 202, into a complaint of which he is empowered to take cognizance or which has been transferred to him under S. 192. *Appa Rao Mudaliar v. Janakiammal.*

28 Cr. L. J. 129 :
99 I. C. 337 : 24 L. W. 613 :
51 M. L. J. 605 : 49 Mad. 918 :
A. I. R. 1927 Mad. 19.

—S. 202—*Procedure to be strictly followed.*

The procedure laid down in S. 202 of the Cr. P. C. should be strictly followed. Therefore, it is illegal to dismiss a complaint after examining the complainant and considering certain previous papers dealing with the subject of complaint, consisting of local enquiry made by a Tahsildar on a previous petition. *Bakar v. Bansi.*

15 Cr. L. J. 21 :
22 I. C. 165 : 11 A. L. J. 921 :
A. I. R. 1915 Mad. 130.

—Ss. 202, 203 — *Procedure — Complaint against Circle Officer—Complaint referred to him for report—Complaint, dismissal of—Procedure, illegal.*

A complaint was made against a Circle

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Officer to a Sub-Divisional Officer, who, upon hearing the complaint called upon the Circle Officer to report as to the circumstances stated in the complaint. The Circle Officer reported that the allegations made were untrue, whereupon the Sub-Divisional Officer dismissed the complaint: *Held*, that the procedure of the Sub-Divisional Officer was not only irregular, it was illegal, and the illegality vitiated the order of dismissal, which, in the circumstances, could not be allowed to stand. *Har Narain Hahwai v. Hari-man Ahir*.

21 Cr. L. J. 621 (b) :

57 I. C. 285 : 5 P. L. J. 61 :

1 P. L. T. 609 : A. I. R. 1920 Pat. 655.

———Ss. 202, 203—*Procedure against Police Officer—Witnesses of complaint, examination of.*

Complaints against Police Officers should be handled with the greatest care and the complainant in such cases should be given every facility to prove his allegations. The complaint should not be dismissed without examining the witnesses whom the complainant wishes to produce. *Devasikamani Mudaliar v. Narayana Prasad*.

27 Cr. L. J. 107 :

91 I. C. 539 : A. I. R. 1926 Mad. 288.

———Ss. 202, 203—*Procedure—Dismissal of complaint—Investigation under S. 202, whether necessary for dismissal.*

S. 203 empowers a Magistrate to dismiss a complaint without any investigation under S. 202, if after examining the complainant he considers there is no sufficient ground for proceeding. There is nothing in the section to show that the Magistrate must at once consider the statement of the complainant and may not take time to consider the complaint petition and the examination on oath of the petitioner. *Nawazi Singh v. Jadu Dhanuk*.

19 Cr. L. J. 228 (b) :

43 I. C. 820 : 1918 Pat. 44 :

A. I. R. 1917 Pat. 141.

———Ss. 202, 203—*Procedure—Postponement of issue of process—Notice to show cause to accused—Improper and irregular procedure.*

The petitioner made a complaint to a Magistrate against the opposite party with regard to the cutting and removal of certain paddy. The Magistrate directed notice to be served upon the opposite party to show cause why process should not issue against him. Thereupon the opposite party put in a petition and a Pleader appeared for him and showed cause why process should not issue. The result was, that no process was issued, and the complaint was dismissed: *Held*, that the Magistrate did not act in accordance with the provisions as laid down in S. 202 and 203 and the procedure adopted by him was improper and irregular. *Chandi Charan Mitra v. Manindra Chandra Roy*.

24 Cr. L. J. 333 :

72 I. C. 173 : 36 C. L. J. 414 :

27 C. W. N. 196 :

A. I. R. 1923 Cal. 198.

———Ss. 202, 203—*Procedure—Postponement of process—Duty of Magistrate.*

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If a Magistrate takes it upon himself to postpone the issue of process for compelling the attendance of the person complained against for any purpose at all, he is required either to enquire into the case himself or to direct a local investigation. The fact that a local investigation has already been made does not affect the proceedings necessary under S. 202 when once process has been postponed. *Sheonandan Mahton v. Emperor*.

19 Cr. L. J. 263 :

44 I. C. 119 : 4 P. L. W. 114 :

A. I. R. 1918 Pat. 350.

———Ss. 202, 203—*Procedure—Proceedings under S. 202—Notice to accused before hearing complainant's case, legality of.*

An accused person is not to be called upon under S. 202, to appear unless and until the Magistrate has satisfied himself from the complainant and his witnesses that there is a *prima facie* case against him. It is highly irregular for a Magistrate when a complaint is put in, and sworn to, without hearing the complainant's case or his witnesses, to issue notice to the accused to appear and show cause against the issue of process, hear what the accused has to say, examine any witnesses he wishes to have examined, and then decide whether the complaint shall be received or not. *Varadarajulu Nayudu v. Kuppusami Nayudu*.

28 Cr. L. J. 113 :

99 I. C. 321 : 51 M. L. J. 602 :

49 Mad. 926 :

A. I. R. 1927 Mad. 18.

———Ss. 202, 203, 204—*Procedure—Complaint referred by Magistrate to Police—Duty of Police to make report—Sending charge-sheet without report, legality of.*

When a Magistrate has referred a complaint for investigation under S. 202, Cr. P. C., the Police are not entitled after investigation to arrest the accused and send him up for trial under a charge-sheet as if they had taken cognizance of the case under their ordinary powers of investigation. They can only make a report to the Magistrate, after a consideration of which it is open to the Magistrate to proceed either under S. 203, Cr. P. C., by dismissing the complaint, or by S. 204, Cr. P. C., by issuing process. *Emperor v. Nurmahomed Rajmahomed*.

30 Cr. L. J. 781 :

117 I. C. 129 : 31 Bom. L. R. 4 :

53 Bom. 339 : I. R. 1929 Bom. 377 :

A. I. R. 1929 Bom. 72.

———Ss. 202, 203, 204—*Procedure—Preliminary enquiry by—Notice declaring complaint to be false—Magistrate directing regular trial and sending for charge-sheet—Order ultra vires.*

Where a Magistrate directs an inquiry by the Police under S. 202 into a complaint and the Police submit a report that the case is false, that the matter in dispute between the parties is one for the Civil Courts to determine, and that a civil suit between the parties relating to that matter is pending, the Magistrate has no jurisdiction to direct the submission of a charge-sheet, merely because

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in his opinion it is desirable to ascertain the truth. *Rampabitra Singh v. Kasim Ali Khan.*

23 Cr. L. J. 403 :
67 I. C. 499.

———Ss. 202, 203, 204—*Process, issue of, postponed—Reasons, recording of.*

It is imperative for a Magistrate to give reasons under S. 202 before postponing the issue of process against the accused. *Mushari Ram v. Manhari v. Raj Kishore Lal.*

19 Cr. L. J. 527 :
45 I. C. 287 : 4 P. L. W. 307 :
A. I. R. 1918 Pat. 652.

———Ss. 202, 203, 441—*Procedure—Failure to record reason for action taken under Ss. 202, 203—Prejudice to accused—Irregularity—Revision.*

The failure of a Magistrate to record reasons before taking action under Ss. 202 and 203, is not by itself a sufficient ground for the High Court's interference in revision. If the statement under S. 441 by the Magistrate is satisfactory, the said defect is cured and the omission may be deemed to have been supplied. *Rengammal v. Krishnamachari.*

10 Cr. L. J. 117 :
2 I. C. 618 : 5 M. L. T. 79.

———Ss. 202, 204—*Procedure—Case being tried by a Magistrate who issued process without inquiry—District Magistrate's ordering—Police to make independent investigation, legality of.*

A complaint was filed on behalf of the Collector in the Court of Magistrate, 1st Class, against S. under S. 40 of Act XII of 1896. Process was issued under S. 201, Cr. P. C., without any inquiry under S. 202, and proceedings under Ss. 242 and 244 of the same Code were also taken by the said Court. Notwithstanding this the said Collector who also was the District Magistrate ordered the Police to make independent investigation in the case. On being asked by the Chief Court, the District Magistrate explained: he acted as Head of the Excise Administration: *Held*, that the procedure adopted by the District Magistrate as such or as a Collector was wholly illegal and *ultra vires*. *Shiv Nath v. Emperor.*

7 Cr. L. J. 202 :
3 P. W. R. Cr. 1 : 4 P. R. Cr. 1908 :
86 P. L. R. 1908.

———S. 202, 204, 242, 244 and 439—*Procedure—Case being tried by a Magistrate who issued process on complaint without inquiry under S. 202, Criminal Procedure Code—District Magistrate's ordering the Notice subsequently to make independent investigation even as head of Excise Administration illegal.*

A complaint was filed on behalf of the Collector in the Court of Magistrate, 1st Class, against S. under S. 40 of Act XII of 1896. Process was issued under S. 204, Cr. P. C., without any inquiry under S. 202, and proceedings under Ss. 242 and 244 of the same Code were also taken by the said Court. Notwithstanding this the said Collector who also was the District Magistrate ordered the Police to make independent investigation

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in the case. On being asked by the Chief Court, the District Magistrate explained that he acted as Head of the Excise Administration: *Held*, that the procedure adopted by the District Magistrate as such or as a Collector was wholly illegal and *ultra vires*. *Shiv Nath v. Emperor.*

7 Cr. L. J. 202 :
3 P. W. R. Cr. 1 : 4 P. R. Cr. 1908 :
86 P. L. R. 1908.

———S. 202—*Postponement of issue—Reasons, recording of.*

Omission to record reasons as required by S. 202, for postponing the issue of process in order to make a further inquiry on a complaint is merely an irregularity and not an illegality. *Dharamdas Lilaram v. F. H. Pilcher.*

32 Cr. L. J. 926 :
132 I. C. 479 : I. R. 1931 Sind 96 :
A. I. R. 1931 Sind 113.

———Ss. 202, 203—*Revision—Irregularity not amounting to miscarriage of justice—High Court, power of.*

If an irregularity in procedure has not resulted in a miscarriage of justice, the High Court will not make an order which can result only in harassment to the parties and waste of public time. In a case in which a perfunctory enquiry has been made by the Police and the report considered in a perfunctory fashion by the Magistrate, the High Court will interfere and insist upon the provisions of S. 202 being strictly enforced. But where the enquiry has been carefully made and carefully considered, the Court will exercise its discretion and refuse to re-open the matter. *Sheonandan Mahton v. Emperor.*

19 Cr. L. J. 263 :
44 I. C. 119 : 4 P. L. W. 114 :
A. I. R. 1918 Pat. 350.

———S. 202—*Revision, scope of.*

Where there has been a full enquiry under S. 202, the District Magistrate can interfere, and it is not only on a point of law that he can interfere. *Durga Prasad v. Emperor.*

36 Cr. L. J. 526 :
154 I. C. 513 : 7 R. A. 768 :
A. I. R. 1935 All. 439.

———Ss. 202, 439—*Revision—Inquiry before issue of process—High Court, interference by.*

A Magistrate cannot dismiss a complaint off-hand unless he is satisfied that no *prima facie* case of any kind is made out; and if he considers that before issuing process against the person complained against, he should make further inquiry, interference by the High Court with his order on the petition of either party is uncalled for. *Waryam Singh v. Emperor.*

26 Cr. L. 167 :
83 I. C. 727 : A. I. R. 1923 Lah. 663.

———S. 202—*Scope—Inquiry—Nature of—Dismissal of complaint in Inquest Report, legality of.*

An inquest under S. 176, Cr. P. C., by another Magistrate not under the orders of the Magistrate before whom the complaint is filed, cannot take the place of enquiry contemplated by S. 202, Cr. P. C. and it is

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illegal for a Magistrate to reject a complaint on the basis of a report made in such an inquest. *Surendra Nath Bhattacharjee v. Police Sergeant*. 33 Cr. L. J. 218 (2) :

135 I. C. 878 : 35 C. W. N. 1032 :
I. R. 1932 Cal. 174 : A. I. R. 1932 Cal. 121.

———S. 202—Scope—Charter Act (24 and 25 Vict. C. 104), S. 15—Power of person making investigation under S. 202, to obtain information from the complainant and accused and their witnesses.

There is nothing in S. 202 to prevent an investigating officer directed to make a local investigation under the section, from making a full enquiry by obtaining information from the complainant and his witnesses and the defendant and his witnesses, if any. *Debi Bux Shroff v. Jutmal Dungarmal*.

5 Cr. L. J. 83 :
I. L. R. 33 Cal. 1282.

———S. 202—Scope—Inquiry—Order after issue of process.

An order under S. 202, is one by virtue of which the Magistrate decides to postpone issuing process against the accused. Such an order can only be passed after recording reasons in writing. An order for holding a preliminary inquiry under S. 202, cannot be passed after process has been issued against the accused. *Gaji v. Jumanshah*.

13 Cr. L. J. 749 :
17 I. C. 61 : 6 S. L. R. 83.

———S. 202—Scope—Magistrate holding preliminary inquiry, whether debarred from trying case.

The mere fact that a Magistrate holds a preliminary inquiry into the truth of a complaint, does not incapacitate him from trying the case. *Mrs. May Boudville v. Emperor*.

24 Cr. L. J. 744 :
74 I. C. 72 : A. I. R. 1923 Rang. 65.

———S. 202—Scope—Order calling upon accused to show cause why he should not be prosecuted for bringing false charge, nature of—Jurisdiction of Magistrate making order to proceed with trial.

An order calling upon a person to show cause why he should not be prosecuted under S. 211, Penal Code, is neither in form nor in effect an order under S. 202, Cr. P. C. Such an order is not one under any provisions of the Cr. P. C. and even where it leads to an inquiry by another Magistrate, it does not in any way affect the jurisdiction of the Magistrate who took cognizance of the case to summon the accused and proceed with the trial. *Bhairab Chandra v. Emperor*.

20 Cr. L. J. 794 :
53 I. C. 698 : 29 C. L. J. 318 :
23 C. W. N. 484 : 46 Cal. 807 :
A. I. R. 1919 Cal. 433.

———S. 202—Scope—Reference under S. 202, when can be made.

A reference under S. 202 cannot be made after evidence has been taken for the complainant and process issued. The Magistrate cannot

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go back beyond the stage reached by his predecessor. *Qamar Ali v. Tulsi*.

39 Cr. L. J. 981 :
178 I. C. 54 : 11 R. N. 197 :
A. I. R. 1938 Nag. 433.

———S. 202 and 203—Scope—Facts as stated in complaint and examination of complainant disclosing no offence—Court cannot override Ss. 202 and 203 and dismiss complaint, without preliminary enquiry.

Where Ss. 202 and 203 prescribe a course or courses of action, the Court cannot override the statute by dismissing a complaint when the facts as stated in the complaint and the examination of the complainant disclose no offence, without any preliminary inquiry. The High Court can only direct which course should be followed. *Chin Hone On v. C. Ah Foo*.

A. I. R. 1937 Rang. 35.

———Ss. 202, 203, 204, 304—Scope.

S. 202 deals with inquiries after a Magistrate has taken cognizance of an offence on complaint, and before he dismisses it under S. 203 or issues process under S. 304 and there is nothing in the law which prevents a Magistrate from postponing the issue of process under S. 204, if there is reasonable cause for doing so even if the case be a warrant case. *Ram Saran Singh v. Nikhad Narain Singh*.

26 Cr. L. J. 1179 :
88 I. C. 603 : 6 P. L. T. 477 :
3 Pat. L. R. 134 Cr. : A. I. R. 1925 Pat. 619.

———Ss. 209, 436, 537—Scope—Magistrate directed to make further enquiry under S. 436—His power to make enquiry under S. 202—Failure to raise objection by accused—Effect.

A Magistrate who has been directed under S. 436, Cr. P. C., to make a further enquiry into a case triable by the Sessions is not bound to make a preliminary inquiry under S. 202 before issuing process against the accused. He has a discretion to issue process against the accused forthwith and to commit the accused to the Sessions after hearing the evidence. Even if he is bound to conduct such a preliminary enquiry, summoning the accused before making such an enquiry, is a mere irregularity which will not vitiate the commitment unless the accused has been prejudiced thereby. At any rate, if no objection is taken on behalf of the accused to such procedure during the enquiry, and before commitment, it is not open to the accused to attack the validity of the order of commitment on that ground in revision. *Hem Singh v. Emperor*.

31 Cr. L. J. 961 :
126 I. C. 146 : 9 Pat. 155 :
A. I. R. 1929 Pat. 644.

———Ss. 202, 203, 436, 532, 537—Scope—Order for further enquiry—Magistrate: whether bound to hold preliminary enquiry—Issuing process against accused forthwith and committing him to Sessions after enquiry—Commitment, legality of—Failure to object during enquiry, effect of.

Where a complaint for offences under Ss. 323 347 and 384 was dismissed by a Sub-Divisional Officer but the Deputy Commissioner ordered him to make a further enquiry in

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order to give an opportunity to the accused to vindicate themselves and to prove that the allegations made against them were not only open to doubt but were positively false and the Sub-Divisional Officer without making a preliminary enquiry under S. 202, Cr. P. C., issued process against the accused and after hearing the evidence committed the accused to the Sessions: *Held*, that the order of the commitment was not illegal and could not be set aside in revision on the mere ground that a preliminary enquiry was not made. *Hema Singh v. Emperor*.

31 Cr. L. J. 961 :
126 I. C. 146 : 9 Pat. 155 :
A. I. R. 1929 Pat. 644.

———Ss. 202, 476—Scope—Civil Court ordering enquiry under S. 476—District Magistrate, whether can order enquiry under S. 202.

Where a Magistrate, to whom a case is submitted by a Civil Court, for inquiry under S. 476, Cr. P. C., has no power to try the case, and refers it to the District Magistrate, the latter has no power to order an investigation under S. 202, Cr. P. C., as that section is not applicable to such a case. *Devidin v. Narayanrao*.

21 Cr. L. J. 310 :
55 I. C. 470 : A. I. R. 1920 Nag. 64.

———Ss. 202, 528—Scope—First part of section, if applies to transfer—Second part, if excludes case of transfer under S. 528.

The first part of S. 202 applies only to cases in which the Magistrate has taken cognizance himself and cannot apply to a transfer, and the second part deals only with a transfer under S. 192 and therefore excludes the case of a transfer under S. 528. *Qamarali v. Tulsi*.

39 Cr. L. J. 981 :
178 I. C. 54 : 11 R. N. 197 :
A. I. R. 1938 Nag. 433.

———S. 202—Statement of accused.

Statement of accused under S. 202 is not one under S. 164 or S. 364. *Sat Narain Tewari v. Emperor*.

3 Cr. L. J. 138 :
10 C. W. N. 51 : I. L. R. 32 Cal. 1085.

———S. 202—Transfer.

Additional Chief Presidency Magistrate can send to another Presidency Magistrate case under S. 202 for report. *Kanayalal v. Kanmull Lodha*.

35 Cr. L. J. 729 :
148 I. C. 691 : 59 C. L. J. 204 :
38 C. W. N. 560 : 61 C. L. J. 467 :
6 R. C. 477 : A. I. R. 1924 Cal. 405 (2).

———S. 202—Transfer—Case referred by Sub-Magistrate to Police for investigation—Charge-sheet—Sending of case to superior Magistrate.

Where a Sub-Magistrate refers a case under S. 202 to the Police for investigation and the Police send a charge-sheet to the Sub-Magistrate, it is competent to the Magistrate to accept it and send the case up to a superior Magistrate under S. 346, Cr. P. C. where the trial is beyond his power. *In re : T. R. Balakrishna Reddiar*.

28 Cr. L. J. 384 :
100 I. C. 992 : A. I. R. 1927 Mad. 591.

———S. 202—Transfer—Transfer of complaint by one Magistrate to another—Powers of latter Magistrate.

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If a complaint is transferred at the very outset by one Magistrate to another, the latter has power to take action under Ss. 202 and 203, but it is impossible to suppose that the Code contemplates that when one Magistrate has examined witnesses under S. 202 and has believed them, and thereupon transfers the case for trial to a Subordinate Magistrate, that Magistrate should have power to examine those same witnesses over again under S. 202, and then proceed to dismiss the complaint under S. 203: *Held*, however, that even assuming that the Special Magistrate had power to take evidence under S. 202 and dismiss the complaint under S. 203 further enquiry ought to have been made into the case. The Sessions Judge himself could have ordered further enquiry under the provisions of S. 436 and it was not necessary for him to make reference to the High Court at all. *Sheo Balak Singh v. Sant Bux Singh*.

37 Cr. L. J. 1128 :
165 I. C. 289 : 15 Pat. 326 :
17 P. L. T. 526 : 3 B. R. 30 : 9 R. P. 165 :
A. I. R. 1936 Pat. 537.

———S. 203.

See also (i) Cr. P. C., Ss. 4 (b), 145, 167, 195, 200, 201, 202, 204, 250, 259, 436.

(ii) Criminal Trial.

(iii) Penal Code, 1860, S. 204.

———S. 203.

———Abatement.

———Applicability.

———Discharge.

———Dismissal.

———Dismissal of Complaint.

———District Magistrate, powers of.

———Examination of Complainant.

———False Complaint.

———Fresh Complaint.

———Further enquiry.

———Inquiry.

———Investigation.

———Issue of Process.

———Jurisdiction.

———Maintenance.

———Procedure.

———Revision.

———Reversal.

———Scope.

———Ss. 203, 204, 439—Abatement—Death of complainant—Another complaint on the same facts, maintainability of.

As there is no abatement of a criminal case on the death of the complainant, a fresh complaint on the same facts will not lie but the old complaint must be treated as pending and

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proceeded with to its disposal. *In re : Ramasamier.* 16 Cr. L. J. 713 : 30 I. C. 1001 : A. I. R. 1916 Mad. 1034.

———S. 203—*Applicability—Dismissal of complaint by Village Magistrate—Subsequent complaint before Sub-Magistrate, whether competent—Principle of autrefois acquit, applicability of.*

S. 203 has no application to the proceedings of a Village Munsif. Therefore, the dismissal of a complaint by a Village Magistrate for default is not, so far as the Code lays down, any bar to a Sub-Magistrate proceeding with the case. Neither does the principle of *autrefois acquit* apply to such a case. *Rama Naidu v. Vccrapuram Venkatasami Naidu.*

28 Cr. L. J. 507 : 101 I. C. 891 : 53 M. L. J. 102 : A. I. R. 1927 Mad. 695.

———S. 203—*Applicability of to application under S. 107.*

S. 203 has no applicability to an application under S. 107. *Shams-ud-Din v. Ram Dayal Singh.* 25 Cr. L. J. 89 :

76 I. C. 25 : A. I. R. 1924 Lah. 630.

———S. 203—*Discharge—Complaint on same facts to Police—Jurisdiction of Magistrate to entertain second complaint.*

A complaint was made before a Magistrate who tried the case and passed an order of discharge. Subsequently, the complainant lodged a complaint to the Police on the same facts and the case was reinstated by the same Magistrate: *Held*, that the Magistrate had jurisdiction to reinstate the case. *William Cecil Keymer v. Emperor.*

15 Cr. L. J. 1 (b) : 22 I. C. 145 : 12 A. L. J. 1 : 36 All. 53 : A. I. R. 1914 All. 179.

———S. 203—*Discharge—Further proceedings.*

Where a man has been discharged under circumstances which make the order of discharge equivalent to one of acquittal, no further proceedings should be taken against him under S. 437, Cr. P. C. *Emperor v. Kiru.*

12 Cr. L. J. 364 : 11 I. C. 132 : 10 P. R. 1911 Cr. : 24 P. W. R. 1911 Cr. : 205 P. L. R. 1911.

———Ss. 203, 437—*Discharge—Order for re-trial—Notice to accused.*

A complaint was dismissed under S. 203. The District Magistrate set aside the order of dismissal and ordered a re-trial without giving a notice to the accused: *Held*, that no notice was necessary. *Durga Parshad v. Emperor.*

12 Cr. L. J. 46 (a) : 9 I. C. 277.

———S. 203—*Discharge—Second complaint—Duty of Magistrate.*

A previous order dismissing a complaint or discharging the accused is no bar to the institution of a fresh case against the same accused. It is, however, the duty of a Magistrate who receives a complaint in a case where there has been a previous order of dismissal or discharge, not to issue process, unless he is plainly satisfied that there has been some manifest error

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or manifest miscarriage of justice, or unless new facts are adduced which the complainant had not knowledge of or could not with reasonable diligence have brought forward in the previous proceedings. *U Shwe Kyaw v. Ma Sein Bwin.*

26 Cr. L. J. 284 : 84 I. C. 348 : 3 Bur. L. J. 228 : A. I. R. 1925 Rang. 114.

———S. 203—*Discharge, whether bars second complaint—Procedure—Duty of complainant.*

An order of discharge does not operate as an acquittal and leaves the matter at large for all purposes of judicial inquiry. There is jurisdiction still vested in all Magistrates including the one who made the previous inquiry, just as before, but all Magistrates, and especially the one who formerly discharged the accused, are bound to exercise due discretion to take that discharge into account in dealing with the case, and it is the duty of the complainant to inform the Magistrate before whom the case comes up on the second occasion that he had previously filed a similar complaint which has been dismissed. *In re : Mahadev Laxman Satardekar.*

26 Cr. L. J. 991 : 87 I. C. 527 : 27 Bom. L. R. 352 : A. I. R. 1925 Bom. 258.

———S. 203—*Dismissal.*

Motive of complainant is no ground for dismissal of complaint. *Chamru Sao v. Bhairon Prasad.*

35 Cr. L. J. 1215 : 150 I. C. 1120 : 7 R. N. 47 : A. I. R. 1934 Nag. 135.

———Ss. 203, 259—*Dismissal—Order dismissing complaint under S. 203 or discharging accused under S. 259, whether judgment.*

The word 'judgment' indicates some final determination of the case which would end it once for all such as an order of conviction or acquittal. An order therefore dismissing for default, a complaint made either under S. 203 or under S. 259, Cr. P. C. is not a judgment. *Harbai v. Raya Premji (F. B.)* 40 Cr. L. J. 745 :

183 I. C. 283 : 12 R. S. 44 : 1940 Kar. 74 : A. I. R. 1939 Sind 193.

———S. 203—*Dismissal and complaint—Complaint, dismissal of—Order for further inquiry—Magistrate, power of, to again dismiss complaint.*

When the Sessions Judge orders a further enquiry into a complaint dismissed by a Magistrate under S. 203, the Magistrate has power to again dismiss it under that section. *Nibaran Chandra Mukherjee v. Sital Chandra Bag.*

22 Cr. L. J. 528 : 62 I. C. 416 : 25 C. W. N. 312 : A. I. R. 1921 Cal. 201.

———S. 203—*Dismissal of complaint—Examination of complainant's witnesses.*

A complaint cannot be dismissed without examining the witnesses of the complainant who are present in Court to give evidence in support of the complaint. A complainant is entitled to have an opportunity of establishing the truth of his allegations by having the evidence of his witnesses tested by the Magistrate. *Purosattam v. Ram Das.*

26 Cr. L. J. 561 : 85 I. C. 705 : A. I. R. 1925 Cal. 1031.

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———S. 203—*Dismissal of complaint—Grounds for.*

An order of a Magistrate dismissing a complaint under S. 203, which states no reason except that the Magistrate agrees with the Police report is illegal unless the Police report is made a part of the order. *Ahmed Bee v. Ameena Bee.* 11 Cr. L. J. 331 (a) : 5 I. C. 926 : 7 M. L. T. 175.

———S. 203 — *Dismissal of complaint—Grounds.*

The decision whether there is sufficient ground for dismissing a complaint under S. 203 must be reached by the exercise of discretion based on judicial considerations. That the Magistrate considered the probable result of proceedings to be undesirable or the motives and conduct of the complainant to be discreditable are not relevant considerations. In the absence of any finding that the complaint is false or unsustainable on the evidence likely to be available, the passing of an order of dismissal would constitute an irregularity with which the High Court has, under S. 15 of the Charter Act, jurisdiction to deal. *Gangu Reddi v. Samrapathy Mudali.* 14 Cr. L. J. 633 : 21 I. C. 681 : 25 M. L. J. 510.

———S. 203—*Dismissal of complaint—Effect.*

Order dismissing complaint after accused has appeared in answer to summons amounts to discharge under S. 253 (2). *Bhagwan Das v. Chander Bhan.* 35 Cr. L. J. 418 : 147 I. C. 335 : 1934 A. L. J. 69 : 6 R. A. 521 : A. I. R. 1934 All. 51.

———S. 203—*Dismissal of complaint—Effect.*

The effect of an order dismissing a complaint under S. 203 is to restore the case to the stage under S. 202, and the further inquiry directed should be taken up from that point. *Radha Prasad Bhagat v. Emperor.* 28 Cr. L. J. 857 : 104 I. C. 633 : 9 P. L. T. 12 : A. I. R. 1928 Pat. 12.

———S. 203—*Dismissal of complaint—Effect.*

Where a complaint is dismissed under the section, it cannot be said that there was any inquiry or trial in the Magistrate's Court. *Ramasmami Aiyar v. Vekneswara Aiyar.* 14 Cr. L. J. 27 : 18 I. C. 171 : 24 M. L. J. 1 : 1913 M. W. N. 851 : 14 M. L. T. 431.

———S. 203—*Dismissal of complaint—Grounds for.*

Hire-purchase—Lorry purchased on hire-purchase terms—Owner forcibly dispossessing purchaser on alleged breach of contract—Purchaser filing complaint and asking for search warrant—Magistrate dismissing complaint but ordering return of lorry to purchaser on having bond from him to produce it whenever necessary—Order held proper—Remedy of aggrieved party was in Civil Court. *Ruma Aiyar v. S. P. Das Gupta.* 34 Cr. L. J. 676 (2) : 144 I. C. 78 : I. R. 1933 Cal. 495 : A. I. R. 1933 Cal. 149.

———S. 203—*Dismissal of complaint—*

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Grounds—Jurisdiction—Criminal misappropriation—Jurisdiction of Court to try.

The fact that a complaint could have been also filed by persons other than the complainant, is not a ground for not inquiring into the complaint. *Behari Lal v. Gangadin.* 27 Cr. L. J. 1104 : 97 I. C. 368 : A. I. R. 1927 All. 69.

———Ss. 203, 537—*Dismissal of Complaint—Omission to examine complainant—Irregularity.*

An order dismissing a complaint under S. 203, Cr. P. C., is not illegal because the order was passed without examination of the complaint, where there are other materials on which the Court could pass the order, and the Vakil for complainant was present at the passing of the order and did not object to it. Such omission only amounts to an irregularity. *In re : Velu Nathan.* 12 Cr. L. J. 550 : 12 I. C. 526 : 10 M. L. T. 573 : 22 M. L. J. 155.

———S. 203—*Dismissal of Complaint on Police report—Reference to Police—Omission to record reasons for reference to Police.*

Where the Magistrate recorded the sworn statement of the complainant and numbered the complaint and thereafter referred it to the Police without recording his reasons for doing so and on receipt of the Police report dismissed the case : *Held*, that the final order was a legal disposal of the case under S. 203, Cr. P. C. and that the omission to record reasons for reference to the Police did not invalidate it. *In re : Arula Katiah.* 12 Cr. L. 463 : 11 I. C. 999 : 10 M. L. T. 120 : 1911 2 M. W. N. 74.

———Ss. 203, 200—*Dismissal of complaint under S. 200 irregular—Order, if can be revised.*

While the final order is in fact one under S. 203, the revisional jurisdiction of the District Magistrate can be exercised even though there may have been some irregularity on the part of the officer taking cognizance of the complaint lodged under S. 200. *Sudhu Charan Roy v. Balci Swami.* 19 Cr. L. J. 874 : 47 I. C. 70 : 3 P. L. J. 346 : A. I. R. 1918 Pat. 270.

———S. 205—*Dismissal of complaint—Summary dismissal, legality of.*

S. 203 authorises the dismissal of a complaint only after examining the complainant and considering the result of the investigation. *Nga Tha Tu v. Emperor.* 12 Cr. L. J. 385 : 11 I. C. 249 : U. B. R. 1910 I, 73.

———S. 203—*Dismissal of complaint—Without evidence, effect of.*

An order dismissing a complaint after summons to the accused without recording any evidence is not one of acquittal but is one passed under S. 203. *Nune Panakalu v. Ravula Subbarao.* 30 Cr. L. J. 191 : 113 I. C. 625 : 1928 M. W. N. 801 : I. R. 1929 Mad. 161 : 52 Mad. 695 : 57 M. L. J. 331 : 30 L. W. 624 : A. I. R. 1928 Mad. 1158 :

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—S. 203—*Dismissal of complaint, without recording reasons, bad.*

It is an imperative provision of law that a Magistrate shall briefly record his reasons for dismissing a complaint. There can be no question of irregularity where the provisions of the statute are imperative and are directly disobeyed. Where a Magistrate did not record any reason for dismissing a complaint but directed that the complainant should be prosecuted under S. 211, Penal Code: *Held*, that the order of dismissal was without jurisdiction and altogether bad, and that there must be a further inquiry. *Maniruddin Sarkar v. Abdul Rauf*. 13 Cr. L. J. 482 : 15 I. C. 482 : 40 Cal. 41.

—S. 203—*District Magistrate, powers of—Complaint pending before Magistrate sent to District Magistrate for transfer to some other Court—District Magistrate's jurisdiction to dismiss complaint.*

If a complaint pending before a Magistrate is sent to the District Magistrate with a view to the latter transferring it to some other Court, the District Magistrate is seized of the case and has jurisdiction to dismiss the complaint if after examining the record he is of opinion that the complaint was wholly unfounded. *Govind Prasad Singh v. Ram Das*. 25 Cr. L. J. 555 : 21 I. C. 43 : A. I. R. 1924 All. 666.

—S. 203—*District Magistrate, powers of—Direction to Magistrate to pass particular order.*

A District Magistrate acts wrongly in giving a direction to a Magistrate subordinate to him that he should pass a particular order with respect to a case which is pending before him in his judicial capacity. *Thakur Singh v. Kirpal Singh*. 19 Cr. L. J. 436 : 44 I. C. 964 : 10 P. W. R. 1918 Cr. : 53 P. L. R. 1918 : A. I. R. 1918 Lah. 123.

—S. 203—*Examination of complainant.*

S. 203 allows a criminal complaint to be disposed of after examination of the complainant and an enquiry under S. 202. *Chiragh ud-Din v. Emperor*. 5 Cr. L. J. 491 : 2 P. R. Cr. 1907 : 49 P. L. R. 1907 : 18 P. W. R. 1907 Cr.

—S. 203—*Procedure—Dismissal of complaint by methods not warranted by law, legality of—Court's power to take action against complainant.*

A Court should not get rid of a complainant whom it believes to be false by methods not warranted by law but should follow the procedure prescribed by the Cr. P. C. with regard to the hearing of the complaint and take action under S. 182 or S. 211, Penal Code against the complainant if it finds the complaint false. Even where the accused persons do not desire to take action under S. 211, Penal Code, a Court of Law has authority to complain against a false complainant under S. 182, Penal Code, which is contained in Chap. X relating to contempt of the lawful authority

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of public servants. *Ram Das v. Ganga Ram* 30 Cr. L. J. 2 : 112 I. C. 770 : I. R. 1929 All. 81 : A. I. R. 1928 All. 333.

—S. 203—*First complaint.*

A Court dismissing a complaint under S. 203, is competent to re-hear the complaint without any order for further enquiry by a higher tribunal. *In re : Chinna Kallappa Goundan and Subbier*. (F. B.) 3 Cr. L. J. 274 : 1 M. L. T. 31 : 15 M. L. J. 79 : 29 Mad. 126.

—S. 203—*Fresh complaint.*

A Magistrate who has dismissed a complaint under S. 203 is not precluded from entertaining a fresh complaint upon the same facts. *Makhatambi v. Hassan Ali*. 2 Cr. L. J. 651 : 1 N. L. R. 18.

—S. 203—*Fresh complaint.*

A prior order of discharge does not bar the jurisdiction of the Magistrate to entertain a second complaint upon the same facts. The mere fact that a complaint has been dismissed under S. 259, is not a sufficient ground for refusing to entertain a second complaint and dismissing it under S. 203. *Bulehand Tahitram v. Ghandhoomal Ramrakhiamal*. 16 Cr. L. J. 174 : 27 I. C. 558 : 8 S. L. R. 196 : A. I. R. 1914 Sind 44.

—S. 203—*Fresh Complaint.*

Application for making complaint under S. 476, dismissed—Second application is maintainable. *Kalastri Mudali v. Emperor*. 33 Cr. L. J. 272 : 136 I. C. 313 : 61 M. L. J. 686 : 1931 M. W. N. 1048 : 34 L. W. 629 : I. R. 1932 Mad. 281 : A. I. R. 1932 Mad. 130.

—S. 203—*Fresh Complaint—Complaint, dismissal of fresh complaint, whether maintainable.*

The fact that a complaint has been dismissed by a Magistrate is no bar to the entertainment of a second complaint upon the same facts by the successor-in-office of that Magistrate. *Mohan Singh v. Emperor*. 21 Cr. L. J. 815 : 58 I. C. 687 : A. I. R. 1920 All. 267.

—S. 203—*Fresh complaint—Complaint, dismissal of—Second complaint, whether entertainable.*

There is nothing in the law to prohibit a Magistrate who has dismissed a complaint under S. 203 of the Cr. P. C. from receiving the proceeding upon a second complaint, if he considers that there are good grounds for so doing. *Jai Kishan v. Kalla*. 21 Cr. L. J. 379 : 55 I. C. 859 : 2 U. P. L. R. All. 75 : A. I. R. 1920 All. 8.

—S. 203—*Fresh complaint—Complaint dismissed—Fresh complaint on same facts, barred.*

When a complaint has been dismissed under S. 203, a fresh complaint on the same facts is barred till the order of dismissal is set

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aside by a competent Court. *Mahomed Abdul Mennan v. Panduranga Row.*

2 Cr. L. J. 752 :

1 I. L. R. 28 Mad. 255 : 2 Weir 247-A.

———S. 203—*Fresh complaint—Complaint dismissed—Petition for revision to the Sessions Judge also dismissed—Fresh complaint, not allowed.*

A Magistrate cannot entertain a fresh complaint when a previous one on the same facts has been dismissed and the order of dismissal has been upheld by the Sessions Judge. In such a case the complainant's only remedy is to apply to the High Court for revising the lower Court's orders. *Mohammad Yaqur v. Emperor.*

11 Cr. L. J. 347 :

5 I. C. 991 : 11 P. W. R. 1910 Cr.

———S. 203—*Fresh complaint—Dismissal of complaint—Confirmation of order of dismissal by superior Court—Fresh complaint, competency of.*

The dismissal of a complaint under S. 203 does not preclude the filing of a fresh complaint on the same facts and the fact that the superior Court has confirmed the order of dismissal does not make any difference. But although a previous dismissal under S. 203 may not be legally a bar to the institution of a fresh complaint, it would be only in exceptional circumstances that a second complaint would be entertained on the same facts. Where the facts are identical and there are no good grounds for re-consideration, a second complaint should not be entertained even if it is made by a different person. *Allah Ditta v. Karam Bakhsh.*

31 Cr. L. J. 1180 :

127 I. C. 15 : A. I. R. 1930 Lah. 879.

———S. 203—*Fresh complaint—Dismissal of complaint—No appeal or revision filed—Whether complaint.*

It is not open to a Magistrate to entertain a complaint when a similar complaint has been dismissed by another Magistrate of co-ordinate jurisdiction, whether accused be acquitted or discharged, and the dismissal has not been set aside by higher authority. *Tirathbai v. Sugribai.*

29 Cr. L. J. 1097 :

112 I. C. 681 : 33 S. L. R. 43 :

A. I. R. 1929 Sind 61.

———Ss. 203, 403—*Fresh complaint—Dismissal of complaint—Second trial on same charge and evidence, validity of.*

Though there is no absolute bar to an accused person being put in peril of a fresh trial in respect of the same offence in a case where the first trial has ended in an order of discharge, it is a well-recognised and salutary rule of law, that a Magistrate of co-ordinate jurisdiction should not entertain a fresh complaint in respect of the same offence when it is based on facts which were known to the complainant and on evidence which was available when the first trial was held. *Pars Ram Bhagwan Das v. Emperor.*

30 Cr. L. J. 444 :

115 I. C. 309 : I. R. 1929 Sind 69.

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———S. 203 — *Fresh complaint — Dismissal of previous complaint not set aside—Fresh complaint, competency of.*

The principle that it is not open to a Magistrate to entertain a complaint when a similar complaint has been dismissed by another Magistrate of co-ordinate jurisdiction and the dismissal has not been set aside by higher authority, has no application where the complaint subsequently filed is not similar to but essentially different from previous complaint. *Umar Ahmed v. Emperor.*

41 Cr. L. J. 248 :

186 I. C. 95 : 12 R. S. 191 :

A. I. R. 1940 Sind 15.

———S. 203 — *Fresh complaint—Dismissal of complaint—Fresh complaint on same facts.*

A complainant whose complaint has been dismissed under S. 203, is competent to make a fresh complaint on the same facts without getting the 1st order of dismissal set aside by a higher Court. *Behari Lal v. Emperor.*

8 Cr. L. J. 249 :

3 P. W. R. Cr. 70.

———S. 203—*Fresh complaint—Order dismissing complaint not set aside—Fresh complaint whether barred.*

An order of dismissal passed on a complaint, which has not been set aside, is no bar to a fresh complaint upon the same facts to another Magistrate. *Puran v. Emperor.*

27 Cr. L. J. 383 :

92 I. C. 895 : A. I. R. 1926 All. 298.

———S. 203—*Fresh complaint.*

Second complaint should be entertained only in exceptional circumstances, e. g. where the previous order was passed on an incomplete record or when it was manifestly perverse or foolish. *Mohammad Din v. Mehtab Din.*

33 Cr. L. J. 493 :

137 I. C. 520 : 33 P. L. R. 318 :

I. R. 1932 Lah. 342.

———S. 203—*Fresh complaint—Order dismissing complaint not set aside—Subsequent complaint whether can be entertained.*

The fact that an order dismissing a complaint under S. 203 has not been set aside, is no bar to another Magistrate entertaining a subsequent complaint on the same facts. *Pampalli Subbareddi v. Chaduboyigari Kamal Saib.*

16 Cr. L. J. 814 :

31 I. C. 830 : A. I. R. 1916 Mad. 887.

———S. 203—*Fresh complaint.*

Where a competent Magistrate has discharged an accused person, another tribunal of exactly the same powers cannot re-open the matter on a fresh complaint made it on the same facts. *Nanda v. Emperor.*

28 Cr. L. J. 536 :

102 I. C. 344.

———S. 203—*Fresh complaint.*

Where a complaint under S. 452 and 500, Penal Code, is dismissed under S. 203, another complaint on the same facts by different complainant is allowable. *Mohammad Din v. Hussain.*

36 Cr. L. J. 62 :

153 I. C. 155 : 7 R. L. 257 :

A. I. R. 1935 Lah. 435.

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———Ss. 203, 253, 259, 403—*Fresh complaint—Dismissal of complaint—Discharge of accused—Absence of complainant—Revival of proceedings on fresh complaint.*

If a case has been disposed of on merits and an order of discharge has been made under S. 203 or S. 253, a fresh complaint on same facts cannot be entertained till the order of dismissal and discharge has been set aside by a competent Court. But if the accused has been discharged and the complaint dismissed under S. 259 of the Code for absence of the complainant, such discharge or dismissal does not preclude the Magistrate from entertaining a fresh complaint by the complainant, as an order of discharge under the section is neither an acquittal nor has it the effect of acquittal under S. 403. *Chinnathambi Muddali v. Salla Gurusamy Chetty.* 2 Cr. L. J. 758 : I. L. R. 28 Mad. 310 : 2 Weir 325-A.

———Ss. 203, 259—*Fresh complaint.*

Dismissal of complaint for default—Second complaint on same facts, whether entertainable. *Bulchand Tahilram v. Ghandhoomal Ramrakhiamal.* 16 Cr. L. J. 174 : 27 I. C. 558 : 8 S. L. R. 196 : A. I. R. 1914 Sind 44.

———Ss. 203, 403, 437—*Fresh complaint—Discharge of accused—Prosecution on fresh complaint, legality of—Duty of Magistrate to make preliminary inquiry—Notice to accused, whether necessary.*

An order dismissing a complaint or discharging an accused person does not operate as an acquittal under S. 403, and does not bar the taking cognizance of a fresh complaint of the same offence even though the order of dismissal or discharge has not been set aside in revision by a competent authority. Although there is no legal bar to the institution of fresh criminal proceedings against an accused person who has been discharged for the same offence as that with regard to which he has been discharged, the Courts should be chary in taking cognizance of complaints in such cases. In dealing with a complaint in such circumstances, the Magistrate is bound to proceed in the manner laid down in S. 200 *seqq.*, that is, after examining the complainant, and if necessary, after a preliminary enquiry or local investigation, to decide whether there is sufficient ground for proceeding. In coming to this decision, he is bound to exercise a proper discretion, and a discretion improperly exercised would be a ground for interference by a Court of Revision.

The Magistrate is not, however, bound to issue notice to the accused before taking cognizance of the case. *Dhana Reddy v. Emperor.*

31 Cr. L. J. 824 : 125 I. C. 341 : 8 Rang. 1 : A. I. R. 1930 Rang. 156.

———Ss. 203, 423, 437—*Fresh complaint—Complaint, dismissal of—Fresh complaint on same facts.*

The dismissal of complaint under S. 203 does not debar the entertainment of a fresh complaint on the same facts. *Sheo Gobind Singh v. Emperor.* 21 Cr. L. J. 660 : 57 I. C. 820 : 1 P. L. T. 293 : A. I. R. 1920 Pat. 523.

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———Ss. 203, 437—*Fresh complaint—Jurisdiction—Whether barred—Jurisdiction—Revision.*

N made a complaint to the District Magistrate against certain persons charging them with having assaulted his brother B. The District Magistrate forwarded the complaint to Mr. W., Sub-Divisional Magistrate, for disposal. Mr. W. ordered a Police inquiry to be made, and on the receipt of the Police report, he dismissed the complaint under S. 203 of the Cr. P. C. Subsequently B made another complaint before Mr. W. on the same facts. Mr. W. fixed a date, but before the date so fixed, Mr. W. ceased to be the Sub-Divisional Magistrate and was re-placed by Mr. S. Mr. S. took up the case and ordered process to issue against the accused persons : *Held*, that Mr. S. being the successor of Mr. W. and presiding over the same tribunal, was not precluded from entertaining B's complaint. *Held*, further, that this was a case in which the High Court, should interfere under S. 437 and order Magisterial inquiry to be made. *Ram Bharos v. Babon.* 15 Cr. L. J. 158 : 22 I. C. 734 : 12 A. L. J. 106 : 36 All. 129 : A. I. R. 1914 All. 79

———S. 203—*Further enquiry—Dismissal of complaint—Further inquiry, order for—Dismissal of complaint under S. 203 after enquiry by Police validity of.*

A Sessions Judge ordered further enquiry into a case dismissed by a Magistrate under S. 203 pointing out that the complainant had other evidence to produce to show that the cattle in the possession of the accused were his and suggested that a Police Officer should be deputed to search for the missing cattle. The Magistrate again dismissed the case under S. 203, upon the investigation and report of the Police : *Held*, (1) that the Sessions Judge did not direct an investigation by the Police but simply pointed out that a Police Officer might be deputed to search for the cattle : (2) that the complainant was entitled to produce evidence, oral and documentary, before the Magistrate and the latter had no right to dismiss the complaint under S. 203 when the order of the Sessions Judge clearly contemplated a trial of the case. *Thakar Singh v. Kirpal Singh.* 19 Cr. L. J. 436 : 44 I. C. 964 : 10 P. W. R. 1918 Cr. 53 P. L. R. 1918 : A. I. R. 1918 Lah. 123

———S. 203—*Further inquiry—Dismissal of complaint without examination of complainant—Further enquiry.*

Where a complainant failed to appear in Court on the dates on which the matter came before the Magistrate and the Magistrate dismissed the complaint under S. 203, without examining the complainant : *Held*, that the complainant could not afterwards be heard to say that the matter should be sent back to the Magistrate for further enquiry. *Ram Prosad Maitra v. Emperor.* 29 Cr. L. J. 798 : 111 I. C. 126 : 48 C. L. J. 90 : A. I. R. 1928 Cal. 569

———S. 203—*Further inquiry.*

Further enquiry after discharge is improper

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unless the order of discharge is manifestly perverse or foolish or is based upon a record of evidence which is obviously incomplete and this is applicable to cases where a complaint has been dismissed under S. 203. *Nazar Muhammad v. Jumma*.

38 Cr. L. 6. 1072 :
171 I. C. 336 : 39 P. L. R. 402 :
10 R. L. 186 : A. I. R. 1937 Lah. 682.

—S. 203—Further inquiry—Notice.

An order for further inquiry into a complaint dismissed under S. 203, without notice to the accused, though not absolutely illegal, is unfair and prejudicial to the accused and ordinarily should not be maintained. *Paras Ram v. Emperor*.

12 Cr. L. J. 615 :
12 I. C. 991 : 44 P. W. R. 1911 Cr.

—S. 203—Further inquiry—Notice to accused.

A complaint of offences falling under Ss. 417—427 and 477, Penal Code, was made in the Court of a Deputy Magistrate. Notice of such complaint was issued to the persons mentioned in it, but no process compelling their attendance. The Deputy Magistrate took action under S. 202, Cr. P. C. and eventually dismissed the complaint under S. 203. The District Magistrate directed a further inquiry into the matters mentioned in the complaint, but without issuing notice to show cause : *Held*, that under the circumstances of the case and as the inquiry had practically been completed the order of the District Magistrate should not be set aside for want of notice. *Emperor v. Muhammad Mutaqi*.

7 Cr. L. J. 157 :
28 A. W. N. 45 : 5 A. L. J. 74.

—Ss. 203, 204—Further inquiry—Notice to accused, whether necessary.

Where a complaint is dismissed under S. 203 or S. 204, no notice to the person against whom the complaint is made is necessary before further inquiry into the case can be ordered. *Dhondu Bapu Gujar v. Emperor*.

28 Cr. L. J. 575 :
102 I. C. 511 : 29 Bom. L. R. 713 :
A. I. R. 1917 Bom. 436.

—Ss. 203, 435, Sub-s. (4), 437—Further inquiry—Dismissal of complaint by Deputy Magistrate—Fresh complaint to District Magistrate—Sending case to Deputy Magistrate for report—Dismissal of case by District Magistrate after considering report—Order for further inquiry by Sessions Judge, if within jurisdiction.

A complaint was made to a Deputy Magistrate, who after considering a Police report on the matter, ordered : "Enter mistake of law." The complainant put in another complaint before the District Magistrate who sent the complaint to the Deputy Magistrate for judicial inquiry and report, and after considering his report, directed that the case should be entered as false. The complainant then applied to the Sessions Judge who ordered a further inquiry under S. 437 : *Held*, that the Deputy Magistrate's order must be regarded as an order dismissing the complaint. Therefore, the District Magistrate in directing a further inquiry acted under S. 435, and the Sessions Judge was not competent to direct

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a further inquiry in view of Sub-s. (4) of S. 435. *Siddik v. Chakauri Khansamah*.

14 Cr. L. J. 123 :
18 I. C. 683 : 17 C. W. N. 451 :
17 C. L. J. 608.

—Ss. 203, 436—Further inquiry—Dismissal of complaint—District Magistrate, power to restore complaint.

Where a complaint is dismissed under S. 203, the District Magistrate cannot, under S. 436, order it to be restored to file. The proper order is to direct further inquiry into the case, and proceed according to law, with unfettered discretion to dismiss the complaint once more if he thinks it proper to do so. *In re : Arikatia Nagireddi*.

39 Cr. L. J. 281 (a) :
173 I. C. 213 (1) : 46 L. W. 642 :
1937 M. W. N. 1242 : 10 R. M. 536 (1) :
A. I. R. 1938 Mad. 112.

—Ss. 203, 436—Further inquiry—Dismissal of complaint—Duty of Appellate Court.

An Appellate Court should not lightly set aside the order of a Magistrate dismissing a complaint, but should only do so when it is clear that there has been a miscarriage of justice. *Jangal Singh v. Radha Kishun*.

26 Cr. L. J. 866 :
86 I. C. 802 : 3 Pat. L. R. 33 Cr. :
A. I. R. 1925 Pat. 447.

—Ss. 203, 436—Further inquiry—Dismissal of complaint—Sessions Judge moved—Sessions Judge directing other Magistrate to issue summons without issuing notice to accused—Order, if correct.

A complaint made against certain persons under Ss. 420-120-B was dismissed under S. 203. The complainant moved the Sessions Judge for a direction to Police Magistrate to make further inquiries. The Sessions Judge without issuing any notice on the accused directed the issue of summons straightaway on them under Ss. 420-120-B and ordered the same to be heard by other Magistrate : *Held*, that the form of the Judge's order was not correct. He should have left it to the Magistrate to select the particular form of enquiry instead of directing him categorically to issue a summons against the accused. But if the Magistrate, in the exercise of his own direction chose to issue a summons immediately instead of wasting time over a possibly useless enquiry, he was quite at liberty to do so. *Annakali Debi v. Gyanendra Chakravarty*.

39 Cr. L. J. 292 :
173 I. C. 318 : 10 R. C. 501 :
A. I. R. 1938 Cal. 22.

—Ss. 203, 436—Further inquiry—Discharge, what is.

Where no process has been issued to the accused at all and he does not appear in Court and the complaint against him is dismissed summarily under S. 203, the accused cannot be said to have been "discharged" within the meaning of S. 436. It is only after he has appeared in Court and the evidence against him in Court is found to be insufficient so as to make it unnecessary to call upon him to enter upon his defence, that he can be

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discharged. An order dismissing a complaint under S. 203, therefore, may be set aside and further inquiry ordered under S. 436 without any notice to the accused. *Gajraj Singh v. Emperor*. 26 Cr. L. J. 1176 :

88 I. C. 600 : 23 A. L. J. 451 :
47 All. 722 : A. I. R. 1925 All. 537.

———Ss. 203, 436—*Further inquiry—Notice to accused.*

When an order has been passed under S. 203, Cr. P. C., it is not necessary for the District Magistrate to give an opportunity to the accused of showing cause why orders should not be passed against him under S. 436, Cr. P. C. This proviso of S. 436 applies only to cases when the accused person has been discharged and not to cases when orders have been passed under S. 203. *Daya Ram v. Emperor*. 28 Cr. L. J. 650 :

103 I. C. 106 : 1 Luck. Cas. 184 :
2 Luck. 573 :
A. I. R. 1927 Oudh 264.

———Ss. 203, 436—*Further inquiry—Notice to accused.*

Where a complaint has been dismissed under S. 203, Cr. P. C., the accused is not entitled to notice before a further inquiry is ordered under S. 436 of the Code, even if he had appeared at the trial Court. *Mawshar Ali Pramanik v. Hazratulla Pramanik*. 30 Cr. L. J. 1030 :

119 I. C. 376 : 49 C. L. J. 422 :
I. R. 1929 Cal. 792 :
A. I. R. 1929 Cal. 508.

———Ss. 203, 436, 437, 439—*Further inquiry—Matter found civil by original Court—Dismissal of complaint—Application to District Magistrate against it—Order for further inquiry passed without notice to accused, and without stating grounds.*

Where complaint having been dismissed by a Magistrate under S. 203, Cr. P. C., on the ground that, in his opinion, the dispute was of a civil nature, the District Magistrate, on an application of the complainant, but without giving a notice to the accused, directed the Magistrate, under S. 437, Cr. P. C. to make further enquiry: *Held*, that the order was not bad for want of notice to the accused but that, as the district Magistrate had not stated what were, in his opinion, the grounds in the complaint for a criminal enquiry, and as the matter was a civil one and also found to be of a civil nature by the original Court, the order should be set aside. *Maun Ghela Amarchand v. Jadeja Meruji Mansingji*. 3 Cr. L. J. 98.

———Ss. 203, 436, 439—*Further inquiry—Notice to accused.*

An accused person who has not appeared before the Magistrate on the occasion of his dismissing a complaint under S. 203, Cr. P. C., is not ordinarily entitled to be heard before an order for further inquiry is made by the Sessions Judge. Where a complaint is dismissed in the absence of the accused, the latter has no right to be heard before an order for

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further enquiry is made under S. 436, Cr. P. C. *Manrup Singh v. Sahdeo Sahu*.

30 Cr. L. J. 1069 :
119 I. C. 559 : I. R. 1929 Pat. 607 :
A. I. R. 1929 Pat. 230.

———Ss. 203, 437—*Further inquiry—Complaint against several accused—Magistrate refusing to proceed against some—Order, whether amounts to discharge.*

One S. instituted a criminal case against eleven persons. The Magistrate instituted proceedings only against some of them and after their conviction rejected the petition of the complainant to issue process against the remainder. On application by the complainant, the District Magistrate under S. 437 ordered the remaining accused to be proceeded against. No notice was issued to the accused prior to the passing of the order: *Held*, (1) that the order of the Magistrate refusing to issue process amounted to a discharge and that the District Magistrate had, therefore, jurisdiction to proceed under S. 437, Cr. P. C.; (2) that no notice was required to be issued to the accused inasmuch as they had never appeared before a Magistrate nor been formally discharged. *Hori La Choudhry v. Emperor*. 20 Cr. L. J. 385

53 I. C. 931 : A. I. R. 1919 Pat. 361

———Ss. 203, 437—*Further inquiry—Dismissal of complaint—Order for further enquiry by District Magistrate, grounds for—Possibility of conviction on further enquiry—Landlord and tenant—Removal of crops by tenant—Decision by Revenue Court, whether evidence at criminal trial—Questions of civil nature—Penal Code S. 379—Madras Estates Land Act Ss. 90, 212.*

An order of dismissal passed under S. 203 should not be set aside by a District Magistrate on the bare ground that it is possible that, on further enquiry, the accused may be convicted. Where the accused is tried for removal of crops after the immovable property had been distrained, under S. 379 Penal Code, and S. 212 of Madras Estate Land Act, the finding of a Revenue Office under S. 90 of the latter Act is not evidence for any purpose and cannot be relied on as a ground for further enquiry into the charge that was thrown out by a Magistrate under S. 203, Cr. P. C. Disputes between landlords and tenants should be left to Revenue Court and not taken up by Criminal Courts. *In re : Bakir Alli Khan Sahib*.

17 Cr. L. J. 406
35 I. C. 966 : A. I. R. 1917 Mad. 831

———Ss. 203, 437—*Further inquiry—Notice to accused.*

A notice to a person against whom a complaint is made is quite unnecessary, where it is sought to set aside the summary order in a proceeding to which he was actually no party. Where a complaint has been dismissed without inquiry, and without summoning the accused, the District Magistrate can order further inquiry without notice to the accused. *Angan v. Ram Pirbhan*.

14 Cr. L. J. 2 :
18 I. C. 146 : 10 A. L. J. 531 :
35 All. 78.

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———Ss. 203, 437—*Further inquiry—Notice to accused.*

Where a complaint has been dismissed under S. 203 without notice to the accused, the order of dismissal may also be set aside without notice to him. *Mata Palat v. Emperor.*

24 Cr. L. J. 811 :
74 I. C. 715 : A. I. R. 1923 All. 479.

———Ss. 203, 437—*Further inquiry—Notice to accused, whether necessary.*

No notice to the accused is necessary before an order setting aside an order of dismissal under S. 203 and directing further inquiry into the case may be passed under S. 437. *Fazarbi Bibi v. Moonsab Molla.*

21 Cr. L. J. 663 :
57 I. C. 823 : 32 C. L. J. 44 :
A. I. R. 1920 Cal. 542.

———Ss. 203, 437—*Further inquiry—Notice to accused, whether necessary—Procedure.*

A party who is not being tried for an offence is not an accused person. In revising under S. 437 an order of dismissal under S. 203 or 204 (3) it is not necessary to issue notice to the other side. Where a case is dismissed under S. 203, Cr. P. C. and the Magistrate is directed under S. 437 to hold a further judicial inquiry, he has no jurisdiction to issue summons to the accused, until he has completed the judicial inquiry and a *prima facie* case is disclosed against the accused. *Sheo Narain Singh v. Ram Pertap Rai.*

20 Cr. L. J. 843 :
53 I. C. 939 : 4 P. L. J. 456 :
A. I. R. 1919 Pat. 567.

———Ss. 203, 437—*Further inquiry—Notice to accused, whether necessary.*

Where a complaint is dismissed under S. 203 after giving the accused an opportunity of being heard, an order directing further inquiry into the case under S. 437 should not be made without giving notice to the accused. *Jogesh Chandra Sen v. Nikunja Behari Choudhuri.*

25 Cr. L. J. 140 :
76 I. C. 236 : 27 C. W. N. 552 :
A. I. R. 1923 Cal. 651.

———Ss. 203, 437—*Further inquiry—Notice to the accused.*

Where a complaint is dismissed under S. 203, the Sessions Judge is not bound to issue notice to the accused before ordering further inquiry under S. 437. *Muhammad Salamat-ul-Lah v. Lala Situl Prasad.*

8 Cr. L. J. 342 :
11 O. C. 261.

———Ss. 203, 437—*Further inquiry.*

Where a complaint charging the accused with assault and theft was dismissed by a Magistrate on receipt of the *Panchayat* report without hearing the complainant and referring only to the charge on assault: *Held*, that further enquiry must be made into the allegations made in the complaint. *Purna Chandra De v. Ambica Charun.*

20 Cr. L. J. 784-A :
53 I. C. 624 : 23 C. W. N. 575 :
A. I. R. 1919 Cal. 725.

———Ss. 203, 437, 439—*Further enquiry—*

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Complaint dismissed by Presidency Magistrate—Jurisdiction of High Court to order further enquiry.

Where a complaint has been dismissed by a Presidency Magistrate under S. 203, the High Court has no power to direct a further enquiry under Ss. 437 and 439 but only under S. 15 of the Charter Act (24 and 25 Vict., 104.) The question of the propriety or the impropriety of the order of dismissal does not strictly come within the authority vested in the Court thereunder. *Debi Bux Shroff v. Jutmal Dungarmal.*

5 Cr. L. J. 83 :
I. L. R. 33 Cal. 1282.

———S. 203—*Inquiry—Complaint against Police Officer.*

Where a complaint is made against a Police Officer, it should be enquired into with care and every opportunity given to the complainant to prove his complaint. If the complaint is false, the Magistrate has considerable powers of granting compensation by inflicting fine on the complainant and of prosecuting him for perjury. *Balda Pasi v. Nasir Ali Khan.*

24 Cr. L. J. 814 :
74 I. C. 718.

———S. 203—*Inquiry—Locus standi of accused.*

A Magistrate to whom a complaint is referred for enquiry may examine or question the person complained against and his witnesses but he would be acting illegally if he permits the accused to be represented by a Pleader and hears his argument. *Fanindra Kumar Das v. Rohcil Bux.*

34 Cr. L. J. 604 (2) :
143 I. C. 606 : 37 C. W. N. 709 :
57 C. L. J. 259 : 60 Cal. 1051 :
I. R. 1933 Cal. 446 :
A. I. R. 1933 Cal. 447.

———S. 203—*Inquiry—Locus standi of accused in such enquiry.*

At an inquiry under S. 203, Cr. P. C., the accused has no *locus standi* and a Magistrate acts illegally in allowing the accused to appear at that stage and cross-examine the witnesses. *Mawshar Ali Pramanik v. Hazratulla Pramanik.*

30 Cr. L. J. 1030 :
119 I. C. 376 : 49 C. L. J. 422 :
I. R. 1929 Cal. 792 :
A. I. R. 1929 Cal. 508.

———S. 203—*Inquiry—Magistrate's duty to record evidence.*

The provisions of S. 203 are very wide and this section does not say that the Magistrate dismissing the complaint must have himself recorded the evidence in the preliminary enquiry. *Virumal Manghanmal v. Muhammad Khan.*

37 Cr. L. J. 1086 :
164 I. C. 1020 : 30 S. L. R. 217 :
9 R. S. 85 : A. I. R. 1936 Sind 146.

———Ss. 203, 488—*Inquiry—Application for maintenance—Inquiry—Procedure by Subordinate Magistrate.*

An application for maintenance under S. 488 should be inquired into by the Magistrate to whom it is presented, he cannot refer it to a

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Subordinate Magistrate for enquiry and report.
Sardaran v. Amir Khan.

2 Cr. L. J. 421 :
29 P. R. Cr. 1905.

———S. 203—*Investigation—Investigation or inquiry, whether necessary.*

S. 203 is not in any way dependent upon the provisions of S. 202, and an investigation or inquiry under S. 202 is not a condition precedent to the dismissal of a complaint under S. 203. *Dukhiram Raut v. Jamuna Kuer.*

26 Cr. L. J. 921 :
86 I. C. 985 : 6 P. L. T. 727 :
A. I. R. 1925 Pat. 704.

———S. 203—*Investigation—Police sending report to the other Magistrate.*

Where a Magistrate sends a case to the Police under S. 203 for investigation and report, the Police Officer to whom the case is sent acts wrongly in sending the papers after the investigation to another Magistrate and applying to him for a *kharij-ul-waqua* order, when the case is pending in the Court of the Magistrate who referred it to the Police. *Thakar Singh v. Kirpal Singh.*

19 Cr. L. J. 436 :
44 I. C. 964 : 10 P. W. R. 1918 Cr :
53 P. L. R. 1918 :
A. I. R. 1918 Lah. 123.

———S. 203—*Issue of Process, Magistrate's discretion to refuse.*

Under S. 203, even though the evidence discloses a *prima facie* case, there is a discretion left in the hands of the Magistrate who may refuse to issue process. *Sher Singh v. Jitendra Nath Sen.*

334 Cr. L. J. 3 :
134 I. C. 1045 : 54 C. L. J. 253 :
36 C. W. N. 16 : 59 Cal. 275 :
54 C. L. J. 253 : I. R. 1932 Cal. 5 :
A. I. R. 1931 Cal. 607.

———S. 203—*Jurisdiction.*

Quite apart from any order of the Revisional Court for further enquiry, a Magistrate has jurisdiction to proceed with the trial of an accused person in spite of the fact that he has dismissed the complaint under S. 205. *Janakdhari Singh v. Emperor.*

31 Cr. L. J. 146 :
120 I. C. 632 : 8 Pat. 537 :
10 P. L. T. 725 : A. I. R. 1929 Pat. 469.

———S. 203—*Jurisdiction—Superintendence, High Court's power of—S. 15 of the Charter Act—Interfering with order of Presidency Magistrate—Order under—Dismissal of complaint—Rule issued by High Court—Magistrate's duty to show cause.*

Independently of the Cr. P. C. the High Court has jurisdiction under S. 15 of the Charter Act to interfere with the order of a Presidency Magistrate dismissing a complaint under S. 203, Cr. P. C., and direct a further inquiry. There is no form of judicial injustice which the High Court, if need be, cannot reach under the Charter Act. S. 15 of the Charter Act should be interpreted in an extended sense so as to give the High Court power of superintendence, that is to say, powers of revision over proceedings of the Subordinate Court. *Lekhraj Ram v. Debi Pershad.*

7 Cr. L. J. 499 :
12 C. W. N. 678.

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———S. 203—*Jurisdiction.*

Where a complaint is dismissed by a Sub-Divisional Magistrate under S. 203, a Sub-Magistrate has jurisdiction to entertain a charge-sheet founded on a subsequent complaint, the order of dismissal not having been set aside. *In re : Ponnuswami Goundan.* (F. B.)

33 Cr. L. J. 454 :
137 I. C. 317 (2) : 62 M. L. J. 469 :
35 L. W. 478 : 1931 M. W. N. 1149 :
55 Mad. 622 : I. R. 1932 Mad. 380 :
A. I. R. 1932 Mad. 369.

———Ss. 203, 488—*Maintenance application—Reference for enquiry to subordinate Magistrate.*

A Magistrate to whom an application for maintenance is made under S. 483, cannot refer it to a subordinate Magistrate for enquiry and dismiss it on his report. *Emperor v. Amir Khan.*

2 Cr. L. J. 367 :
6 P. L. R. 361.

———Ss. 203, 437—*Procedure—Cross-complaints, dismissal of—Further enquiry ordered—Dismissal under S. 203 not proper.*

The two rival parties in a case of rioting preferred two complaints which were dismissed by the Magistrate under S. 203. The Sessions Judge on the application of both parties under S. 437, ordered that further inquiry should be held in both the cases and directed that if one of them be found false, the other case should be tried. When after remand one of the cases was dismissed under S. 203 : *Held*, that the Sessions Judge's order contemplated that the cases should be decided after regular trial and not dealt with under S. 203, and that the order of the Deputy Magistrate dismissing the case under S. 203, Cr. P. C., was illegal. *Brij Kishore Ghose v. Gopal Rai.*

5 Cr. L. J. 112 :
11 C. W. N. 316.

———S. 203—*Procedure—Complaint dismissed under S. 203—Reasons, whether to be recorded.*

It is incumbent upon a Magistrate to record briefly his reasons for dismissing a complaint under S. 203. *Harnandan Das v. Atul Kumar Prasad.*

26 Cr. L. J. 1502 :
90 I. C. 158 : A. I. R. 1926 Pat. 57.

———S. 203—*Procedure—Complainant purchasing sewing machine on hire-purchase system—Default in payment—Company's employee removing machine—Complaint for trespass and for issue of search warrant—Magistrate holding no trespass committed but issuing search warrant—Order, illegal.*

The complainant purchased a sewing machine on a hire-purchase agreement. On his making default in the payment of the monthly hire for four consecutive months, the Company sent an employee to his house to remove the machine as they were entitled to do under the terms of the agreement. On the next day, the complainant appeared before the Police Magistrate of Sealdah and alleged that the employee of the Company had committed criminal trespass and theft and asked for the issue of a search warrant. The Magistrate

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sent the case for inquiry and upon the report held that no criminal action would lie. Nevertheless, he issued a search warrant to recover the machine which he ordered to be made over to the complainant on a bond for Rs. 100. *Held*, that the Magistrate has no authority to make the order. He had rejected the application of the complainant, and ought to have dismissed the complaint under S. 203. After that, he was not in position to make an order for the issue of a search warrant or that the machine should be handed over to the complainant. *S. R. Bagnall v. Mrs. Dean*.

37 Cr. L. J. 991 :
164 I. C. 521 : 62 C. L. J. 270 :
9 R. C. 248.

—S. 203—*Procedure—Defamation of wide class—Dismissal of complaint without evidence, propriety of—Further enquiry.*

The 'Statesman,' an English daily of Calcutta, published an article libelling Hindu widows as a class and the Magistrate refused to issue process for defamation against the editor and printer of that newspaper on the ground that the class defamed was too wide to hurt any one : *Held*, that the Court was wrong in dismissing the complaint without giving the complainant an opportunity to substantiate the charge by production of evidence. *Mahim Chandra Roy v. Watson*. 30 Cr. L. J. 407 :

115 I. C. 35 : 55 Cal. 1280 :
I. R. 1929 Cal. 291 : A. I. R. 1929 Cal. 191.

—S. 293—*Procedure—Dismissal on Police report.*

Where a complaint is dismissed by a Magistrate on a perusal of the Police papers without giving an opportunity to the complainant to argue the case and to induce the Magistrate to examine the prosecution witnesses so that he may decide how far they are speaking the truth the procedure is not proper and further enquiry should be ordered. *Manghanmal Vishindas v. Emperor*.

35 Cr. L. J. 222 :
146 I. C. 924 : 6 R. S. 102 (2) :
A. I. R. 1933 Sind 395.

—S. 203, 204—*Procedure—Dismissal of complaint—Granting of summary A, B or C is mere administrative matter—On complaint Magistrate taking cognizance of offence—Procedure to be followed.*

Dismissal of a complaint under S. 203 by an order granting a 'C' summary is not a proper dismissal of the complaint under S. 203 at all. The granting of a summary A, B or C is a mere administrative matter, while the dismissal of the complaint requires a judicial order under S. 203. Ordinarily when a Magistrate takes cognizance of an offence on a complaint, he should examine the complainant on oath and reduce the substance of his examination to writing, and if he wishes to postpone the issue of process, he acts in accordance with S. 202, and then if after inquiry he wishes to dismiss the complaint, he acts under S. 203. But that section contemplates that he should exercise his own independent judgment, and if he does not wish to postpone the issue of process, then he acts under S. 204 and the

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following sections. *Pherumal Lilaram v. Emperor*.

39 Cr. L. J. 966 :
177 I. C. 744 : 11 R. S. 67 :
A. I. R. 1938 Sind 192.

—Ss. 203, 204—*Procedure.*

District Magistrate taking cognizance under S. 200 and directing inquiry under S. 202 by Police. He has to proceed under S. 203 or S. 204. S. 156 does not apply. *Isaf Nasya v. Emperor*.

28 Cr. L. J. 577 :
102 I. C. 545 : 54 Cal. 303 :
A. I. R. 1928 Cal. 24.

—S. 203—*Procedure—Examination of one out of several prosecution witnesses—Complaint dismissed—Procedure, irregular.*

A Magistrate examined the complainant, only one out of the several prosecution witnesses, recorded the statement of the accused and then dismissed the complaint awarding compensation to the accused : *Held*, (1) that the procedure of the Magistrate was illegal inasmuch as after having heard evidence for the prosecution, he could not pass an order dismissing the complaint though he could have made an order of discharge ; (2) that the entire evidence for the prosecution should have been received, unless for some very strong reason the Magistrate considered that evidence unnecessary. *Gokul Chand v. Mahabir Misir*. 14 Cr. L. J. 412 :
20 I. C. 236 : 11 A. L. J. 451.

—S. 203—*Procedure—Refusal to summon accused without examining complainant or any of his witnesses.*

The complainant, whose brother had been murdered, lodged an information before the Police against the accused. The Magistrate, without examining either the complainant or any of the witnesses he wished to produce in support of his complaint, came to the conclusion that the case was one in which no Jury would convict the person complained against and refused to summon the accused : *Held*, that the Magistrate should not have disposed of a case of so serious a nature without examining the complainant or any of his witnesses. *Fazlur Rahman v. Abedor Rahman*.

20 Cr. L. J. 175 :
49 I. C. 495 : 29 C. L. J. 50 :
23 C. W. N. 392 : A. I. R. 1919 Cal. 78.

—Ss. 203, 204—*Procedure.*

The Magistrate who receives a complaint and examines the complainant must deal with it himself under S. 203 or S. 204 of the Code and cannot send it to the District Magistrate for orders. It is improper for a Magistrate to dismiss a complaint while sitting in his private room and without giving the complainant or his pleader an opportunity of being heard. *Fani Bhushan Banerjee v. F. E. Kemp*.

4 Cr. L. J. 213 :
10 C. W. N. 1086.

—S. 203—*Procedure.*

There need not be any examination on oath other than that provided by S. 200. *Hashim Moosa v. Mrs. G. Booth*. 33 Cr. L. J. 330 :

136 I. C. 767 : 25 S. L. R. 468 :
I. R. 1932 Sind 63 : A. I. R. 1932 Sind 58.

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———S. 203—Revision—Competency of.

Quære—Whether the High Court has power to revise an order of dismissal of complaint under S. 203. *Gangu Reddi v. Samrapathy Mudali*. 14 Cr. L. J. 633 : 21 I. C. 681 : 25 M. L. J. 510.

———Ss. 203, 204 (3), 253, 437—Revision—Charter Act, S. 15—Order of discharge—Powers of the High Court to interfere.

The High Court has no power under the Cr. P. C. to interfere with an order of discharge made by a Presidency Magistrate. Its powers of interference exist by virtue of S. 15 of the Charter Act, which gives it a limited jurisdiction. It can exercise such powers only in cases of non-exercise or illegal exercise of jurisdiction and cannot set aside an order of discharge made by Presidency Magistrates merely on a consideration of the evidence in the case. *Kedar Nath Sanyal v. Khelra Nath Sikdar*. 6 Cr. L. J. 400 : 6 C. L. J. 705.

———Ss. 203, 204, Chap. XVI—Revision—Dismissal of complaint under S. 203—Revision—Notice to accused—Order for further inquiry whether one under Chap. XVI or Chap. XVII.

An accused person has no *locus standi* in an inquiry under Chap. XVI. The principle is equally applicable when the order in such an inquiry is under revision either in the High Court or the Sessions Court. On a revision petition against the dismissal of a complaint under S. 203, notice should not be issued to the accused. Where the Revision Court in such a case orders further inquiry, such inquiry must be regarded as being one under Chap. XVI and not Chap. XVII until the Magistrate is satisfied that a notice should go to the accused under S. 204. *In re : T. S. Rambadra Odayar*. 29 Cr. L. J. 1059 : 112 I. C. 563 : A. I. R. 1928 Mad. 1198.

———Ss. 203, 257 and 437—Revision—Jurisdiction of District Magistrate under S. 437—Order directing that the accused should not be proceeded against and the processes against him be withdrawn, legality of—District Magistrate's power to revise such order.

Where on the acquittal of a co-accused, the other accused against whom process of arrest had been issued, surrendered before the Deputy Magistrate who tried the co-accused, and that officer passed an order directing that the accused should not be proceeded against and that the warrant and other processes issued against him be withdrawn : *Held*, that this order of the Deputy Magistrate was bad in law and should be set aside. The proper course for him was to send notice to the complainant requiring him to proceed with the case and then dispose of the case according to law. *Held*, further, that the District Magistrate had no jurisdiction under S. 437, Cr. P. C., to set aside the order and direct a re-trial of the accused, as it was not an order dismissing a complaint or discharging the accused. *Panchu Ghosh v. Khosdel Sarkar*. 6 Cr. L. J. 367 : 12 C. W. N. 68.

———Ss. 203, 439—Revision—Notice to opposite party.

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Revision of an order passed under S. 203 can be made without notice to the person complained against. *Gada Husain v. Janki*. 11 Cr. L. J. 629 : 8 I. C. 371 : 13 O. C. 289.

———Ss. 203, 253, 259—Revival.

Benson, J.—*Quære*, whether it would not make any difference if the Magistrate seeking to revive the complaint be different from the Magistrate that acted under S. 203. *Moore, J.*—*Quære*, whether the view would not be different if the case was one of discharge under Ss. 253 and 259. *Subramania Aiyar, J.* (Davies, J., concurring), If a person, against whom a *prima facie* case had been made out but who was acquitted after trial, is entitled to be protected, then a person against whom the case is so weak as not to warrant his being put on trial, is *a fortiori* entitled to protection. *In re : Chinna Kaliappa Gounden and Subbier*. 3 Cr. L. J. 274 : 1 M. L. T. 31 : 15 M. L. J. 79 : 29 Mad. 126.

———Ss. 203, 437—Revival—Dismissal of complaint—Revival by first Court after District Magistrate's refusal to order further enquiry.

A Deputy Magistrate who had dismissed a complaint under S. 203, on the ground of absence of the complainant's witnesses can legally revive it, even after the District Magistrate has refused to order further enquiry under S. 437, upon a motion by the complainant. *Jyolindra Nath Daw v. Hem Chandra Daw*. 9 Cr. L. J. 563 : 2 I. C. 293 : 13 C. W. N. 193 : 5 M. L. T. 95 : 36 Cal. 415.

———S. 203—Scope.

On a complaint by the Police against a person under S. 182, Penal Code, the Magistrate passed the following order : "under the circumstances I do not think proper to start this case. I, therefore, reject it." *Held*, that the order was neither of acquittal, nor of discharge, but merely an order under S. 203, Cr. P. C. *Daya Ram v. Emperor*. 28 Cr. L. J. 650 : 103 I. C. 106 : 1 Luck. Cas. 184 : 2 Luck. 573 : A. I. R. 1927 Oudh 264.

———S. 203—Scope—S. 203 does not provide for issue of "C" summary.

In S. 203, there is no provision for the issue of a "C" summary. *Joomal Tikamdas v. Emperor*. 40 Cr. L. J. 807 : 183 I. C. 449 : 1939 Kar. 277 : 12 R. S. 57 : A. I. R. 1939 Sind 208.

———S. 203—Scope.

White, C. J.—An order under S. 203 is not a judgment within the meaning of S. 369. *In re : Chinna Kaliappa Gounden and Subbier*. 3 Cr. L. J. 274 : 1 M. L. T. 31 : 15 M. L. J. 79 : 29 Mad. 126.

———S. 203—Transfer by District Magistrate of case remanded for further enquiry.

Where a Sessions Judge remands a case dismissed by a Deputy Magistrate under S. 203 and directs that further proceedings should be held under the same section, the case cannot, after the remand, be transferred by the District

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Magistrate from the file of the Deputy Magistrate. *Brij Kishore Ghose v. Gopal Rai*.

5 Cr. L. J. 112 :
11 C. W. N. 316.

————S. 204 as amended in 1923.

See also (i) Cr. P. C. 1898, S. 105 (1) (b).

————S. 204.

See also (i) Cr. P. C., 1898, Ss. 75, 190, (c), 192, 195 (1) (b), 200, 202, 203, 403.

————S. 204—Arrest.

If an enquiry under S. 202 is held by a Magistrate or a Police Officer, his power to arrest without a warrant remains intact. *Raghunath v. Emperor*.

33 Cr. L. J. 349 :
136 I. C. 842 : 12 P. L. T. 937 :
I. R. 1932 Pat. 129 : A. I. R. 1932 Pat. 72.

————Ss. 204 (3)—Diet-money—Private prosecution—Duty of complainant to deposit diet money of witnesses in advance.

A Magistrate has a right to refuse to issue process for the attendance of witnesses in a case instituted on the complaint of a private person, unless travelling expenses and diet money of such witnesses have been deposited by the complainant in advance. *Ram Dulari v. Mushtaq Ahmad*.

29 Cr. L. J. 664 :
110 I. C. 216 : 5 O. W. N. 26 :
3 Luck. 363 : A. I. R. 1928 Oudh 226.

————S. 204 (3)—Dismissal—Summons case—Dismissal of complaint for non-payment of witness batta.

A summons case can be dismissed under S. 204 (3), for non-payment of witness batta. *Modiboyina Raghavulu v. Oduyu Narasa Reddi*.

38 Cr. L. J. 265 :
166 I. C. 639 : 936 M. W. N. 1381 :
45 L. W. 60 : 1937 : 1 M. L. J. 120 :
I. L. R. 1937 Mad. 515 : 9 R. M. 389 :
A. I. R. 1937 Mad. 222.

————S. 204—Issue of process—Materials sufficient for issue of process—Magistrate, duty of.

Process ought not to be issued against a man unless there are materials to justify the issue of process. Allegations made in the petition of complaints, which on being examined on oath the complainant does not substantiate, are not sufficient to justify the Magistrate in issuing process. But where the allegations made in the petition of complaint, considered along with the evidence given by the complainant and the affidavit made by him, give rise to certain inferences adverse to the accused, the Magistrate is justified in going on and making further enquiry into the case. *Jogesh Chandra v. Abdul Gani*.

18 Cr. L. J. 626 :
39 I. C. 994 : A. I. R. 1917 Cal. 671.

————S. 204—Issue of process—Summoning accused piecemeal, legality of.

There is nothing either irregular or improper in a Magistrate first issuing process for one of the accused and then changing his mind

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and issuing process for all the accused before taking further evidence. *Alam v. Emperor*.

29 Cr. L. J. 293 :
107 I. C. 778 : A. I. R. 1928 Lah. 541.

————S. 204—Nature of order.

An order calling for a charge-sheet on a report under S. 202, is an order under S. 204, and in practice, an order for issue of process. *Ragunath v. Emperor*.

33 Cr. L. J. 349 :
136 I. C. 842 : 12 P. L. T. 937 :
I. R. 1932 Pat. 129 : A. I. R. 1932 Pat. 72.

————S. 204—Nature of order—Order directing summons to issue—Magistrate, power of, to rescind order.

An order under S. 201 directing the issue of a summons, is not a judgment to which the provisions of S. 369 would be applicable. A Magistrate, therefore, has jurisdiction, to rescind such an order, and direct the holding of an enquiry under S. 202. *Lalit Mohan v. Noni Lal Sarkar*.

25 Cr. L. J. 464 :
77 I. C. 816 : 27 C. W. N. 651 :
39 C. L. J. 329 : A. I. R. 1923 Cal. 662.

————S. 204—Preliminary inquiry.

Preliminary inquiry before ordering accused to appear is advisable. *Murugappa Chettyar v. K. P. R. M. Raman Chettyar*.

37 Cr. L. J. 243 :
160 I. C. 150 (b) : 8 R. Rang. 345 :
A. I. R. 1935 Rang. 485.

————S. 204—Procedure—Cancellation of warrant—Discretion.

Where a Magistrate has issued a warrant against the accused in the first instance, he can in exercise of his discretion vested in him by S. 204 cancel the same and issue summons instead, if sufficient reasons are shown to him. *Imperator v. Mst. Janah*.

8 Cr. L. J. 187 :
1 S. L. R. 69.

————Ss. 204, 239—Procedure—Accused person who is—Accused person in one trial, whether competent witness in another trial—Magistrate, whether has discretion to proceed against accused person—Prejudice.

Applicants were convicted being concerned in the forgery of an unregistered mortgage bond, upon proceedings started against them on the petition of a Police Inspector, which stated, *inter alia*, that they together with one S. were members of a gang and had jointly fabricated the bond. J., one of the applicants, had instituted a suit on the bond and the sanction of the Civil Court was necessary to his prosecution. The Police Inspector promised S. a pardon and his evidence was taken on oath by the Civil Court and the prosecution of J sanctioned. S. was never arrested, nor brought to trial in the Criminal Court, nor were any steps taken to give him a conditional pardon under S. 337. It was objected that S. should have been placed before the Magistrate as an accused, that his evidence was inadmissible, that the promise of pardon to him, not being in accordance with S. 337 was illegal and that his evidence was irrelevant under S. 24 of the

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Evidence Act: *Held*, that although in view of S. 239, S. could have been tried jointly with the applicants or separately, yet the fact that he was not so tried did not make him a co-accused with the applicants, and his competency as a witness could not be questioned, as he did not answer to the description of an accused person in the trial, although he may have been converted illegally into a witness; (2) that inasmuch as in the complaint S. was described as having assisted in the preparation of the fabricated bond, the Magistrate was bound, under S. 204, to issue process against him, and his failure to do so, or to proceed separately against him, seriously prejudiced the applicants, and consequently vitiated the whole proceedings. *Govinda Sambhuji v. Emperor*.

21 Cr. L. J. 769;
58 I. C. 449; 16 N. L. R. 9.
A. I. R. 1920 Nag. 255.

———S. 205.

See Cr. P. C., S 75.

———S. 205—*Appearance of accused through proxy.*

Where an accused person is permitted to appear by a pleader, it is open to him to appoint a private person to appear in his stead and plead and do other acts on his behalf in the case against him, and it is equally open to the Court to permit such private person to represent the accused as a Pleader. But there should be clearly on record something to show that the person who represents the accused has been duly appointed by him just as an ordinary pleader has to file a *vakalatnama*. The record must also show that the Court has given the requisite permission for his appearance in place of the accused. *Dorabshah Bomanji Dubash v. Emperor*.

27 Cr. L. J. 440.
93. I. C. 232; 28 Bom. L. R. 102;
50. Bom. 250; A. I. R. 1926 Bom. 218.

———S. 205. *Applicability.*

S. 205 applies to all cases where a summons is issued in the first instance to an accused irrespective of the fact whether he appears in answers to the summons or has to be brought in by a warrant of arrest issued subsequently. *Saji v. Bhimi*.

31 Cr. L. J. 284.
121 I. C. 651. A. I. R. 1930 Nag. 61;
26 N. L. R. 50.

———S. 205 (1)—*Applicability—Warrant issued subsequently recalled—Accused before Magistrate—Accused, if can be allowed to appear by Pleader.*

The word "ever" in "whenever;" in S. 205 (1), implies different occasions and is in contrast to the words used in the previous S. 204 about issuing a summons in the first instance. In the case where a warrant had been issued and recalled and a summons then has been issued S. 205, will apply by virtue of this word "whenever." The same result follows when the accused being before the Magistrate he does not think it necessary for him to issue summons for his appearance. In such a case he can allow the accused to appear by Pleader. *Jagdish Narain Bajpai v. Emperor*.

41 C. L. J. 500;
187 I. C. 682; 1940 A. L. J. 104;
12 R. A. 575; 1940 A. W. R. 79;
A. I. R. 1940 All. 178.

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———S. 205—*Exemption from personal appearance, revocation of—Power of Magistrate—Discretion.*

The power conferred on a Magistrate under S. 205 of exempting a person from personal appearance is discretionary, and where a Magistrate, in exercise of his discretion, permits a person to appear by a Pleader, the concession so extended ought not to be revoked. *Dwigendra Narain Bagchi v. Emperor*.

24 Cr. L. J. 902;
75 I. C. 150; 38 C. L. J. 9.

———S. 205—*Pardanashin lady—Exemption from personal attendance.*

The complainant prosecuted three women together with his wife for assisting in the performance of a bigamous marriage alleged to have been contracted by the latter. The complaint against them was couched in the vaguest language and alleged no specific act. There appeared to be no difficulty for the prosecution witnesses to describe them in their absence: *Held*, that the Magistrate would have exercised a wise discretion in exempting them from personal attendance until he was sure that the complaint against them was not made for the purpose of harassment and vexation. *Bachal v. Emperor*.

15 Cr. L. J. 539 (b);
21 I. C. 947; 7 S. L. R. 161;
A. I. R. 1914 Sind 51.

———S. 205 — *Pardanashin lady—Personal appearance—Discretion—Substitution of summons for warrant.*

S. 205 should be freely utilized in such a country as Sind, where so much prejudice exists against the appearance of females in public, and where the procedure law is so frequently abused in order to gratify private malice. The mere impression of a Magistrate that certain female accused are not *pardanashin* is not a sufficient reason for his refusal to allow them the benefit of S. 205. Summons should be substituted for warrants issued without holding any preliminary enquiry against female accused and then personal appearances should not be insisted on until it becomes necessary. *Emperor v. Mahomed*.

11 Cr. L. J. 197;
4 I. C. 1152; 3 S. L. R. 167.

———S. 205—*Pardanashin lady—Personal appearance in Court—Revision.*

The High Court can in a proper case interfere with an order of a Magistrate under S. 205, Cr. P. C., rejecting an application by a *pardanashin* lady to be excused from personal appearance in Court though ordinarily such matters will be left to the discretion of the Magistrate. The mere fact that certain ladies who were related to a *parda* lady appeared in Court voluntarily is no ground for enforcing personal appearance of the latter. *Tirbeni v. Bhagwati*.

28 Cr. L. J. 94;
99 I. C. 126; A. I. R. 1927 All. 149.

———S. 205 — *Pardanashin lady—Personal attendance, when to be enforced—Doubtful complaint.*

A Criminal Court should abstain from com-

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PELLING a *pardanashin* woman to attend in person unless and until the case against her has reached the stage at which her personal attendance is clearly and legally required in the interests of justice. It is a part of Court's duty to see that the machinery of Criminal Law is not utilized as a means of gratifying petty spite. *Mst. Habbo v. Emperor*.

9 Cr. L. J. 158 :
1 I. C. 101 : 5 P. W. R. Cr. 1909.

—Ss. 205, 526—*Pardanashin lady—Dispensing with personal attendance.*

The accused, respectable *pardahnashin* ladies, were charged with offences under Ss. 307, 308, 325 and 326, Penal Code. The High Court allowed them to appear at the inquiry or trial by their Pleader or Pleaders, subject to their having to appear before the Court to hear the sentences passed, should the case be proved against them and the trial end in a conviction and also directed that should the case be committed to the Court of Session, the personal appearance of the ladies should be dispensed with till the Sessions Judge passes his order. *Raj Rajeshwari Debi v. Emperor*.

15. Cr. L. J. 281 (b) :
23 I. C. 489 : 17 C. W. N. 1248.

—S. 205—*Procedure—Accused absent from trial, conviction of, legality of.*

The conviction of an accused person who has not appeared at the trial and whose presence has not been dispensed with under S. 205 is illegal. *Ma Kin v. Emperor*.

26 Cr. L. J. 845 :
86 I. C. 669 : 3 Bur. L. J. 182 :
A. I. R. 1924 Rang. 383.

—S. 205 (2)—*Procedure—Attendance of accused.*

Order for attendance of exempted accused for giving explanation under S. 342 is legal. *Ishwar Das v. Bhagwan Das*.

35 Cr. L. J. 879 :
3 A. W. R. 443 : 148 I. C. 1135 : 1934 A. L. J. 753 :
6 R. A. 831 : A. I. R. 1934 All. 693 (2) :

—S. 205—*Procedure—Personal appearance, exemption of—Order.*

Where a Magistrate dispenses with the personal attendance of an accused person and permits him to appear by Pleader under S. 205, he should not note upon his record that such permission has been given and should not leave the matter to mere implication. *Dorabshah Bomanji Dubash v. Emperor*.

27 Cr. L. J. 440 :
93 I. C. 232 : 28 Bom. L. R. 102 :
50 Bom. 250 : A. I. R. 1926 Bom. 218.

—Ss. 205, 255, 342—*Procedure—Accused exempted from personal appearance—Statement of accused—Procedure.*

S. 205 allows the accused to appear by Pleader, and such appearance involves the performance of all acts which devolve upon the accused in the course of the trial, such as answering the examination by the Court under S. 342, or pleading, or refusing to plead to the charge under S. 455. *Emperor v. Jamal Khatun*.

14 Cr. L. J. 272 :
19 I. C. 544 : 6 S. L. R. 206.

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—S. 205, 342—*Procedure—Attendance of accused dispensed with—Examination of accused—Procedure.*

Where the attendance of an accused person has been dispensed with under S. 205, the accused can leave it to his or her Pleader to make a statement under S. 312 of the Code and it is not necessary to compel the attendance of the accused for the purpose of examination under that section. *Maung Po Nyein v. Haka Singh*.

28 Cr. L. J. 226 :
99 I. C. 1026 : 4 Rang. 506 :
A. I. R. 1927 Rang. 73.

—S. 205—*Proceedings in absence—Plea of guilty by person not duly authorised by accused to appear, whether can be accepted.*

Where there is no power-of-attorney or letter of authority to show that a person has been appointed by an accused person to appear and plead on his behalf, the Court is not entitled to accept a plea of guilty put forward by such person and to convict the accused upon such plea. *Dorabshah Bomanji Dubash v. Emperor*.

27 Cr. L. J. 440 :
93 I. C. 232 : 28 Bom. L. R. 102 :
50 Bom. 250 :
A. I. R. 1926 Bom. 218.

—S. 205—*Scope—Discretion to be liberally exercised in Sind.*

The discretion under S. 205 is one that should be liberally exercised in the Province of Sind. *Emperor v. Jamal Khatun*.

14 Cr. L. J. 272 :
19 I. C. 544 : 6 S. L. R. 206.

—S. 205—*Scope.*

Magistrate dispensing with personal attendance of accused—Questioning of accused is not obligatory. *Jaffar Cassum Moosa v. Emperor*.

35 Cr. L. J. 1035 :
149 I. C. 1132 : 36 Bom. L. R. 433 :
6 R. B. 414 : A. I. R. 1934 Bom. 212.

—S. 205—*Scope—Substituting summons for warrant—Excusing personal attendance of female accused—Power to be freely used in Sind.*

The power of substituting a summons for a warrant is not limited to the case of *pardanashin* women. The power should be freely utilized in the Province of Sind and especially in the case of female accused. Where a Magistrate instead of issuing a summons by inadvertence issues a warrant, he has power to make an order under S. 205. *Emperor v. Zalikhhan*.

14 Cr. L. J. 604 :
21 I. C. 476 : 7 S. L. R. 40.

—Ss. 205, 512—*Scope—Accused absconding after charge framed—Conviction, legality of.*

Where a warrant is, in the first instance, issued for the arrest of an accused person, the Magistrate trying him cannot dispense with his attendance and the whole trial must take place in his presence so that if the accused absconds before the trial is concluded, he cannot be convicted and sentenced in his absence. *Emperor v. Sardar*.

18 Cr. L. J. 975 :
42 I. C. 335 : 36 P. R. 1917 Cr. :
47 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 292.

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———S. 206—*Commitment, ground for.*

Apparent connection between case under Ss. 326 and 302, I. P. C., is no ground for committing case under S. 326 to Session Judge when it can be adequately decided by trial Court. *Emperor v. Nathu.*

33 Cr. L. J. 255 :
136 I. C. 272 : 32 P. L. R. 856 :
I. R. 1932 Lah. 224 :
A. I. R. 1932 Lah. 168.

———S. 206—*Commitment—Case triable by Court of Session and Magistrate—Commitment, when justified.*

Where a Magistrate is inquiring into a case which is triable both by the Court of Session and by himself, he has a discretion to commit the case to the Court of Session or to try it himself. If the maximum sentence provided for the offence is within the powers of the Magistrate, a commitment would only be justifiable on very special grounds. *Bengal-Nagpur Railway Co. v. Makbul.*

27 Cr. L. J. 313 :
92 I. C. 697 : 1926 Pat. 74 :
7 P. L. T. 343 :
A. I. R. 1925 Pat. 755.

———S. 206—*Commitment, legality of.*

The accused were charged with theft under S. 379, Penal Code. The Magistrate drew up a charge against the accused, but instead of trying them himself committed them to the Court of Session on the ground that the case was connected with another case in which he felt bound by law to commit. The connection, however, between the cases was not of such a character as to embarrass or prejudice the accused if they had been tried by the Magistrate himself : *Held*, that the reason given by the Magistrate for commitment was not good in law or in fact, and therefore, the commitment must be quashed. *Emperor v. Asha Bhatni.*

14 Cr. L. J. 657 :
21 I. C. 897 : 15 Bom. L. R. 998.

———S. 206—*Commitments—Murder case—Enquiry by Magistrate.*

When the evidence for the prosecution tends to show that an offence under S. 302, Penal Code, has been committed and the Magistrate holding the enquiry does not disbelieve the evidence, ordinarily it is not for him to weigh the evidence. It is better for him to commit the accused to the Sessions and leave it to the Sessions Judge to decide upon the value of the evidence led. *Emperor v. Wafadar.*

30 Cr. L. J. 234 :
114 I. C. 58 : 30 P. L. R. 36 :
I. R. 1929 Lah. 218 :
A. I. R. 1929 Lah. 403.

———S. 206—*Commitment, validity of.*

A commitment is not invalid merely because the Committing Magistrate himself had held an identification parade before the commencement of proceedings in his Court and is himself an important witness at the trial for the prosecution. *Bhola Ram v. Emperor.*

33 Cr. L. J. 188 :
135 I. C. 675 : 33 P. L. R. 641 :
13 Lah. 461 : I. R. 1932 Lah. 147 :
A. I. R. 1932 Lah. 196.

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———S. 206—*Commitment, validity of.*

Four cases having same evidence committed to Sessions by Magistrate with S. 30 powers—Magistrate competent to try two cases—Commitment order held proper. *Emperor v. Ujagar Singh.*

34 Cr. L. J. 314 :
142 I. C. 200 : 34 P. L. R. 360 :
I. R. 1933 Lah. 174 :
A. I. R. 1933 Lah. 500.

———Ss. 206, 215—*Commitment—Offence resulting in death of person—Committing Magistrate competent to pass adequate sentence—Commitment to Sessions undesirable—Revision.*

It is undesirable that a Committing Magistrate should commit a case to the Sessions, when he can pass an adequate sentence, even though the case may be one which involves the death of a person. If a Magistrate without any adequate reason commits a case to the Sessions in which he could adequately punish the accused himself, it would be a point of law and the High Court can quash the commitment under S. 215, Cr. P. C. *Emperor v. Allahabad.*

31 Cr. L. J. 596 :
123 I. C. 702 : A. I. R. 1930 Sind 145.

———Ss. 206, 438—*Commitment—Trial of accused under S. 409, Penal Code—Application by accused for commitment—Jurisdiction of Sessions Judge to order Magistrate to commit accused.*

Where an accused put on his trial under S. 409, Penal Code, makes an application to the Court of Sessions after the prosecution case is completely closed and the Sessions Judge directs the Magistrate to commit him for trial, the order of the Sessions Judge is entirely without jurisdiction. He can only make a reference to the High Court if he thinks that an interference is necessary. He has no power himself to make such an order. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Nabin Chandra Hur.*

39 Cr. L. J. 569 :
175 I. C. 521 : A. I. R. 1938 Cal. 416.

———Ss. 206, 526, 177—*Commitment to High Court.*

Per *Sadasiva Aiyar, J.*—The High Court, in its original criminal jurisdiction, has power to try cases committed to it by the Muffasal Magistracy, and the commitment is not void because a Sessions Court in the Muffasal has local jurisdiction in respect of the offence so committed. *In re : Ganapathy Chetty.*

20 Cr. L. J. 484 :
51 I. C. 468 : 37 M. L. J. 60 :
26 M. L. T. 64 : 10 L. W. 263 :
42 Mad. 791 : 1919 M. W. N. 808 :
A. I. R. 1920 Mad. 824.

———S. 207—

See Cr. P. C. S. 215.

———S. 207—*Commitment—Grounds.*

Under S. 207 a Magistrate who is competent to commit to the Court of Sessions can commit to that Court cases triable exclusively by that Court and cases which, in his opinion, ought to be tried by that Court. A commitment, however, made on the sole ground that the accused has been committed in another case is bad in law. *Emperor v. Hanuman.*

20 Cr. L. J. 97 :
§ 48 I. C. 977 : A. I. R. 1918 Nag. 141.

———S. 207—*Commitment to Court of Session—“Ought to be tried by such,” scope of.*

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The Cr. P. C. does not require that all cases of assault ending in death should be committed to the Court of Session. The expression "ought to be tried by such Court" in S. 207 is limited to cases which the Magistrate is not competent to try or cases in which he is unable to inflict an adequate punishment. *Emperor v. Ismail*.

19 Cr. L. J. 319 :
44 I. C. 335 : 11 S. L. J. 79 :
A. I. R. 1918 Sind 60.

—S. 207—Commitment to Sessions—Duty of Committing Magistrate to state reason—Order of commitment, whether judicial order.

Under S. 207 a Magistrate can commit an accused to the Court of Session where the case is triable exclusively by that Court, or where in his opinion the case ought to be tried by the Court of Session. In the latter case, he must give reasons for his entertaining that opinion, for the order of commitment is a judicial order. *Emperor v. Deo Narain Mullick*.

29 Cr. L. J. 612 :
109 I. C. 804 : A. I. R. 1928 Pat. 551.

—Ss. 207, 215—Commitment by Magistrate to Court of Session, when to be quashed.

Where a Magistrate is of opinion that he cannot adequately punish an accused person and commits him to the Court of Session under S. 207, the commitment is legal and cannot be quashed by the High Court on the mere ground that the punishment which the Magistrate could have awarded would have been sufficient. *Emperor v. Baldeo*.

14 Cr. L. J. 304 :
19 I. C. 960 : 11 A. L. J. 439.

—Ss. 207, 254, 347—Commitment of case to Sessions Court by Magistrate competent to try it, legality of.

The commitment of a case to the Sessions Court which can adequately be dealt with by the Magistrate himself is illegal, but where there is any good cause why the case should be tried by the Court of Sessions, the commitment should be made. A Magistrate who is himself competent to try a case has power to commit it to the Court of Session, on the ground that in respect of the same transaction another party of accused is to be tried by that Court. *Emperor v. Ali*.

18 Cr. L. J. 524 :
39 I. C. 492 : 13 P. R. 1917 Cr. :
A. I. R. 1917 Lah. 251.

—Ss. 207, 254, 347—Commitment to Sessions, when can be made—Magistrate, power of.

Where a Magistrate decides under S. 207 that a case is one which ought to be tried by the Court of Sessions then he must follow the procedure laid down by Chap. XVII of the Code and not the procedure prescribed by Chap. XXI. S. 254 can have no application whatever to such a case. This section merely lays down what a Magistrate must do when proceeding with the trial of a warrant case. It would be undue extension of its scope to hold that it is meant to fetter the scope of a Magistrate in all circumstances. S. 347 of the Cr. P. C., is a general section and applies to all inquiries and trials. It gives the Magistrate power to

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deal with a case under the provisions of Chap. XVII at any stage before the judgment is signed, and if this power is exercised, then the provisions of S. 254 of the Code are no longer applicable. *Emperor v. Ishahat*.

89 I. C. 525 : 3 Rang. 42 :
A. I. R. 1925 Rang. 207.

—S. 207—'Ought to be tried' to be read with S. 254.

The words "ought to be tried" in Ss. 207 and 347 must be read with S. 254 of the Code. *Emperor v. Hanuman*.

20 Cr. L. J. 97 :
48 I. C. 977 : A. I. R. 1918 Nag. 141.

—S. 208.

See also (i) Cr. P. C., Ss. 132, 162 (1)
215.

(ii) Criminal trial.

—S. 208.

—Commitment.
—Committal proceedings.
—Complainant.
—Cross-examination.
—Evidence.
—Procedure.
—Revision.
—Scope.

—S. 208—Commitment to High Court—Duty of Magistrate.

In a case triable exclusively by the High Court, it is the duty of a Magistrate to commit the accused, if he is satisfied that there are credible witnesses to the facts, which, if believed by a Jury, would justify the conviction of the accused of the offences complained of. If he proceeds to weigh the evidence to accept some statements, to reject others and to deal with probabilities, or draws inferences as to knowledge or intention, he is in reality dealing with the question of the guilt or innocence of the accused and is usurping the function of the trial Court. The existence of a possible ground of defence is not a sufficient reason for a Magistrate to refuse to commit a person for trial against whom a *prima facie* case is made out. *National Bank of India, Ltd. v. Kothandaram Chetti*.

14 Cr. L. J. 529 :
21 I. C. 129 : 14 M. L. T. 200 :
1913 M. W. N. 728.

—S. 208—Commitment, when can be made.

It is only after all the procedure laid down in Ss. 208—212, has been followed that the Magistrate can make 'an order of commitment,' recording briefly his reasons for it. The Magistrate, however, is not bound to make such an order. It is open to him to consider whether he ought to commit the case to the Court of Session or to try it himself. *Emperor v. Venkatesh Sodashtu*.

11 Cr. L. J. 486 (b) :
7 I. C. 450 : 12 Bom. L. R. 521.

—S. 208—Commitment, when legal.

S. 208 requires that the order of committal should not be passed till the Magistrate has

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heard the complainant and taken such evidence as may be produced in support of the prosecution or on behalf of the accused. *Jaswant Singh v. Emperor*. 25 Cr. L. J. 624 :

81 I. C. 112 : 21 A. L. J. 911 :
46 All. 137 : A. I. R. 1914 All. 317.

———S. 208 (1)—*Committal proceedings—Magistrate, not bound to examine complainant.*

Under S. 208 (1), Cr. P. C., in proceedings for commitment to the Sessions, a Magistrate is not bound to examine the complainant; he is only bound to hear him. *Santiram Mandal v. Emperor*.

30 Cr. L. J. 942 :
118 I. C. 572 : I. R. 1929 Cal. 668 :
A. I. R. 1929 Cal. 229 :

———S. 208—"Complainant," meaning of.

Obiter.—The informant in a case which has been investigated by the Police is not necessarily the "complainant" referred to in S. 208. *Kasem Molla v. Emperor*.

26 Cr. L. J. 1560 :
90 I. C. 440 : 42 C. L. J. 114 :
A. I. R. 1926 Cal. 410.

———S. 208—*Cross-examination—Accused's right to reserve cross-examination till copies of statements to Police are furnished.*

Where accused have applied for copies of statements made by prosecution witnesses to Police during investigation, to cross-examine the witnesses and the Magistrate has ordered copies to be furnished under S. 162 (1), the Magistrate is bound to postpone the cross-examination of the witnesses until such copies are furnished to the accused and to afford the accused an opportunity to cross-examine after receiving such copies. Omission to do so constitutes a direct violation of the statutory provisions of S. 208 (2) and vitiates a commitment. *Saadat Mian v. Emperor*.

28 Cr. L. J. 709 :
103 I. C. 597 : 6 Pat. 329 :
8 P. L. T. 780 : A. I. R. 1927 Pat. 243.

———S. 208 — *Cross-examination—Committal proceedings—Right of defence to cross-examine prosecution witnesses—Cross-examination reserved—Commitment without allowing cross-examination, legality of.*

A prosecution started first of all as a prosecution in an ordinary warrant case, but the Magistrate made up his mind in view of the suggestion that there was a case exclusively triable by the Court of Sessions, to deal with the case from the beginning as though it were to end in a commitment and allowed the defence to reserve cross-examination. Later on he committed the case to the High Court Sessions without giving an opportunity to the defence to cross-examine the witnesses: *Held*, that the Magistrate acted illegally in committing the case to the Sessions without giving the defence an opportunity to cross-examine the prosecution witnesses and to adduce any evidence they desired. *Nanooram Goenka v. Fulchand Jaypuria*.

32 Cr. L. J. 182 :
128 I. C. 802 : 57 Cal. 945 :
I. R. 1931 Cal 98 :
A. I. R. 1930 Cal. 754 (2).

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———S. 208 — *Cross-examination — Discretion to Magistrate to allow accused to reserve cross-examination.*

The Magistrate may, however, in the special circumstances of a case and in the interests of justice allow an accused to reserve his cross-examination. *Raman v. Emperor*.

30 Cr. L. J. 1107 :
119 I. C. 808 : 33 C. W. N. 535 :
I. R. 1929 Cal. 808 :
A. I. R. 1929 Cal. 593.

———S. 208 — *Cross-examination—Reserving of, right not conferred on the accused by law.*

Reserving cross-examination is not a right conferred upon the accused by S. 208, Para. 2, of the Cr. P. C., and an order refusing to grant leave to the accused to reserve his cross-examination is not open to revision. *In re : Mohamed Kasim*. 15 Cr. L. J. 29 :

22 I. C. 173 : 14 M. L. T. 532.

———S. 208 (2)—*Cross-examination, whether can be postponed till all witnesses have been examined—Procedure.*

The proper time for cross-examination of a witness is immediately after the examination-in-chief, and an order by a Magistrate allowing an accused, without any special reason, to postpone cross-examination, the prosecution witnesses until they have been all examined-in-chief is a proceeding not contemplated by law. An accused has no right under S. 208 (2) to postpone his cross-examination of the witnesses for the prosecution until they have been all examined-in-chief, but the Magistrate has power to recall witnesses for further cross-examination if the circumstances of the case call for it. *Tambi v. Emperor*.

19 Cr. L. J. 327 :
44 I. C. 343 : 9 L. B. R. 109 :
11 Bur. L. T. 144 :
A. I. R. 1919 L. Bur. 159.

———Ss. 208, 213—*Cross-examination—Enquiry for committal—Accused—Right of, to reserve cross-examination.*

In an enquiry under Chap. XVIII of the Cr. P. C., into cases triable by a Court of Sessions, the accused has no right to reserve the cross-examination of the prosecution witnesses until after all those witnesses have been examined-in-chief. He must exercise his right to cross-examine each witness at the close of the examination-in-chief of that witness. *Raman v. Emperor*. 30 Cr. L. J. 1107 :

119 I. C. 808 : 33 C. W. N. 535 :
I. R. 1929 Cal. 808 :
A. I. R. 1929 Cal. 593.

———S. 208—*Cross-examination by accused, reserving of.*

Accused cannot postpone the cross-examination of witnesses till all the prosecution witnesses are examined-in-chief in cases triable by a Court of Sessions. The Magistrate, however, has a discretion to allow the accused to postpone cross-examination in suitable circumstances, but he cannot question the liberty of accused to cross-examine prosecution witnesses: *Saadat Mian v. Emperor*. 28 Cr. L. J. 709 :

103 I. C. 597 : 6 Pat. 329 :
8 P. L. T. 780 : A. I. R. 1927 Pat. 243.

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—S. 208—*Evidence—Duty of Magistrate to take defence—Failure—Commitment, illegal.*

Where, after the evidence for the prosecution was heard in a case and the statements of the accused persons were taken down, the Magistrate framed a charge without asking them whether they had any evidence to produce, and rejected an application made on their behalf asking that certain witnesses should be summoned: *Held*, (1) that it was obligatory on the Magistrate to record such evidence as the accused wanted to produce; (2) that since he failed to discharge the duty imposed on him by law, the order of committal was bad and ought to be set aside. *Jaswant Singh v. Emperor*. 25 Cr. L. J. 624 :

31 I. C. 112 : 21 A. L. J. 911 :
46 All. 137 : A. I. R. 1924 All. 317.

—S. 208—*Evidence—Duty of Magistrate to take defence evidence.*

In an inquiry into a case triable by the Court of Session, the inquiry Magistrate is bound to take all such evidence as the accused applies for or produces under S. 208, Cr. P. C. and a commitment made without taking such evidence is bad in law. *Emperor v. Muhammad Hadi*. 1 Cr. L. J. 357 :

I. L. R. 26 All. 177.

—S. 208—*Evidence.*

Entire prosecution evidence need not be produced before Committing Magistrate. *S. H. Jhabwala v. Emperor*. 34 Cr. L. J. 967 :

145 I. C. 481 : 1933 A. L. J. 799 :
6 R. A. 65 : A. I. R. 1933 All. 690.

—S. 208—*Evidence—Summoning of defence witnesses—Discretion of Magistrate—Refusal to summon, whether illegal.*

Under S. 208 (3) of the Code, in inquiries preceding commitment, although a Magistrate is bound to issue process to compel the attendance of witnesses, he has power to refuse to summon them and, consequently, such rejection of an application by the accused to summon his witnesses, is not an illegality vitiating the commitment. *Saadat Mian v. Emperor*. 28 Cr. L. J. 709 :

103 I. C. 597 : 6 Pat. 329 :
8 P. L. T. 780 : A. I. R. 1927 Pat. 243.

—Ss. 208, 212, 215—*Evidence—Commitment—Case committed to Sessions before examination of defence witnesses—Commitment quashed.*

A charge under S. 302 of the I. P. C. was under inquiry by a Magistrate of the first class. The evidence for the prosecution had been recorded, and certain witnesses for the defence had been summoned. The Magistrate also at the request of the accused, had consented to make a local inspection. When the Sessions Judge directed the Magistrate to commit the case to the Sessions, and he did so, without examining any of the witnesses for the defence and without making the intended local inspection: *Held*, that the commitment should be quashed. *Emperor v. Mathura*. 4 Cr. L. J. 452 :

26 A. W. N. 306.

—Ss. 208, 438—*Evidence—Sessions case—*

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Inquiry before Magistrate—Summoning of witnesses on date of committal—Proper procedure.

In an inquiry before a Magistrate preliminary to commitment to Sessions, the fact that an application was made on the date on which the accused was committed to the Sessions for the summoning of further witnesses, introduces no conditions which show that provisions of S. 208 have not been observed. *Emperor v. Surath*. 16 Cr. L. J. 415 :

28 I. C. 245 : 19 C. W. N. 335 :
42 Cal. 608 : A. I. R. 1916 Cal. 106.

—Ss. 208, 213—*Procedure—Charge—Order of commitment.*

The petitioner was being tried before a Magistrate. After the witnesses for the prosecution had been examined, the petitioner's pleader pointed out to the Magistrate the propriety of committing the case for trial to the Court of Session. Yielding to that suggestion, the Magistrate framed certain charges, one of which was under S. 467 of the I. P. C., and directed that the case should be tried by the Court of Session. The petitioner then raised the point that the charge under S. 467 could not proceed for want of sanction under S. 195 of the Cr. P. C. The Magistrate then and there amended the charges and intimated his intention to try the case himself instead of committing it to the Court of Sessions. The petitioner's pleader thereupon objected that the Magistrate, having once framed charges and directed the case to be tried by the Court of Sessions could not thereafter amend the charges and proceed with the case: *Held*, that the mere framing of a charge against the accused, as required by S. 210 of Cr. P. C., is distinct from, and does not amount to, an order of commitment which has to be made under S. 213. *Emperor v. Venkatesh Sadashiv*. 11 Cr. L. J. 486 (b):

7 I. C. 450 : 12 Bom. L. R. 521.

—S. 208—*Procedure—Production of partial evidence before Magistrate, legality of.*

The prosecution cannot produce its evidence partly before the Committing Court and the rest before the Sessions Court. A committing order without having taken all the evidence proposed by the prosecution is bad and a conviction by the Sessions Judge should be set aside and a fresh trial ordered. *Sher Bahadur v. Emperor*. 36 Cr. L. J. 169 :

152 I. C. 673 : 15 Lah. 331 :
36 P. L. R. 469 : 7 R. L. 313 :
A. I. R. 1934 Lah. 667.

—S. 208—*Procedure—Production of Police diaries.*

Where a Magistrate receives an application under S. 208, for production of Police diaries, he is bound to take steps for the production of the documents wanted by the accused unless he deems it unnecessary to do so. *Gulam Rahman Khan v. Emperor*. 34 Cr. L. J. 868 :

144 I. C. 930 : 6 R. C. 66 :
A. I. R. 1933 Cal. 184.

Cr. P. CODE (1898), S. 208**—S. 208—Procedure.**

Provision is mandatory—Committing Magistrate must examine defence witnesses—Commitment should be set aside on failure to so examine. *Jahana v. Emperor*.

36 Cr. L. J. 410 :
153 I. C. 436 : 35 P. L. R. 612 :
7 R. L. 438 (1) : A. I. R. 1934 Lah. 610 (1).

—S. 208—Procedure—Transfer of case from one Magistrate's Court to another—Commitment on evidence recorded by former Magistrate.

After the prosecution evidence in a case under S. 324, Penal Code, was recorded by a Second Class Magistrate, the District Magistrate transferred the case to a 1st Class Magistrate who, acting on the evidence which had already been recorded by the 2nd Class Magistrate, committed the accused to the Court of Session : *Held*, that the order of commitment was not illegal. *Emperor v. Nanhua*.

15 Cr. L. J. 354 :
23 I. C. 722 : 12 A. L. J. 467 : 36 All. 315 :
A. I. R. 1914 All. 45.

—S. 208 (3) — Procedure — Process for production of witnesses—Duty of Magistrate to issue.

A Magistrate to whom an application is made by a complainant for issue of process for attendance of witnesses under S. 208 (3), is entitled to refuse to do so, without recording his reasons for such refusal. *Kanda Raja v. Sangiya Thevan*.

27 Cr. L. J. 1327 :
98 I. C. 399 : 24 L. W. 713 : 38 M. L. T. 14 :
A. I. R. 1927 Mad. 162.

—Ss. 208, 435, 439—Revision—Powers of High Court.

The High Court has power to revise an order of discharge whenever the order is manifestly wrong. As a rule, it does not interfere with the order of Criminal Court in revision except on the ground of an error of law or a serious irregularity in procedure which is likely to have affected the conclusion of the lower Court, but this is only a rule of practice based on the undesirability of interference by this Court merely on the ground of misappreciation of evidence. So far as the provisions of the statute are concerned, the High Court has plenary powers of interference and would not hesitate to exercise them, wherever the ends of justice require it, whether the error of the inferior Court be on a question of law or not. *National Bank of India, Ltd. v. Kothandarama Chetti*.

14 Cr. L. J. 529 :
21 I. C. 129 : 14 M. L. T. 200 :
1913 M. W. N. 728.

—Ss. 208, 435, 439—Revision—Powers of High Court.

The High Court ordinarily, when acting in revision, takes the facts as found by a Magistrate, but there is nothing in Cr. P. C., to limit the Court's power of interference to cases where the Magistrate ignored or contravened an express provision of law. *National Bank of India, Ltd. v. Kothandarama Chetty*.

14 Cr. L. J. 529 :
21 I. C. 129 : 14 M. L. T. 200 :
1913 M. W. N. 728.

Cr. P. CODE (1898), S. 209**—S. 208—Revision—Powers of High Court.**

The jurisdiction of the High Court to consider whether an order made by a Magistrate under S. 208, refusing an application for admission of evidence is a proper one is not ousted by the mere fact that the Magistrate has recorded his reasons for his refusal. The Court, however, would not interfere in the matter unless the reasons recorded by the Magistrate appear on their face to be illegal or untenable. *Yellappa Durgaji Jadhav v. Emperor*.

30 Cr. L. J. 1066 :
119 I. C. 647 : 31 Bom. L. R. 523 :
I. R. 1929 Bom. 519 : A. I. R. 1929 Bom. 269.

—S. 208—Scope—Committal, purpose of —Magistrate's refusal to call evidence on behalf of accused.

The purpose of committal proceedings is not merely to place on record the case for the prosecution, but to commit to the Court of Sessions for trial, an offence which, after having heard the evidence for the prosecution and for the defence, the learned Magistrate thinks has been committed. But while it is intended that the prosecution should be allowed to adduce all material evidence in support of the prosecution case, so it is intended, to be fair, that the accused shall also be entitled to adduce all material evidence in their defence. It is true that under S. 208 (3), a Magistrate can, for reasons to be recorded, refuse to issue process to compel the attendance of any witness. But it does not mean that the Magistrate shall refuse the application of the accused to call witnesses because these witnesses can be called thereafter in the Court of Sessions. A committal to the Court of Sessions is a very serious matter indeed for an accused person and he is to be given every reasonable opportunity to show that there is no ground to commit him to the Court of Session because of the evidence he has adduced in his defence. *Jashammal J. Gulrajani v. Emperor*.

40 Cr. L. J. 818 (b) :
183 I. C. 619 : 12 R. S. 64 : 1940 Kar. 95 :
A. I. R. 1939 Sind 222.

—S. 208—Scope—Order not in accordance with law—Magistrate's power to alter.

It is true that a Criminal Court has no power given to it by the Code to review and modify an order which it has once passed, but then it must have been an order such as is contemplated by the Code. If the charge, which made the case triable exclusively by the Court of Session, could not lie for want of sanction, the Magistrate had no jurisdiction to frame it, the framing of the charge was *ultra vires*, and the Magistrate had nothing to alter but was bound to proceed with the trial according to law. *Emperor v. Venkatesh Sadashiv*.

11 Cr. L. J. 486 (b) :
7 I. C. 450 : 12 Bom. L. R. 521.

—S. 209.

See Criminal trial.

—S. 209.

Commitment.

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- Committing Magistrate, duty of.
- Committing Magistrate, power of.
- Cross-examination.
- Discharge.
- Duty of Magistrate.
- Examination of accused.
- Fresh complaint.
- Interference.
- Jurisdiction.
- Power of District Magistrate.
- Revision.
- Scope.

———S. 209—Committing Magistrate to weigh evidence of direct witnesses—Credible, meaning of.

A Committing Magistrate is entitled, at any rate to some extent, to weigh the evidence of direct witnesses and to pronounce as to their credibility. The word credible, means entitled to belief. *Sultani v. Emperor*.

11 Cr. L. J. 18 :

4 I. C. 612 : 10 P. R. 1909 Cr. :

32 P. W. R. 1909 Cr.

———S. 209—Commitment—Case triable by Court of Session.

When a Magistrate holding an inquiry into a case triable by a Court of Session has certain evidence put forward by witnesses which would make out a *prima facie* case, it is his duty to make an order of commitment. It is not open to him, in commenting upon the truth or otherwise of the depositions made to him, to discuss the probabilities of the evidence being true. *Balmakund Das v. Emperor*. 21 Cr. L. J. 202 :

54 I. C. 986 : A. I. R. 1920 Pat. 591.

———S. 209—Commitment—Case triable by Court of Session—Enquiry by Magistrate—*Prima facie* case made out—Procedure.

Where a *prima facie* case is made out against an accused person in the Court of a Magistrate, and the case is triable exclusively by a Court of Session, the Magistrate ought to commit the accused for trial by that Court, and not dispose of the case himself. *Sahdeo v. Sarjoo*.

21 Cr. L. J. 61 :

54 I. C. 413 : A. I. R. 1920 All. 9.

———S. 209—Commitment—Case triable by Court of Session—Inquiry by Magistrate—Jurisdiction of Magistrate—Discharge.

A Magistrate holding a preliminary inquiry into a case triable by a Court of Session does not exceed his jurisdiction if he examines the credibility of testimony, and should not commit a person for trial in the Sessions Court if he is of opinion that notwithstanding direct evidence the case is improbable and the evidence unreliable. *Munshi Mander v. Karu Mander*.

25 Cr. L. J. 1089 :

81 I. C. 913 : 6 P. L. T. 146 :

A. I. R. 1925 Pat. 279.

———S. 209—Commitment—Case triable by Sessions Court—Inquiry by Magistrate—*Prima facie* case, absence of—Magistrate, duty of.

If a Magistrate holding an inquiry into a case triable by a Court of Session is satisfied

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that the charge is without foundation and that there are no sufficient grounds for committing the accused person for trial, he is entitled and it is his duty to discharge him. *Ganpat Lal v. Emperor*.

25 Cr. L. J. 795 :

81 I. C. 315 : 22 A. L. J. 411 :

46 All. 537 :

A. I. R. 1924 All. 664.

———S. 209—Commitment—Case triable by Court of Session—Magistrate, whether can dispose of case.

A Magistrate dealing with a case triable by a Court of Session is not competent to dispose of it himself; he must commit the accused for trial by that Court. *Makhni v. Farzand Ali*.

21 Cr. L. J. 318 :

55 I. C. 478 : 18 A. L. J. 232 :

2 U. P. L. R. (A.) 90 :

A. I. R. 1920 All. 52.

———S. 209—Commitment and conviction, grounds for.

The intention of the Legislature is to make a distinction between grounds for conviction and grounds for committing for trial. Satisfactory proof of the guilt of the accused is the ground for conviction and satisfactory evidence to go to trial must be regarded as the ground for committing for trial. *In re: Mania Manikha Padayachi*.

26 Cr. L. J. 1570 :

90 I. C. 530 : 49 M. L. J. 155 :

22 L. W. 755 : 48 Mad. 874 :

A. I. R. 1925 Mad. 1061.

———S. 209—Commitment—Duties of Committing Magistrate.

There are cases which provide debatable ground, where the evidence is conflicting and lays itself open to suspicion but where on the other hand it may be true and may commend itself to certain tribunals. In such cases, the Magistrate, even though he may have reason to doubt whether if he were trying the case, he would convict, has no right to substitute his judgment for the final judgment of the Court indicated by law for the trial and to arrive at a final decision dismissing the case in the way in which he would do if he were the trial Court. Even if the evidence is balanced, however unevenly in his opinion, then it is a matter which has to be tried and it is his duty to commit it for trial. *Ishaq v. Emperor*.

38 Cr. L. J. 659 :

168 I. C. 958 : 1937 A. L. J. 294 :

9 R. A. 687 : 1937 A. W. R. 261 :

A. I. R. 1937 All. 373.

———S. 209—Commitment on evidence to be given in future.

A commitment of an accused to the Sessions must depend on evidence actually before the Court and not on evidence that may be given in future. *Sreemanta Chatterjee v. Surendra Nath*.

16 Cr. L. J. 5 :

26 I. C. 309 : A. I. R. 1915 Cal. 715.

———S. 209—Commitment—"Sufficient ground for committing", meaning of.

The expression "sufficient ground for committing" in S. 209 refers to a case in which the

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evidence is sufficient to put the accused on his trial, and such a case arises when credible witnesses make statements which, if believed, would sustain a conviction. *Maulu v. Emperor*. 25 Cr. L. J. 238 : 76 I. C. 702 : 4 Lah. 69 : 5 L. L. J. 276 : A. I. R. 1923 Lah. 337.

—————**Ss. 209, 210 and 439—Commitment—Committing Magistrate, functions of—Sufficient grounds.**

Where there is credible evidence, which, if believed, *prima facie*, shows grounds for thinking that the accused has committed an offence triable by the Court of Session, it is the Magistrate's duty to commit him to that tribunal, and the Magistrate exercises wrong discretion if he takes upon himself to discharge the accused, the words "sufficient grounds" in S. 209, Cr. P. C., not meaning sufficient grounds for conviction. A Magistrate invested with S. 30 powers has no jurisdiction to try an offence *prima facie* falling under the 1st clause of S. 304, Penal Code. *Hazara Singh v. Bishen Singh*. 8 Cr. L. J. 263 : 14 P. R. Cr. 1908 : 3 P. W. R. Cr. 84.

—————**S. 209—Committing Magistrate—Duty of.**

Case exclusively triable by Sessions Court—Magistrate is not to weigh evidence or give accused benefit of doubt. He should only see if there is sufficient evidence to commit. *Alopi Din v. Emperor*. 36 Cr. L. J. 1103 : 157 I. C. 205 : 1935 A. L. J. 653 : 8 R. A. 140 : A. I. R. 1935 All. 366.

—————**S. 209—Committing Magistrate, duty of.**

In all Sessions cases it is for the Sessions Judge to weigh the evidence and come to a conclusion. The committing Court has only to see whether there is evidence which, if believed, would sustain a conviction. It is not its function to consider the probabilities and the evidence in the case as if it is a trying Court. *Chinnammal v. Kondareddi*. 28 Cr. L. J. 120 : 99 I. C. 328 : 38 M. L. T. 135 : A. I. R. 1927 Mad. 277.

—————**S. 209—Committing Magistrate, duty of—Discharge.**

Where in an inquiry in a case triable by the Court of Sessions, the prosecution evidence pointed both to a dacoity having been committed, and to the accused having been the persons concerned in the dacoity, but the Magistrate considering this evidence improbable and exaggerated rejected it, and discharged the accused without there being any rebutting evidence: *Held*, that the Magistrate ought not to have discharged the accused. *Chiranjil Lal v. Ram Lal*. 1 Cr. L. J. 56 : 24 A. W. N. 5.

—————**S. 209—Committing Magistrate, duty of.**

Where the Magistrate entertains any real doubt as to the weight or quality of the evidence, the task of resolving the doubt and

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assessing the evidence should be left to the Court of Sessions. *In re : Bai Parvati*.

11 Cr. L. J. 692 : 8 I. C. 631 : 12 Bom. L. R. 923.

—————**S. 209—Committing Magistrate, powers and duties of.**

All that a Committing Magistrate has to do is to see if a *prima facie* case has been made out, but he is not precluded from drawing reasonable inferences from facts deposed to by the prosecution witnesses where more than one inference can be drawn and to discharge the accused where the evidence is unworthy of credit. He has to see whether the evidence is such as to render the case a fit one for the Jury to decide between conflicting probabilities or whether it clearly points to there being no *prima facie* case for the accused to meet. *In re : Ponniiah Terumali Vandaya*.

23 Cr. L. J. 209 : 65 I. C. 993 : 42 M. L. J. 49 : 16 L. W. 460 : 1922 M. W. N. 13 : 30 M. L. T. 72 : A. I. R. 1922 Mad. 43.

—————**S. 209—Committing Magistrate, power of.**

Per Knox, J.—The Magistrate holding the enquiry has no power to declare an accused either guilty or innocent of the offence with which he is charged. He is not a Magistrate holding a trial and cannot write a judgment. *Per Aikman, J.*—A Magistrate holding an enquiry under Chapter XVIII, Cr. P. C., into cases triable by the Court of Sessions or the High Court, is empowered not only to consider whether the evidence for the prosecution, furnishes sufficient grounds for committing the accused for trial, but he can go further and weigh that evidence, *i. e.*, consider whether it is true. This power, however, should be sparingly used. *Fattu v. Fattu*.

1 Cr. L. J. 519 : 1 A. L. J. 292 : I. L. R. 26 All. 564 : 24 A. W. N. 125.

—————**S. 209—Cross-examination—Preliminary inquiry, necessity of, for commitment—Prosecution witness, cross-examination of, by Magistrate, if allowed.**

Where, on a complaint being lodged against two persons under S. 477, I. P. C., the Magistrate did not issue any process against one but examined him as a witness in the course of the inquiry against the other and also cross-examined the complainant's witnesses and after recording the whole evidence discharged the accused on the ground that in his opinion the evidence was very interested and unreliable, but the Sessions Judge set aside the order of discharge and remanded the case to the Magistrate with instructions to commit both the accused: *Held*, (1) that the Magistrate was well within his powers in cross-examining the prosecution witnesses and in considering whether the witnesses examined on behalf of the prosecution were credible: (2) that in so far as no enquiry whatever was made against the second accused under Chapter XVIII of the Cr. P. C., he was

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not liable to any order of committal by the Sessions Court. *Emperor v. Bai Mahalaxmi*.

16 Cr. L. J. 747 (b) :
31 I. C. 347 : 17 Bom. L. R. 910 :
A. I. R. 1915 Bom. 195.

———S. 209—Cross-examination—Proceedings for committal to Sessions—Evidence of witnesses—Cross-examination reserved for Sessions Court—Admissibility of evidence.

If the cross-examination of a witness is reserved by a Magistrate during committal proceedings of his own accord, that deposition is not complete, and should not be admitted in evidence at the trial in the Court of Session. But from a mere endorsement of the Committing Magistrate at the end of the deposition that cross-examination was reserved for the Sessions Court, it is not proper to infer that cross-examination was reserved by the Magistrate of his own accord without giving an opportunity to the accused for cross-examination. *Emperor v. Mahrab*.

31 Cr. L. J. 121 :
120 I. C. 524 : A. I. R. 1930 Sind 54.

———S. 209—Discharge—Case exclusively triable by Court of Session.

It cannot be said that a Magistrate has no power whatever to pass an order of discharge in a case "exclusively triable by a Court of Sessions." Where the entire prosecution evidence is quite unworthy of credit and bristles with improbabilities and where it is clear that the case is foredoomed to failure at the Sessions, it is the duty of the Subordinate Magistrate to discharge the accused. *In re : Damappa Palai*.

15 Cr. L. J. 373 :
23 I. C. 741 : A. I. R. 1914 Mad. 424.

———S. 209—Discharge—Case triable by Court of Session—Inquiry.

An order of discharge is not final order, and the offence against an accused person who has been discharged may be further inquired into by a Magistrate upon further evidence if it be forthcoming. The High Court has, therefore, full power to revise an order of discharge at the instance of a private prosecutor. *Maung Hlin Gyaw v. Maung Po Sein*.

28 Cr. L. J. 219 :
99 I. C. 1019 : 4 Rang. 471 :
A. I. R. 1927 Rang. 74.

———S. 209—Discharge—Case triable by Sessions Court—Inquiry—Committing Magistrate, power of.

Where in the course of an inquiry held by a Magistrate into a case triable by the Court of Sessions he finds that the evidence tendered by the prosecution is totally unworthy of credit, it is his duty, under S. 209, to discharge the accused. *Ahmad v. Emperor*.

23 Cr. L. J. 601 :
68 I. C. 825 : 4 U. P. R. (L.) 108.

———S. 209—Discharge—Commitment to Sessions—Duty of Magistrate.

A Magistrate holding a preliminary inquiry ought to commit the accused to the Court of Session, when the evidence is enough to

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put the party on his trial. But where there is no credible evidence on which a Court could convict, it is the duty of the Magistrate to discharge the accused. *Maulu v. Emperor*.

25 Cr. L. J. 238 :
76 I. C. 702 : 4 Lah. 69 : 5 L. L. J. 276 :
R. A. I. 1923 Lah. 337.

———S. 209—Discharge—Committing Magistrate—Discretion to discharge.

Under S. 209 if a Magistrate finds that there are not sufficient grounds for committing the accused person for trial—either because there is no evidence whatever, or because the evidence tendered by the prosecution appears to him to be totally unworthy of credit, it would be his duty to discharge the accused. *In re : Bai Parvati*.

11 Cr. L. J. 692 :
8 I. C. 631 : 12 Bom. L. R. 923.

———S. 209—Discharge—Court discretion of Magistrate, when to discharge.

A Magistrate has a discretion, under S. 209, to discharge an accused person if there is no evidence whatever against him, or if the evidence tendered for the prosecution appears to be totally unworthy of credit, but if he entertains any real doubt as to the weight or quality of the evidence, the task of resolving that doubt and assessing the evidence should be left to the Court of Session. *Aidas Tekchand v. Saban*.

22 Cr. L. J. 570 :
62 I. C. 586 : 15 S. L. R. 1 :
A. I. R. 1921 Sind 5.

———S. 209—Discharge—Inquiry before commitment—Discharge of accused—Subsidiary witnesses not examined, effect of.

When a Committing Magistrate finds that the prosecution evidence is totally unworthy of credit, it is his duty to discharge the accused. Where all the material evidence has been heard and disbelieved, an order of discharge passed by a Committing Magistrate should not be set aside merely because there were one or two subsidiary witnesses who might have been called but whose evidence was not recorded. *Ratan Mani v. Hans Ram*.

27 Cr. L. J. 274 :
92 I. C. 450.

———S. 209—Discharge—Inquiry—Prosecution evidence, unreliability of—Duty of Magistrate.

If in an inquiry preparatory to commitment, the evidence tendered for the prosecution is totally unworthy of credit, it is not only within the power of the Magistrate but it is his duty to discharge the accused under S. 209. *Emperor v. Bai Mahalaxmi*.

16 Cr. L. J. 747 (b) :
31 I. C. 347 : 17 Bom. L. R. 910 :
A. I. R. 1915 Bom. 195.

———S. 209—Discharge—Magistrate, when bound to discharge.

A Magistrate is bound to discharge an accused under S. 209, Cr. P. C., if he believes that he has committed no offence. *Sreemanta Chatterjee v. Surendra Nath*.

16 Cr. L. J. 5 :
26 I. C. 309 : A. I. R. 1915 Cal. 715.

Cr. P. CODE (1898), S. 209———S. 209—*Discharge*.

No distinction can be drawn between orders of discharge passed under S. 253 and such orders passed under S. 209. *Emperor v. Parashram*.

34 Cr. L. J. 564 :
143 I. C. 289 : 35 Bom. L. R. 245 :
57 Bom. 430 :

I. R. 1933 Bom. 266 : A. I. R. 1933 Bom. 158.

———S. 209—*Discharge of some accused—Reasons not recorded before end of trial of others—Irregularity*.

Where, during the course of a trial of several accused, some of them are discharged by the Magistrate, the discharge is not illegal merely because the reasons for discharge are not recorded till the end of the trial. *In re : Naramban*.

24 Cr. L. J. 269 :
71 I. C. 877 : 15 L. W. 552 :
1922 M. W. N. 326 : A. I. R. 1922 Mad. 195.

———S. 209—*Discharge—Reversal*.

Order of discharge should not be set aside unless it is perverse or manifestly unreasonable and inconsistent with an honest appreciation of evidence before Court. *Emperor v. Parashram*.

34 Cr. L. J. 564 :
143 I. C. 289 : 35 Bom. L. R. 245 :
57 Bom. 430 : I. R. 1933 Bom. 266 :
A. I. R. 1933 Bom. 158.

———S. 209—*Discharge—Powers of Magistrate*.

A Magistrate holding enquiry into a case triable exclusively by a Court of Session is entitled to weigh the evidence produced before him and to pronounce as to its creditability and to discharge the accused if he is of opinion that there is no credible evidence to establish a *prima facie* case against him. *Mir Abdulla v. Emperor*.

11 Cr. L. J. 751 :
8 I. C. 1044 : 215 P. L. R. 1910.

———S. 209—*Discharge*.

There is no reason for making any differentiation between an order passed under S. 209, and one passed under S. 253. *Zarin v. Emperor*.

35 Cr. L. J. 1282 :
151 I. C. 143 : 7 R. Pesh. 13 :
A. I. R. 1934 Pesh. 52.

———S. 209—*Discharge, when can be ordered*.

A Magistrate is not compelled to commit to Sessions any case in which he considers that conviction is impossible. A Magistrate must, however, exercise a proper discretion in ordering the discharge of any person charged with an offence triable only by a Court of Session. It is not enough for the Magistrate merely to doubt some portions of the prosecution evidence. He must be satisfied that the prosecution will fail and rightly fail in the Sessions Court. *Chheda Khan v. Emperor*.

25 Cr. L. J. 1189 :
82 I. C. 53 : 11 O. L. J. 664 : 1 O. W. N. 402 :
A. I. R. 1925 Oudh 167.

———S. 209—*Discharge, when not legal*.

If a Magistrate had no jurisdiction to entertain the complaint, he could certainly have no jurisdiction to discharge the accused under

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S. 209 (2). *K. S. Subramania Ayyar v. Swamihannu Chetty*.

34 Cr. L. J. 800 :
144 I. C. 519 : 37 L. W. 547 :
1933 M. W. N. 217 : I. R. 1933 Mad. 424 :
A. I. R. 1933 Mad. 413.

———Ss. 209, 210, 213—*Discharge—Inquiry before commitment—Discretion of Magistrate*.

Where a Magistrate has heard the evidence for the prosecution with entire disbelief where he considers himself in a position to show that the prosecution witnesses are totally unworthy of credit, and *a fortiori* where, after examining certain witnesses named on behalf of the accused, he comes to the conclusion that the evidence given by them is reliable and disproves that given by the prosecution witnesses, he is well within his discretion in discharging the accused and not committing him to the Sessions. *Dharam Singh v. Joti Prasad*.

16 Cr. L. J. 429 :
28 I. C. 1005 : 13 A. L. J. 407 :
37 All. 355 : A. I. R. 1915 All. 186.

———Ss. 209, 212, 213 (2), 437, 509—*Discharge—Committing Magistrate, powers of further enquiry—Medical evidence—Expert, opinion of*.

The accused was discharged by the District Magistrate. He could only be found guilty if the medical evidence of the Assistant Surgeon examined by the Magistrate were held incredible. On revision in the Chief Court, notice was issued to the accused to show cause why further enquiry should not be ordered in the case. This was done by the Judge after discussing the case with the Civil Surgeon of Lahore, but no record was made of the opinion given by the Civil Surgeon. At the hearing, the accused tendered written opinions of a large number of the leading medical men practising in the Punjab supporting the Assistant Surgeon's opinion : *Held*, that the opinions were not admissible, nor was admissible anything which the Civil Surgeon may have said. *Mir Abdulla v. Emperor*.

11 Cr. L. J. 751 :
8 I. C. 1044 : 215 P. L. R. 1910.

———Ss. 209, 436, 437—*Discharge under S. 209 in respect of offences not exclusively triable by Sessions Judge—Sessions Judge, whether can direct commitment to Sessions—Proper procedure*.

Where an order of discharge is made by a Magistrate under S. 209, Cr. P. C., in respect of offences under Ss. 450 and 380, Penal Code, which are not exclusively triable by a Court of Session, the Sessions Judge can merely direct further inquiry under S. 436, Cr. P. C.; he cannot direct an order of commitment to the Sessions Court. *Subba Naicker v. Emperor*.

31 Cr. L. J. 459 :
122 I. C. 788 : 1929 M. W. N. 709 :
A. I. R. 1930 Mad. 103.

———S. 209—*Duty of Magistrate—Case triable by Court of Sessions—Inquiry—Procedure*.

In the case of an inquiry into a case triable by the Court of Session, if the Magistrate finds that there are not sufficient grounds for committal, he must discharge the accused. For this purpose he is competent to consider the credibility and weigh the probabilities of the evidence. In a matter of reasonable doubt

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however, he must not rely upon his own opinion. He must keep before him the question whether there are fair grounds for concluding that the accused is guilty upon the evidence. In other words, where there is a *prima facie* case upon evidence reasonably credible by a Court of trial, he should commit. *Maung Htin Gyaw v. Maung Po Sein.*

28 Cr. L. J. 219.
99 I. C. 1019 : 4 Rang. 471 :
A. I. R. 1927 Rang. 74.

—S. 209—Duty of Magistrate—Case triable by Sessions Court—Inquiry—Magistrate, whether can discharge accused.

In an inquiry into a case triable by the Court of Session it is open to the Magistrate to form his opinion, with regard to the credibility of the witnesses called before him. It is not, however, his duty to closely criticise their evidence. If a *prima facie* case is made out, he should leave it to the Jury at the Sessions to form their own view as to the credibility of the evidence. But if after hearing the evidence he is satisfied that it is not trustworthy and that a conviction will not result, he is entitled to record his finding and to discharge the accused. *Tarapada Biswas v. Kalipada Ghose.*

26 Cr. L. J. 117 :
83 I. C. 677 : 28 C. W. N. 587 :
51 Cal. 849 : A. I. R. 1924 Cal. 639.

—S. 209—Duty of Magistrate—Case triable by Sessions Court—Procedure.

Per Sulaiman, J.—The policy of the Legislature is that serious offences should be tried by Sessions Judges who are ordinarily more experienced than Magistrates. They are the proper Courts for pronouncing an opinion as to the guilt or innocence of accused persons in cases triable exclusively by the Sessions Court. Where, however, the evidence is wholly untrustworthy and the Magistrate is satisfied that it cannot lead to a conviction, he would be perfectly justified in discharging the accused even though he has already framed his charge. He should not, however, try to weigh the probabilities of the case and then after balancing the evidence on both sides, decide whether the guilt of the accused has or has not been conclusively proved. *Akbar Ali v. Raja Bahadur.*

27 Cr. L. J. 2 :
91 I. C. 34 : 24 A. L. J. 133 :
A. I. R. 1925 All. 670.

—S. 209—Duty of Magistrate—Commitment—Accused, when to be committed—Order discharging accused, reasons for—Sessions Judge, powers of.

The report made to the Police of a dacoity mentioned, among others, one C but the senior investigating officer dropped proceedings against C, and certain other persons were committed to Sessions and convicted. On appeal the Judicial Commissioner passed an order directing that the charge against C be inquired into and dealt with according to law. The Magistrate who held the inquiry, after recording the prosecution evidence, discharged C but the Sessions Judge set aside the order of discharge and committed C to Sessions. C filed a petition of revision :

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Held, that in the face of the Judicial Commissioner's order directing that the accused should be put on his trial, the Magistrate was ill-advised in refusing to commit the accused to Sessions. *Chheda Khan v. Emperor.*

25 Cr. L. J. 1189 :
82 I. C. 53 : 11 O. L. J. 664 :
1 O. W. N. 402 :
A. I. R. 1925 Oudh 167.

—S. 209—Duty of Magistrate—Discharge—Evidence, necessary for—Magistrate, if precluded from finding that prosecution case is false.

The Committing Magistrate is bound to weigh the evidence of the witnesses who appear before him. If he does not, his proceedings are farcical. He should not, of course, require the same high standard of proof for the prosecution which he would require in cases which he can himself finally dispose of. If there merely exists in his mind a reasonable doubt as to the truth or otherwise of the evidence before him, he should commit the accused for trial and leave the Sessions Court to appreciate the evidence for itself. But this is not to say that he is precluded from finding that the prosecution case is false. If that is the only conclusion to which the evidence lead him, he would be failing in his manifest duty if he did not record his finding and discharge the accused. *In re : Endapalle Ella Reddi.*

38 Cr. L. J. 703 :
169 I. C. 102 : 1937 M. W. N. 324 :
9 R. M. 687 : 45 L. W. 643 :
A. I. R. 1937 Mad. 654.

—S. 209—Duty of Magistrate—Inquiry into case triable by Court of Session.

It is the duty of a Magistrate inquiring into a case triable by the Court of Session, if the evidence is *prima facie* adequate, to commit the case for trial and leave the ultimate judicial decision to the trial Court; but if he has reason to think and is prepared to state for judicial reasons, in the exercise of his discretion in his committal order, that there is a possibility of an alternative view to that which is set out in the charge originally made, he can always commit the accused for trial on two or more alternative charges. What he cannot do is to shut the door finally to the possibility of a trial upon evidence which *prima facie* is capable of interpretation to support graver charge. Where the evidence is conflicting and lays itself open to suspicion, but where on the other hand it may be true, and may commend itself to certain tribunals, the Magistrate, even though he may have reason to doubt whether if he were trying the case, he would convict, has no right to substitute his judgment for the final judgment of the Court indicated by law for the trial and to arrive at final decision dismissing the case in the way in which he would do if he were the trial Court. If the evidence is balanced, however unevenly in his opinion, then it is a matter which is to be tried, and it

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is his duty to commit the case for trial. *Emperor v. Allah Mahr.*

28 Cr. L. J. 281 :
100 I. C. 361 : 25 A. L. J. 191 :
49 All. 443 : A. I. R. 1927 All. 279.

———S. 209—*Duty of Magistrate—Inquiry into Sessions case—Evidence, consideration of—Magistrate, duty of.*

It is the duty of a Magistrate when inquiring into a Sessions case to consider whether the evidence is credible or not, and though in case of doubt, he may be justified in leaving it for the Jury to decide, when he is convinced that the evidence is false, it is his duty to discharge the accused. *Kasim Ali v. Sarada Kripa Laba.*

27 Cr. L. J. 509 :
93 I. C. 973 : 30 C. W. N. 336 :
A. I. R. 1926 Cal. 528.

———S. 209—*Duty of Magistrate—Inquiry Magistrate, duty of—Discharge, order of, when can be passed.*

If the inquiring Magistrate on the evidence before him comes to the conclusion that the charge is groundless, then he should discharge and not commit for trial. For a charge being groundless, it is not necessary that there should be no evidence at all of the charge. That will be a case of there being no evidence of the charge at all and not a case of the charge being groundless. What the inquiring Magistrate has got to try and determine is not whether the case has been made out but only whether there is a case for trial. There is always a case for trial when the evidence is of such a nature that the guilt of the accused can be held to be proved or disproved only as the result of valuing and weighing of the evidence. *In re : Mania Manikha Padayachi.*

26 Cr. L. J. 1570 :
90 I. C. 530 : 49 M. L. J. 155 :
22 L. W. 755 : 48 Mad. 874 :
A. I. R. 1925 Mad. 1061.

———Ss. 209, 213—*Duty of Magistrate—Case triable by Sessions Court—Evidence disbelieved by Magistrate—Discharge.*

If a Magistrate hearing a charge triable by the Court of Session comes to the conclusion that the evidence before him is totally untrustworthy and that there is no reasonable possibility of the case resulting in a conviction, he is entitled, and it is, indeed, his duty, to discharge the accused under S. 209. The same result follows if he comes to a similar conclusion after framing a charge and hearing witnesses for the defence under S. 213 (2). This discretion must, however, be carefully exercised, and wherever there is a possibility that different Courts might take different views of the evidence, the Magistrate, even though he may himself not think the evidence sufficient for a conviction, should leave it to the Sessions Court to pronounce finally upon the matter. *Akbar Ali v. Raja Bahadur.*

27 Cr. L. J. 2 :
91 I. C. 34 : 24 A. L. J. 133 :
A. I. R. 1925 All. 670.

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———Ss. 209, 364—*Examination of accused—Court, discretion of.*

The examination of an accused, prior to commitment, is in the discretion of the Magistrate. If the accused is unwilling to submit to examination, it is sufficient for the Magistrate to make a note to that effect. The provisions of S. 364 have no application to such examination. *Emperor v. Dosu.*

18 Cr. L. J. 913 :
42 I. C. 145 : 11 S. L. R. 52 :
A. I. R. 1917 Sind 24.

———S. 209, 437—*Fresh complaint—Accused, discharge of—Order upheld in revision—Fresh complaint on same facts, if competent.*

Where an accused person has been discharged under S. 209, and the order of discharge has been upheld by a higher authority, it is not competent for a Magistrate to entertain a second complaint on the same charge. *Shah Mohamed v. Emperor.*

28 Cr. L. J. 57 :
99 I. C. 89 : A. I. R. 1938 Sind 49.

———S. 209—*Interference—Discharge under S. 209—Sessions Judge, when can interfere.*

With an order of discharge under S. 209, a Sessions Judge should only interfere if he finds that the order of the inquiring Court was perverse or foolish or manifestly against the weight of the evidence, or that the Magistrate had failed to record all the evidence. *Fazal Razak v. Emperor.*

38 Cr. L. J. 427 :
167 I. C. 602 : 9 R. Pesh. 88 :
A. I. R. 1937 Pesh. 12.

———Ss. 209, 437—*Jurisdiction—Penal Code (Act XLV of 1860) Ss. 304, Part. II, 149, 325-149—Charge under—Magistrate after enquiry finding that offence fell under S. 325-149—Complainant's application under S. 437—Sessions Judge finding offence to be under S. 302—Retrial ordered on ground of want of jurisdiction of trial Court—Held, Magistrate had jurisdiction to decide nature of offence—Order for re-trial set aside.*

Certain persons were accused of having formed an unlawful assembly with the common object of beating some persons, and in prosecution of that common object, having committed murder or culpable homicide not amounting to murder. The S. 30-Magistrate before whom the enquiry took place, charged them under S. 304, Part II-149 and 325-149, Penal Code. After a careful enquiry he came to the conclusion that there was no intention to cause death and convicted the accused under Ss. 325-149. On the complainant's application under S. 437, Cr. P. C., the Sessions Judge directed the accused to be tried under S. 302, holding that the Magistrate had no jurisdiction to try the accused. He held that the trial was without jurisdiction and ordered that the accused be committed for trial to the Sessions Court : *Held*, that under S. 209, the Magistrate had jurisdiction to decide whether the offence was triable by the Sessions Court or was triable by himself. There was nothing to show that the trial Magistrate snatched at any jurisdiction or perversely held that the offence was one triable by himself in order to minimize

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the offence. It is more a case of an honest difference of opinion on a subject which is always open to doubt and difference of opinion. It was, however, useless, in matters of doubt, to subject the accused to the costs and strain of a re-trial and hence the order of the Sessions Judge directing a re-trial to himself should be set aside. *Kirpal Singh v. Emperor*.

38 Cr. L. J. 992 :
170 I. C. 780 : 39 P. L. R. 444 :
10 R. L. 148 : A. I. R. 1937 Lah. 217.

———Ss. 209, 437—*Jurisdiction—Rejection of application to set aside discharge—Order for commitment on fresh materials, legality of—Jurisdiction of Session Judge.*

The petitioners who were accused along with another person under Ss. 307 and 326, Penal Code, were discharged by the Committing Magistrate under S. 209, Cr. P. C. Before the commencement of the trial an application was made to the Sessions Judge for setting aside the order of discharge but this application was summarily rejected. At a later stage when all the evidence was before him, the Sessions Judge came to the conclusion that the petitioners were improperly discharged and directed that the petitioners should be committed for trial: *Held*, that the Sessions Judge had jurisdiction, notwithstanding his prior order, to direct the commitment of the petitioners. *Debidas Karmakar v. Emperor*.

31 Cr. L. J. 260 :
121 I. C. 401 : 33 C. W. N. 974 :
A. I. R. 1930 Cal. 61.

———S. 209—*Power of District Magistrate—Discharge by Magistrate—Commitment to Sessions by District Magistrate.*

Where the accused is discharged by the Magistrate, the District Magistrate has power to examine the evidence and if he finds a *prima facie* case established against the accused, to make an order of commitment to the Court of Session. *Balmakund Das v. Emperor*.

21 Cr. L. J. 202 :
54 I. C. 986 : A. I. R. 1920 Pat. 591.

———Ss. 209, 437—*Powers of District Magistrate—Enquiry in respect of two offences—Charge framed in respect of only one offence—Further enquiry.*

Accused was placed before a Second Class Magistrate for trial on charges under Ss. 307 and 323 of the Penal Code. The Magistrate framed a charge under S. 323 only and directed the accused to enter on his defence. The District Magistrate called for the record and after giving notice to the accused and hearing his Counsel, directed a further enquiry in respect of the charge under S. 307: *Held*, that the order of the Magistrate framing a charge under S. 323 amounted to a discharge of the accused under S. 307 and that, therefore, the District Magistrate had power to direct further enquiry in respect of the latter offence. *Sheo Narayan Singh v. Radha Ram*.

20 Cr. L. J. 778 :
53 I. C. 618 : 17 A. L. J. 1093 :
1 U. P. L. R. (A.) 193 : 42 All. 128 :
A. I. R. 1919 All. 66.

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———Ss. 209, 437—*Powers of District Magistrate—Magistrate refusing to charge accused with offence triable by Court of Session—Discharge or acquittal—District Magistrate's order of committal to Sessions, legality of.*

Certain persons were charged before a Magistrate of the First Class under Ss. 424 and 506, Part II of the Penal Code and acquitted. Subsequently the complainant made several applications to him to frame a charge against the accused under S. 395, Penal Code, and commit the accused to the Court of Session. The Magistrate put the application on record but declined to entertain them. The complainant, thereupon, moved the District Magistrate who acting under S. 437 of the Cr. P. C., framed a charge against the accused and committed them to take their trial before the Court of Session. On its being contended, on revision, that the order of the District Magistrate was illegal on the ground that the accused had been acquitted and not discharged: *Held*, that the order of the Magistrate was in substance an order discharging the accused in respect of an alleged offence under S. 395, Penal Code, and that the District Magistrate had jurisdiction to make the order sought to be revised. *Khanu v. Emperor*.

25 Cr. L. J. 1368 :
82 I. C. 760 : A. I. R. 1925 Sind 190.

———S. 209—*Revision—Order of Sessions Judge directing committal—Remedy.*

Where a Sessions Judge set aside an order of discharge passed by a Magistrate and directed that the case should be committed to his Court, the person prejudicially affected by such order has the right to apply to the High Court in revision to set aside the order, and if he can show that it is an order which ought not to have been made and which the circumstances could not justify any Sessions Judge in making, the High Court has jurisdiction to reverse or modify such order. There is no other form of procedure by which such an order can be judicially reviewed. *Emperor v. Allah Mahr*.

28 Cr. L. J. 281 :
100 I. C. 361 : 25 A. L. J. 191 :
49 All. 443 : A. I. R. 1927 All. 279.

———Ss. 209, 210—*Scope—Case triable by Sessions Court.*

In cases triable by the Court of Session, only one trial is contemplated and the inquiry before the Magistrate is only in the nature of a preliminary inquiry. Ss. 209 and 210 of the Cr. P. C. speak only of there being or not being sufficient grounds for committing the accused for trial. When the Legislature speaks of sufficient grounds for committing for trial, it should not be supposed to have spoken of sufficient grounds for conviction and, similarly, when the Legislature speaks of there not being sufficient grounds for committing for trial, it should not be supposed to have spoken of there not being sufficient grounds for conviction. *In re : Monia Manikha Padayachi*.

26 Cr. L. J. 1570 :
90 I. C. 530 : 49 M. L. J. 155 :
22 L. W. 755 : 48 Mad. 874 :
A. I. R. 1925 Mad. 1061.

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———S. 210.

See Cr. P. C., S. 209.

———S. 210—*Addition of charge—Discretion.*

There is nothing in the law which compels a Magistrate to frame that charge, which, on the most heinous view of the circumstances indicated by the evidence, is the gravest possible charge. The addition of a grave charge without any solid and reasonable ground for the addition and any support for it in the evidence, simply for the sake of committing the case to the Sessions, is highly improper, inasmuch as it throws on the Sessions Court the burden of trying cases which can well be tried and disposed of by the Magistrate. *Emperor v. Mahammed Khan Raja Khan Pathan.*

9 Cr. L. J. 163 :

1 I. C. 104 : 11 Bom. L. R. 18 :

5 M. L. T. 225.

———S. 210—*Admissibility in Evidence—Bengal Municipal Act (III B. C. of 1884) S. 251 Chemical Examiner, report of, whether admissible in evidence without examination of Chemical Examiner.*

A report of the Chemical Examiner made prior to the institution of proceedings under S. 251 of the Bengal Municipal Act is not admissible in evidence without the examination of the Chemical Examiner himself. *Chauth Mull v. Emperor.*

20 Cr. L. J. 266 :

50 I. C. 26 : A. I. R. 1919 Pat. 139.

———S. 210—*Commitment—Case not exclusively triable by Sessions Court—Reasons to be stated.*

If a Magistrate thinks that a case not exclusively triable by the Court of Sessions must be committed, he must state his ground in the order so as to enable the High Court to judge whether the committal is a sound exercise of the discretionary power. *Emperor v. Mahamad Khan Rajakhan Pathan.*

9 Cr. L. J. 163 :

1 I. C. 104 : 11 Bom. L. R. 18 :

5 M. L. T. 225.

———S. 210—*Commitment when permissible—Sufficient grounds for commitment—District Magistrate ordering commitment to be made.*

S. 210 requires that a charge should be framed and commitment made only when "the Magistrate is satisfied that there are sufficient grounds for committing." The requirement that the grounds for committing the case should be sufficient must be taken as excluding all cases in which the alleged grounds for commitment appear insufficient whatever the reason of this insufficiency may be, and is not limited to a requirement for merely formal allegations whether credible or not as to the essentials of the alleged offence. A District Magistrate is not justified in calling on a Subordinate Magistrate to commit a case unless it can be shown that if that Magistrate was not satisfied as required by S. 210, that he ought to have been satisfied, that is to say it ought to appear that the Magistrate had no ground for discrediting the evidence adduced for the Crown as well as that the evidence relates to

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facts sufficient to form the basis for a conviction. *Emperor v. Rawji Hari.*

5 Cr. L. J. 213 :

9 Bom. L. R. 225.

———S. 210—*Committing Magistrate, duty of.*

In a Sessions case it is not sufficient for a Committing Magistrate to say that a *prima facie* case has been made out and thus to relieve himself of further responsibility in the case. If the Police has not sent up all the material witnesses, it is the Committing Magistrate's duty to examine them himself in order to determine which side is speaking the truth. *Ram Pershad Tewari v. Emperor.*

26 Cr. L. J. 1589 :

90 I. C. 661 : A. I. R. 1926 Pat. 5.

———S. 210—*Discretion—Commitment by Magistrate.*

The law gives a discretion to Magistrate, empowered to commit cases to the Sessions Court, to decide whether a certain case should be committed or not, but the discretion, being judicial, must be exercised with care and on some proper ground.

Emperor v. Mohammad Khan Raja Khan Pathan.

9 Cr. L. J. 163.

1 I. C. 104 : 11 Bom. L. R. 18 :

5 M. L. T. 225.

———S. 210, 426—*Discharge—Case triable by Court of Session—Magistrate, jurisdiction of, to discharge accused.*

A Magistrate holding an inquiry in a case triable by a Court of Session is required under S. 210 to commit the accused if he is satisfied that there are grounds for so doing, but if, after weighing the evidence and examining its credibility, he comes to the conclusion that the prosecution case is improbable, and the evidence unreliable, he has jurisdiction to discharge the accused. *Tinkouri v. Emperor.*

21 Cr. L. J. 328:

55 I. C. 600 : 1. P. L. T. 153:

A. I. R. 1920 Pat. 46.

———S. 210—*Procedure—Magistrate's discretion to summon and examine witnesses for defence before or after framing charge.*

S. 210, in requiring "the evidence referred to in S. 208, Sub-s. (1) and (2)" to be recorded before a charge is drawn up, does not require a Magistrate to record the evidence of witnesses whom, in the exercise of the discretion given by Sub-s. (3) he has deemed it unnecessary to summon. Therefore, the accused is not entitled to delay asking the Magistrate to summon his witnesses until the last moment before the charge is drawn up and then require him to summon and examine his witnesses, as such a procedure would lead to undue delay in the commitment of cases and the evils which such delay would entail. *Sessions Judge of Coimbatore v. Immudi Kumara Kangaya.*

13 Cr. L. J. 778:

17 I. C. 410 : 23 M. L. J. 368:

13. M. L. T. 166 : 1912 M. W. N. 1243.

———Ss. 210, 436—*Revision—Discharge by Committing Magistrate—Commitment by District Magistrate—Interference by High Court.*

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Where a District Magistrate, acting under S. 436, disagrees with an order of discharge by a Magistrate, and directs the commitment of the accused to the Court of Session, the High Court has justification to go into the evidence in order to ascertain whether the order of the District Magistrate is or is not justified and if it finds no justification for the order, it will direct the discharge of the accused.

Tinkouri v. Emperor. 21 Cr. L. J. 328

55 I. C. 600 : 1 P. L. T. 153 :

A. I. R. 1920 Pat. 46.

————S. 211.

See also (i) Cr. P. C., S. 291.

(ii) Criminal trial.

————S. 211—Charge, framing of.

If the prosecution be in some doubt whether the offence disclosed was one of abduction or of kidnapping, charges may be framed on both and the verdict of the jury may be taken on both. *Muhammad Ali v. Emperor.*

34 Cr. L. J. 1107 :

145 I. C. 925 : 6 R. C. 172 :

A. I. R. 1933 Cal. 194.

————S. 211, 216—Charge, alteration in—Right of accused.

When amendments and additions to the charges are made after the commencement of the trial, the prosecutor and the accused have the right not only to re-call and re-summon any witness who may have been examined but also to call any further witnesses who the Court may think to be material. A request to summon a fresh witness under S. 211 can only be refused on the ground that the evidence of the witness is not thought by the Court to be material. *Musabru v. Emperor.*

41 Cr. L. J. 931 :

190 I. C. 517 : 21 P. L. T. 13 :

19 Pat. 413 : 7 B. R. 67 : 13 R. P. 230 :

A. I. R. 1940 Pat. 355.

————S. 211—Defence evidence.

Accused has no right to examine witnesses not in list supplied by accused. But Judge has discretion to summon any other material witnesses for the defence. *Misri Lal v. Emperor.*

35 Cr. L. J. 591 :

147 I. C. 1197 : 1934 A. L. J. 67 :

6 R. A. 628 : 3 A. W. R. 241 :

A. I. R. 1934 All. 372.

————S. 211 — Defence evidence — Duty of Court.

Commitment order on July 27—List of witnesses filed in Sessions Court on August 7 but rejected on September 2—Application on 12th September to summon and undertaking not to ask further adjournment also rejected. Though accused cannot claim summons as of right : *Held*, opportunity should have been given to him. *Fazal Hussain v. Emperor.*

35 Cr. L. J. 1034 :

149 I. C. 1046 : 6 R. L. 788 :

A. I. R. 1934 Lah. 250.

————S. 211 — Defence evidence — Duty of Court.

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In a Sessions case when the accused files before the Magistrate a list of witnesses to be examined at the trial, the witnesses named therein must be summoned and made to be present at the trial, and if they are not present, their attendance has to be secured by some means by the Crown. *Ran Mamud Sarkar v. Emperor.*

32 Cr. L. J. 316 :

129 I. C. 353 : 34 C. W. N. 1014 :

58 Cal. 412 : I. R. 1931 Cal. 161 :

A. I. R. 1931 Cal. 6.

————S. 211 — Defence evidence — Duty of Court.

The accused must be informed of the necessity of giving his list of witnesses or of the fact that he has the right to give in such list. *Muhammad Sharif v. Emperor.*

35 Cr. L. J. 616 :

148 I. C. 159 : 35 P. L. R. 312 :

6 R. L. 510 (2) : A. I. R. 1934 Lah. 23 (1).

————S. 211 — Defence evidence — Duty of Magistrate.

A Magistrate is under S. 211 (1), Cr. P. C., bound to require the accused, to give a list of the witnesses he desires to call. It is not enough to put to him the question : "Have you any evidence" ; since the question is ambiguous and might suggest only to the accused an enquiry as to whether he had witnesses ready in Court. *Emperor v. Kondi Raghu.*

2 Cr. L. J. 601 :

7 Bom. L. R. 723.

————S. 211—Defence of evidence—Duty of Sessions Court to enforce attendance of accused's witnesses.

An accused, who has complied with the requirements of S. 211, Cr. P. C., and has put in at once his list of defence witnesses, is entitled as of right to have the attendance of those witnesses at the Sessions trial enforced in the event of their ignoring, or failing to comply with the summons. When processes have been issued by the Court, it is the duty of the Court to enforce them. *Kali Bilash Hazra v. Emperor.*

31 Cr. L. J. 695 :

124 I. C. 513 : A. I. R. 1930 Cal. 188.

————S. 211—Defence evidence—Failure of accused to give list of witnesses—Consequent absence of defence witnesses—Conviction—Prejudice.

Where an accused person after being charged in the Committing Magistrate's Court stated that a list of defence witnesses would be filed and filed no list though a period of more than one month elapsed between the commitment and the commencement of his trial in the Sessions Court and there was no kind of application in this respect throughout the whole record, nor was there anything to show that he ever made a verbal representation to the Sessions Judge ; while on the contrary, on being questioned by the Sessions Judge personally as to if he had to produce any defence, he said "no" and in consequence, no defence witnesses were summoned in the Sessions Court : *Held*, that there could be only one explanation of it that the accused had no witnesses to produce

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and that no prejudice had occurred to the accused by action of the Courts below representing his defence. *Abdul Wahab v. Emperor*.

25 Cr. L. J. 97 :
76 I. C. 97.

———S. 211—*Defence evidence—List of defence witnesses filed at late stage—Absence of witness—Adjournment to.*

Where an accused person does not file a list of witnesses under S. 211, Cr. P. C., he is not as of right entitled to an adjournment of the trial by reason of the fact that one of the witnesses summoned at his request at a late stage has not turned up. *Nazir Singh v. Emperor*.

27 Cr. L. J. 134 :
91 I. C. 806 : 7 L. L. J. 428 :
A. I. R. 1925 Lah. 557.

———Ss. 211, 216—*Defence evidence—List of defence witnesses, when should be presented.*

It is not desirable that the presentation of the list of defence witnesses should be postponed till the last minute when the Code contemplates that it should be done at the time when the charge is framed. The Magistrate departs from the order of procedure in S. 210 and the following sections where he simultaneously frames the charge and passes an order of commitment. *Musabru v. Emperor*.

41 Cr. L. J. 931 :
190 I. C. 517 : 21 P. L. T. 13 :
19 Pat. 413 : 7 B. R. 67 :
13 R. P. 230 : A. I. R. 1940 Pat. 355.

———S. 211—*Defence evidence—List of witnesses filed in Sessions Court—Procedure.*

In a case where the list presented to the Sessions Judge was not a list of witnesses in addition to the number already summoned but was the first list which had been presented to any officer, it is desirable to summon at least some of the witnesses regarding the effect of whose testimony some explanation could be given. *Musabru v. Emperor*.

41 Cr. L. J. 931 :
190 I. C. 517 : 21 P. L. T. 13 :
19 Pat. 413 : 7 B. R. 67 :
13 R. P. 230 :
A. I. R. 1940 Pat. 355.

———S. 211—*Procedure—Defence evidence—List of witnesses presented by accused to Sessions Judge.*

There is a departure from the procedure contemplated by the Code when accused present their list of witnesses not to the Magistrate under S. 211 (2), Cr. P. C. but to the Sessions Judge and probably the most correct procedure for the Sessions Judge at that time is at once to forward the application to the Committing Magistrate for disposal under S. 211 (2). *Musabru v. Emperor*.

41 Cr. L. J. 931 :
190 I. C. 517 : 21 P. L. T. 13 :
19 Pat. 413 : 7 B. R. 67 :
13 R. P. 230 :
A. I. R. 1940 Pat. 355.

———S. 211—*Defence evidence—List of witnesses, when to be filed.*

It is ordinarily incumbent on the accused to put in his list of defence witnesses at once, that

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is to say, on the day when the order of commitment is made, and if he does not do so, the Magistrate will have a discretion to allow or not to allow any such application if it is made on any subsequent date. If, however, such an application is made and is allowed, then the application whether under Sub-s. (1) or Sub-s. (2) will be governed by the same principle. *Kali Bilash Hazra v. Emperor*.

31 Cr. L. J. 695 :
124 I. C. 513 : A. I. R. 1930 Cal. 188.

———S. 211—*Defence evidence—Power to accept supplementary list of witnesses—Discretion of Court.*

The power to accept the supplementary list of witnesses in any case is a discretionary power and the discretion of the Magistrate is to be exercised in accordance with S. 216 and subject to the provisos in that section. *Musabru v. Emperor*.

41 Cr. L. J. 931 :
190 I. C. 517 : 21 P. L. T. 13 :
19 Pat. 413 : 7 B. R. 67 :
13 R. P. 230 : A. I. R. 1940 Pat. 355.

———S. 211—*Defence evidence—Right of accused.*

Where there has been filed a list of defence witnesses in the Magistrate's Court by the accused, there is a compliance with the requirements of S. 211. He is, therefore, as of right, entitled to have the witnesses mentioned in the list summoned. *Kundanlal v. Emperor*.

36 Cr. L. J. 889 :
156 I. C. 258 : 29 S. L. R. 64 :
7 R. S. 237 : A. I. R. 1935 Sind 69.

———S. 211—*Defence evidence—Witnesses for defence summoned, but not in attendance—Application at late stage to enforce their attendance, refusal of, effect of.*

Accused, before the Committing Magistrate, filed a list of his witnesses and they were summoned to attend the Sessions Court. Some of them, however, failed to attend and, when all the defence witnesses who had attended had been examined and the case was ready for hearing arguments, the accused made an application to enforce attendance of the absent witnesses, but the Sessions Judge refused the application on the sole ground that it should have been made earlier: *Held*, that as the refusal of the application was not based on the ground that the Judge was satisfied that the evidence of the witnesses would be immaterial, his refusal had vitiated the trial. *Foijuddi v. Emperor*.

21 Cr. L. J. 842 :
58 I. C. 922 : 24 C. W. N. 527 :
47 Cal. 758 : A. I. R. 1920 Cal. 531.

———S. 211—*Procedure—Attendance of some witnesses, not enforced—Effect.*

A conviction will not, however, be set aside on the mere ground that attendance of some of the witnesses was not enforced, if the Court is satisfied that those witnesses were not material witnesses and that the accused has not been prejudiced. *Kali Bilash Hazra v. Emperor*.

31 Cr. L. J. 695 :
124 I. C. 513 : A. I. R. 1930 Cal. 188.

———S. 212.

See Cr. P. C., S. 208.

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———**Ss. 212, 213—Defence evidence—Duty of Magistrate.**

Though it is left to the discretion of a Magistrate to examine witnesses for the defence after the charge is drawn up and then to cancel the charge and discharge the accused, the Cr. P. C. does not compel a Magistrate to summon and examine witnesses for the defence after a charge has been drawn up or even before the charge has been drawn up, for reasons to be recorded, if the Magistrate deems it unnecessary to do so. *Sessions Judge of Coimbatore v. Immudi Kumari Kangaya.*

13 Cr. L. J. 778 :
17 I. C. 410 : 23 M. L. J. 368 :
13 M. L. J. 166 :
1912 M. W. N. 1243.

———**S. 213.**

See also (i) Cr. P. C. 1898 : Ss. 177, 208.
(ii) Criminal trial.

———**S. 213.**

See also (i) Coroners Act.

———**S. 213, Sub-s. (2)—Charge—Charge against accused framed before cross-examination of prosecution witnesses—Subsequent cross-examination—Cancellation of charge, if legal “witnesses for the defence,” meaning of.**

A Magistrate, having drawn up a charge against an accused person with a view to his commitment to the Court of Session, can thereafter allow the accused to cross-examine the witnesses for the prosecution, and, as a result, cancel the charge. The words “witnesses for the defence” in S. 213 (2), Cr. P. C. are wide enough to cover evidence extracted by cross-examination from witnesses for the prosecution. *Jogendra Nath Mookherji v. Moti Lal Chakravarti.*

13 Cr. L. J. 774 :
17 I. C. 406 : 16 C. W. N. 1155 : 39 Cal. 885.

———**S. 213—Commitment, ground.**

The fact that there is direct evidence against an accused person which, if believed, would justify a conviction, is not necessarily a sufficient reason for committing a case to Sessions. *Nga Hmyin v. Emperor.*

19 Cr. L. J. 102 :
43 I. C. 326 : 3 U. B. R. 1917 29 :
A. I. R. 1918 U. Bur. 11.

———**S. 213—Commitment—Grounds.**

Where a case is triable by a Magistrate or by a Court of Sessions, and is committed to the Sessions, the reasons for commitment should include not merely reasons for not discharging the accused but reasons for sending him before the Court of Sessions, and where the case is not one which ought to have been committed, then to commit without giving reasons is more than an irregularity; it is an illegality on account of which the commitment must be quashed. *Emperor v. Nanji Samal.*

14 Cr. L. J. 609 :
21 I. C. 657 : 15 Bom. L. R. 999 :
38 Bom. 114.

———**S. 213—Commitment, irregularity in—Sessions trial, whether vitiated.**

It is too late to object to the commitment after the accused has pleaded to the charge before the Sessions Court. The Sessions Judge

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has jurisdiction to try a case that has been committed to him for trial, and if the trial is legally held, an irregularity in the commitment would not vitiate the proceedings in the Sessions Court. *Kasem Molla v. Emperor.*

26 Cr. L. J. 1560 :
90 I. C. 440 : 42 C. L. J. 114 :
A. I. R. 1926 Cal. 410.

———**S. 213—Discharge.**

Case triable exclusively by Sessions Judge—Trying Magistrate discharging accused rejecting evidence as untrustworthy—Procedure is legal—Accused, held properly discharged. *Moyia v. Harbans Prasad.*

34 Cr. L. J. 1201 :
146 I. C. 160 : 1933 A. L. J. 1115 :
6 R. A. 265 : A. I. R. 1933 All. 482 (2) :

———**S. 213—Discharge—Discharge of accused—Case triable by Court of Session—Magistrate, power of, to discharge.**

In a case triable only by a Court of Session if the enquiring Magistrate, after hearing the defence witnesses, comes to the conclusion that their evidence rebuts that produced for the prosecution or renders it so incredible or unreliable that a conviction will not follow, he may act upon his opinion and may pass an order of discharge under S. 213, Cr. P. C. *Muhammad Abdul Hadi v. Baldeo Sahai.*

22 Cr. L. J. 703 :
63 I. C. 831 : 3 U. P. L. R. A. 184 :
19 A. L. J. 831 : A. I. R. 1922 All. 168.

———**S. 213—Discharge, when proper.**

A Committing Magistrate has a discretion, even after he has framed a charge, of concealing it, if after hearing the evidence for the defence he considers that there are no longer sufficient grounds to put the accused on his trial. If he entirely disbelieves the evidence for the prosecution, however numerous the witnesses may be, he ought to discharge the accused. If he is in doubt as to their credibility but the evidence, if believed, would be sufficient for a conviction, he should not take on himself the functions of a superior Court, but commit the case to Sessions. *U. Ba Nga Hymind v. Emperor.*

19 Cr. L. J. 102 :
43 I. C. 326 : 3 U. B. R. 1917 29 :
A. I. R. 1918 U. Bur. 11.

———**S. 213—Procedure—Committing Magistrate, whether bound to consider defence evidence—Omission to consider, effect of.**

A Committing Magistrate is bound to consider the defence evidence if it is tendered, and omission on his part to do so is not a mere irregularity but an illegality. *Emperor v. Nga Khaing.*

30 Cr. L. J. 1 :
112 I. C. 769 : 6 Rang. 531 :
I. R. 1929 Rang. 23 : A. I. R. 1928 Rang. 299.

———**S. 213—Procedure—Sessions Judge should not express opinion on evidence, before hearing it.**

It is not open to a Court of Sessions in the case of commitment under S. 213 to express a view that the evidence produced is not sufficient to prove the charge against the accused

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before hearing the evidence produced in the case. *Emperor v. Mihi Lal*. 41 Cr. L. J. 869 : 190 I. C. 238 : 1940 A. L. J. 357 : I. L. R. 1940 All. 531 : 13 R. A. 185 : 1940 A. W. R. 338 : A. I. R. 1940 All. 396.

———S. 214.

See Coroners Act.

———S. 215.

See also (i) Coroners Act.
(ii) Cr. P. C., 1898, Ss. 162 (1), 197, 203, 204, 206, 208, 213, 215, 436, 556.
(iii) Penal Code, 1860, S. 193.

———S. 215.

———Applicability.

———Commitment.

———Committal.

———Effect of quashing.

———Point of law.

———Procedure.

———Remand after quashing committal.

———Revision.

———Scope.

———S. 215—*Applicability — Order of commitment to Sessions—Interference by High Court—Principles.*

Under S. 215, the High Court would not ordinarily interfere with an order of committal unless it is satisfied that there is an illegality in the order and the test, in a proceeding of this nature, is to see from the judgment of the Magistrate what his findings on the evidence are and whether those findings are capable *prima facie* of sustaining the charges he has framed and on which the committal to the Sessions is made. *Yellappa Durgaji Jadhav v. Emperor*. 30 Cr. L. J. 1066 :

119 I. C. 647 : 31 Bom. L. R. 523 : I. R. 1929 Bom. 519 : A. I. R. 1929 Bom. 269.

———S. 215—*Commitment—Grounds.*

If a magistrate is unable to punish adequately, he can commit the accused to sessions. *Emperor v. Umrai*. 148 I. C. 653 (a) :

11 O. W. N. 556 : 6 R. O. 392 (2) : A. I. R. 1934 Oudh 185 (2).

———S. 215—*Commitment—Grounds for.*

Neither a request by the accused nor the fact that the case has created a sensation in a particular community is a good ground for committing the accused to Sessions. *Emperor v. Achaldas Jethamal*.

27 Cr. L. J. 479 : 93 I. C. 703 : 28 Bom. L. R. 293 : A. I. R. 1926 Bom. 251.

———S. 215—*Commitment—Grounds for quashing.*

An order of commitment to Sessions cannot be quashed merely because there is no satisfactory, trustworthy or conclusive evidence against the accused. *Emperor v. Nawal Kishore*. 30 Cr. L. J. 519 :

115 I. C. 692 : 10 P. L. T. 101 : I. R. 1929 Pat. 244 : A. I. R. 1929 Pat. 121.

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———S. 215.—*Commitment—High Court's power to quash.*

Under S. 215, a commitment can be quashed by the High Court only and only on a point of law. *Emperor v. Madhav. Luaman*.

20 Cr. L. J. 71 (b) : 48 I. C. 871 : 20 Bom. L. R. 607 : 43 Bom. 147 : A. I. R. 1918 Bom. 117.

———S. 215—*Commitment, order of, quashing of—High Court, power of—Point of law.*

An order of commitment to a Court of Session can be quashed by the High Court only on a point of law. A commitment may be inconvenient or may be indiscreet, but the High Court is concerned only with the question of its legality. *Emperor v. Goda Ram*. 19 Cr. L. J. 224 :

15 A. L. J. 756 : 43 I. C. 800 : A. I. R. 1918 All. 296.

———S. 215—*Commitment, quashing of—Power of High Court.*

A commitment to a Court of Session cannot be quashed after the accused has been put on his trial and has pleaded to the charge. *Crown v. Haji*. 9 Cr. L. J. 250.

1 S. L. R. 6.

———S. 215.

Commitment, quashing of—Insufficiency of evidence, is no ground for quashing commitment—Remedy of aggrieved party is under Ss. 273, 289 and 494. *Maroti v. Emperor*.

36 Cr. L. J. 1389 : 158 I. C. 537 : 18 N. L. J. 227 : 31 N. L. R. 360 : 8 R. N. 90 : A. I. R. 1935 Nag. 202.

———S. 215—*Commitment to the Sessions—Evidence insufficient to be left to a jury—Insufficiency of evidence, a point of law or fact—Justification of High Court to quash commitment.*

The petitioner, who was plaintiff in five suits, was present in Court at the trial of the suits. His *Patwari* (a servant), who appeared for him as a witness, gave false evidence and produced a number of documents which were forgeries. In commitment of the petitioner to the Sessions for offences under Ss. 193, 196, 471, 114, I. P. C., the only evidence against him was :—(1) That a servant (*Patwari*) in his employ gave false evidence and produced forged documents ; (2) That he was present actively prosecuting his suits ; (3) That the evidence of the *Patwari*, if believed, would have supported his case ; (4) That he sometimes made collections and had tested *Jamabandis* : Held, that this just stops short of a case which would properly be left to a jury. It is a case of suspicion—possibly strong suspicion—but in the absence of any evidence that petitioner had seen, or knew of the contents of the documents produced by the *Patwari*, there is no case for him to answer. The commitment was accordingly quashed on the ground that *prima facie* there was no case against that petitioner. The test which should be applied to decide whether a committal ought or ought not to be made on the facts is this—assuming that the whole of the evidence

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telling against the accused is true, is there a case which a Judge at a trial could leave to a jury? If the evidence is such that a judge would have been bound to rule that there was no evidence on which a jury could convict, then a committal ought not to be made. If there was any evidence which called for an answer—however great the preponderance in favour of the prisoner might be—then the committal was proper. *Per Henderson, J.*—The object of a preliminary enquiry in a criminal case is to ascertain whether there is any real case against the accused before a commitment is made and if all that can be said is that there is a mere scintilla of evidence then there should be no commitment. *Per Henderson and Girdl, JJ.*—A Sessions Judge has no power to order a stay of proceedings before a Magistrate. All he can do under S. 435, Cr. P. C., is to call for the record of any proceeding before a Magistrate. *Shcobur Ram v. Emperor*.

2 Cr. L. J. 534 :
9 C. W. N. 829.

———S. 215—Commitment, whether can be questioned in appeal against conviction.

A commitment once made stands unless quashed by the High Court, and if it is not quashed, the trial of the person committed must take place in pursuance thereof. After a trial has ended, it is not open to the accused to impugn the commitment, inasmuch as a commitment can be quashed with only one object, namely, that the trial of the person committed may not take place, and where a trial has already taken place, it serves no purpose to impugn the commitment. *Nazir Singh v. Emperor*.

27 Cr. L. J. 134 :
91 I. C. 806 : 7 L. L. J. 428 :
A. I. R. 1925 Lah. 557.

———S. 215—Committal—Convenient or indiscreet, cannot be quashed, except on point of law.

An order of committal can only be quashed on a point of law. The order may be convenient or it may be indiscreet, but the High Court will not interfere unless it is illegal. *Emperor v. Suleman Ibrahim*.

12 Cr. L. J. 256 :
10 I. C. 802 : 13 Bom. L. R. 201.

———S. 215—Committal in spite of disbelief in prosecution evidence, legality of.

A Magistrate can commit an accused to the Sessions even though he disbelieves the main prosecution evidence, if he is satisfied that there are sufficient reasons for committing the accused in spite of his disbelief of such evidence. *Burjorji Nowroji Kelavalla v. Emperor*.

29 Cr. L. J. 987 :
112 I. C. 107 : 30 Bom. L. R. 639 :
A. I. R. 1928 Bom. 220.

———S. 215 — Committal, quashing of—Grounds for.

Quashing the committal can only be on a point of law as is clear from S. 215, Cr. P. C. *In re : Ramaswami Goundan*. 39 Cr. L. J. 894 :
177 I. C. 494 : 1938 M. W. N. 577 :
48 L. W. 139 : 11 R. M. 330 :
A. I. R. 1938 Mad. 675.

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———S. 215—Effect of quashing—Commitment quashed—Procedure—Transfer.

The effect of the quashing of commitment under S. 215, Cr. P. C., is that the case should start again from the beginning. It must go on from the point at which the Magistrate took cognizance of the complaint. No fresh complaint, however, need be made. But where the Magistrate who had originally tried the case, had to proceed so far as to express his opinion as to the guilt of the accused, the case should not be sent for re-trial to the same Magistrate but to some other Magistrate. *Emperor v. Ghous Baksh*.

38 Cr. L. J. 379 :
167 I. C. 379 : 9 R. S. 181 :
31 S. L. R. 403 : A. I. R. 1937 Sind 32.

———S. 215—Point of law—Absence of evidence—Commitment, quashing of.

Absence of evidence is a question of law and not of fact. Where, therefore, there is no evidence to support an order of commitment, the commitment must be quashed. *Gansham Das v. Emperor*. 31 Cr. L. J. 814 :
125 I. C. 321 : 31 P. L. R. 348 :
A. I. R. 1930 Lah. 545.

———S. 215—Point of law—Absence of evidence—Commitment, when can be quashed—Prima facie case against accused—Sessions Judge thinking that eventually prosecution case may not be proved—No quashing.

In cases in which there is no evidence to warrant a commitment and in cases in which commitment is made on no legal evidence at all, action may be taken under S. 215, Cr. P. C. High Court, however, will not quash commitments where there is a *prima facie* case against the persons who have been committed to take their trial to a Court of Session. In such cases, no legal question arises and so the Court has no power to quash the commitment. Nor can the commitment of the accused be quashed because of the possibility of the Sessions Judge's holding in favour of the accused and against the prosecution after he has heard the evidence. *Emperor v. Mihi Lal*.

41 Cr. L. J. 869 :
196 I. C. 238 : 1940 A. L. J. 357 :
I. L. R. 1940 All. 531 :
113 R. A. 185 : 1940 A. W. R. 338 :
A. I. R. 1940 All. 396.

———S. 215—Point of law—Absence of evidence.

Under S. 215 the High Court is precluded from entertaining an application for revision on a question of fact against an order of commitment made under Ss. 213 and 214 of the Code, but it has power to quash a commitment if there is no evidence to support it, the absence of such evidence being a question of law and not of fact. *Tambi v. Emperor*.

19 Cr. L. J. 801 (b) :
46 I. C. 817 : 9 L. B. R. 208 :
A. I. R. 1919 L. Bur. 146.

———S. 215—Point of law.

Accused charged under S. 148, Penal Code

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—Commitment to Sessions is illegal—Commitment made for the sake of convenience—Ground for commitment ceasing to exist—Commitment is bad in law. *Emperor v. Mir Alam*.

35 Cr. L. J. 1459 :
151 I. C. 970 : 35 P. L. R. 300 :
7 R. L. 232 : A. I. R. 1934 Lah. 95.

—S. 215—Point of Law—Case exclusively triable by Sessions—Case committed by Magistrate having powers under S. 30—Commitment, whether legal.

The fact that the provisions of S. 30, Cr. P. C., confer upon a Magistrate, First Class, invested with those powers the jurisdiction to try cases exclusively triable by Court of Session if he chooses to do so does not mean that S. 30, Cr. P. C. takes away the jurisdiction of the Sessions Court to try the case if committed to it. Hence, when such a Magistrate, commits the case, it cannot be said that the Committing Magistrate has committed an error of law in sending up the case to the Court of Session. *Emperor v. Madan Lal*.

37 Cr. L. J. 852 (a) :
163 I. C. 611 : 9 R. Pesh. 6 :
A. I. R. 1936 Pesh. 139.

—S. 215—Point of Law—Case triable by Magistrate.

A Magistrate competent to try and pass sentence in a case has no discretion to commit it to the Session. *Diwanichand v. Emperor*.

15 Cr. L. J. 664 :
25 I. C. 992 : 8 S. L. R. 23 :
A. I. R. 1914 Sind 94.

—Ss. 215, 30—Point of Law—Case triable by Sessions—S. 30 Magistrate present in the district—No reasons for commitment given—Commitment, legality of—Proper procedure.

When a case is triable by the Sessions Court, the mere fact that the Committing Magistrate did not give his reasons for committing the case when there was a S. 30 Magistrate in the District, cannot make the commitment illegal. The proper course for the Sessions Judge would be to try the case and if he ultimately found that the case should not have been committed, he should bring the matter to the notice of the District Magistrate. *Indoo v. Emperor*.

150 I. C. 769 :
7 R. L. 23 : 36 P. L. R. 218 :
A. I. R. 1934 Lah. 326 (2).

—S. 215—Point of Law—Charge, alteration in—Procedure—Accused not allowed to re-examine witnesses—Commitment to Sessions, legality of.

Where an alteration is made in a charge by a Magistrate at a late stage of the trial and the accused is committed to the Sessions without being given an opportunity of re-examining the witnesses for the prosecution and producing his defence in regard to the alteration in the charge, the procedure adopted is illegal and is likely to prejudice the accused in his trial before the Court of Session, and the commitment is, therefore,

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liable to be quashed. *Mohan Lal v. Emperor*.
25 Cr. L. J. 798 :
81 I. C. 318 : 22 A. L. J. 239 :
A. I. R. 1924 All. 665.

—S. 215—Point of Law—Commitment—Withdrawal of graver charges—Remaining charges triable by Magistrate—Order of commitment, whether may be set aside.

Where there has been a commitment for the trial of charges, some of which are triable by a Sessions Court with a Jury and others triable by a Magistrate, the fact that during the trial, the charges which were triable by the Sessions Court are withdrawn is not a ground for setting aside the order of commitment and taking away the accused's right to a trial by Jury without his consent. *Emperor v. Monmotha Nath Miter*.
28 Cr. L. J. 141 :
99 I. C. 349 : 31 C. W. N. 144 :
A. I. R. 1927 Cal 199.

—S. 215—Point of Law—Commitment without notice to accused—Revision.

An order of commitment, made in contravention of the provisions of S. 436 (a), Cr. P. C., without allowing the accused an opportunity of showing cause against it, is illegal and vitiates the proceedings. *Anokha Singh v. Emperor*.

14 Cr. L. J. 605 :
21 I. C. 477 : 28 P. W. R. 1913 Cr. :
312 P. L. R. 1913.

—S. 215—Point of Law—Committal order, on bad reasons—High Court's power to quash.

Where a Magistrate either gives no reasons or gives reasons which are bad in law, for committing to the Sessions a case which he himself is competent to try, the High Court has jurisdiction to quash the committal as bad in law. *Emperor v. Achaldas Jetmal*.

27 Cr. L. J. 479 :
93 I. C. 703 : 28 Bom. L. R. 293 :
A. I. R. 1926 Bom. 251.

—S. 215—Point of Law—Failure to exercise jurisdiction—Illegal commitment.

The failure by a Magistrate to exercise his own power where the offence is within his jurisdiction is a failure to comply with the provisions of S. 254, Cr. P. C., and an unnecessary committal is, therefore, an error of law, in which the commitment can be quashed. *Ullibai v. Emperor*.

26 Cr. L. J. 148 :
83 I. C. 708 : 17 S. L. R. 188 :
A. I. R. 1924 Sind 61.

—S. 215—Point of Law—Failure to exercise jurisdiction under S. 254 or wrongful exercise of jurisdiction under S. 347.

Failure to exercise jurisdiction under S. 254, Cr. P. C., by a Magistrate is, as much as the wrongful exercise of jurisdiction under S. 347, Cr. P. C., a point of law on which a committal wrongly made by him can be quashed. *Emperor v. Ghousbaksh*.

38 Cr. L. J. 379 :
167 I. C. 379 : 9 R. S. 181 :
31 S. L. R. 403 : A. I. R. 1937 Sind 32.

—S. 215—Point of Law—Failure to produce medical evidence.

A plea that there is no medical evidence

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on the record to prove that the accused committed the offence, does not raise any point of law. *Francis Xavier Fernandes v. Emperor*.

37 Cr. L. J. 314 :

160 I. C. 375 : 29 S. L. R. 281 :

8 R. S. 122 : A. I. R. 1936 Sind 3.

———S. 215—*Point of law—Failure to weigh evidence.*

Committal by Magistrate without weighing evidence against accused—Procedure in consonance with practice prevailing in Punjab—No law point involved—Commitment cannot be quashed. *Muhammad Khan v. Emperor*.

34 Cr. L. J. 39 (1) :

140 I. C. 539 : 33 P. L. R. 1068 :

I. R. 1933 Lah. 7 : A. I. R. 1933 Lah. 39.

———S. 215—*Point of law—Joint inquiry—Commitment—Joint trial.*

There is no provision in the Cr. P. C. which requires a separate inquiry in respect of each accused person, as the provision contained in S. 233 relates to separate trials only. The trial no doubt could not be joint : but there is no objection to the proceedings prior to commitment on the ground that the inquiry was conducted against the accused jointly with others. *Emperor v. Sita kom Ramasa*.

2 Cr. L. J. 43 :

7 Bom. L. R. 457.

———S. 215—*Point of law—Magistrate having power to try offence.*

Where the accused were committed to the High Court Sessions by the Chief Presidency Magistrate on charges under S. 103 of the Presidency Towns Insolvency Act and the Judge presiding over the Sessions quashed the commitment on the ground that the Magistrate had power to impose the maximum punishment with which the offence was punishable and that the commitment was consequently illegal : *Held*, (1) that the order quashing the commitment was a valid one : (2) that where the primary effect of the order was to supersede any action taken by the Magistrate under S. 210 and the proceedings subsequent thereto, it was necessary for the Magistrate to go back to the point at which he took cognizance of the complaint : (3) that there was no need for a fresh complaint but it was necessary for the Magistrate to treat the case as a warrant case and not as a subject-matter of an enquiry under Chap. XVIII, and to begin the trial afresh under S. 252. *Emperor v. Girish Chandra*.

31 Cr. L. J. 506 :

123 I. C. 433 : 34 C. W. N. 13 :

50 C. L. J. 408 : 57 Cal. 1042 :

A. I. R. 1929 Cal. 756.

———S. 215—*Point of Law.*

A commitment can be quashed on a point of law only, and not on the ground that there is no evidence on the Committing Magistrate's record to sustain the charge. *Ismail v. Emperor*.

26 Cr. L. J. 1045 :

87 I. C. 965 : A. I. R. 1925 Nag. 409.

———S. 215—*Point of law—Offence triable both by Magistrate and Sessions Court—Magistrate not giving reason why he committed accused—Commitment should be quashed.*

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Under S. 215, Cr. P. C., the commitment can only be quashed on a point of law. Offences which are triable by both a Magistrate and a Sessions Court, should ordinarily be tried by the Magistrate though of course if he considers that the maximum sentence which he can inflict is insufficient, he has the power to commit to Sessions, but this is an exception to the general rule, that if the Magistrate can try, he should do so. In such a case, the Magistrate must exercise his discretion after due consideration and state the reasons why he commits to a Court of Sessions. Where the Magistrate has given no reason why he has committed the accused, the whole commitment should be quashed. *Sheomangal Pandey v. Emperor*.

40 Cr. L. J. 903 :

184 I. C. 260 : 1939 O. W. N. 868 :

12 R. O. 87 : 1939 O. L. R. 596 :

A. I. R. 1940 Oudh 15.

———S. 215—*Point of law—Order of commitment—Interference in revision, principles relating to—Approver, evidence of—Commitment based on approver's evidence alone, legality of.*

The real test in deciding whether an order of commitment should be quashed or not is to see whether there is evidence which could fairly be acted upon, whether, in other words, a Judge at a trial held with Jurymen could say that there was evidence which could go before a Jury. Evidence of an accomplice can be acted upon without corroboration in a proper case and, therefore, the mere fact that the only evidence is that of an accomplice is no ground for quashing an order of commitment. *Bal Chand v. Emperor*.

27 Cr. L. J. 1369 :

98 I. C. 489 : 24 A. L. J. 1050 :

A. I. R. 1927 All. 90.

———S. 215—*Point of law—Prejudice to accused—Quashing of commitment.*

In quashing committal, point at issue before the High Court is a point of law, pure and simple. Prejudice to the accused is no ground for refusing to quash committal in fit cases. *Maniram v. Emperor*.

34 Cr. L. J. 14 :

140 I. C. 485 : 26 S. L. R. 407 :

I. R. 1932 Sind 189 : A. I. R. 1932 Sind 157.

———S. 215—*Procedure—Order making complaint—Remand by District Judge on appeal, legality of—Omission to challenge order of remand by way of appeal or revision—Objection after commitment, competency of.*

A Munsif made an order under S. 476, Cr. P. C. making a complaint against a person under certain sections of the Penal Code and any other section of that Code found applicable. On appeal, the District Judge sent back the case to the Munsif directing him to specify all the sections of the Penal Code, under which the complaint was made. No objection was taken to the proceedings of the District Judge by way of appeal or revision or before the Magistrate but after the accused was committed to the Sessions, application was made to the High Court for quashing the commitment on the ground that the District Judge had no jurisdiction to remand the case : *Held*, (1)

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that the order of the District Judge was not illegal and did not contravene the provisions of S. 476-B, and if it did, it was not an order without jurisdiction : (2) that at any rate as the accused had not taken any action against the order of the District Judge, it had become final and could not be attacked after commitment. *Mahindra Nath Das v. Emperor*.

31 Cr. L. J. 750 :
124 I. C. 827 : 49 C. L. J. 374 :
A. I. R. 1929 Cal. 428.

———S. 215—*Point of law—Prosecution allegations, if proved, not constituting offence—Quashing of commitment.*

A commitment can be quashed under S. 215, Cr. P. C., where the allegations of the prosecution, if proved, would not constitute an offence in law. *Emperor v. Jagannath*.

28 Cr. L. J. 137 :
99 I. C. 345 : 3 O. W. N. 308 Sup. :

———S. 215—*Point of law—Territorial jurisdiction, want of—Doubtful evidence—Commitment order—Reason for quashing.*

A commitment order can be quashed under S. 215, Cr. P. C., only on a point of law. The want of territorial jurisdiction in the Magistrate who holds the inquiry is a point of law. But the commitment is valid in spite of the want of territorial jurisdiction unless a failure of justice has in fact been caused by such commitment. A commitment order cannot be quashed merely on the ground that the evidence was doubtful. The proper course would be for the District Magistrate in such case to instruct the Public Prosecutor to withdraw under S. 494, Cr. P. C. *Emperor v. Nga Taung Thu*.

15 Cr. L. J. 270 :
23 I. C. 478 : 7 Bur. L. T. 26 :
A. I. R. 1914 L. Bur. 9.

———S. 215—*Point of law, what is.*

A commitment made without examining prosecution witnesses and allowing the accused an opportunity to cross-examine is illegal and must be quashed. *Emperor v. Channing Arnold*.

13 Cr. L. J. 877 (b) :
17 I. C. 813 : 5 Bur. L. T. 239.

———S. 215—*Point of law, what is.*

A commitment once made to a Court of Session can be quashed only on a point of law. Whether the evidence be strong or weak, sufficient or insufficient to justify a conviction is a question of fact, and not of law, and can be determined by a judge of facts only. *Sheobux Ram v. Emperor*.

2 Cr. L. J. 534 :
9 C. W. N. 829.

———S. 215—*Point of law, what is.*

Absence or insufficiency of evidence is not a point of law within the meaning of S. 215, on which a commitment could be quashed.

32 Cr. L. J. 867 :
132 I. C. 380 : 32 P. L. R. 581 :
I. R. 1931 Lah. 572 :
A. I. R. 1931 Lah. 467.

———S. 215—*Procedure—Commitment order of—Application to quash order—High Court, powers of—Credibility of evidence.*

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On an application under S. 215 to quash a commitment made by the investigating Magistrate in the exercise of his own discretion, the High Court has no concern with the question of the credibility of the evidence, when there is, in fact, some evidence on the committal record which would justify the Sessions Judge in leaving the question of guilt or innocence to the Jury. *Mahomed Moidin v. Emperor*.

25 Cr. L. J. 261 :
76 I. C. 821 : 1 Rang. 526 :
A. I. R. 1924 Rang. 165.

———S. 215—*Procedure—Two dacoity cases—Failure to examine all witnesses—Irregularity.*

Prosecution need not produce all evidence before Committing Magistrate—Two dacoity cases—Material witnesses examined separately—Carbon copies of statements of merely formal witnesses in one case filed in another—Irregularity can be rectified by Sessions Judge summoning and examining them. *Emperor v. Chhadammi*.

36 Cr. L. J. 175 :
152 I. C. 428 : 1934 O. L. R. 855 (1) :
11 Oudh 1308 : 7 R. O. 219 :
A. I. R. 1935 Oudh 9 (1).

———S. 215—*Remand, after quashing commitment.*

High Court's power to pass any subsequent order after commitment is quashed, is not restricted. It can order that case should be sent back to the Magistrate who should conclude the trial before him. *Emperor v. Sher Alam Khan Shah*.

35 Cr. L. J. 479 :
147 I. C. 879 : 35 Bom. L. R. 1062 :
6 R. B. 221 : A. I. R. 1933 Bom. 494.

———S. 215—*Revision—Interference.*

The High Court will not, in the exercise of its revisional powers, interfere with an order admitting a certain piece of evidence made by a Subordinate Court in the course of a preliminary inquiry prior to commitment to the Sessions. *Katikineni Venkata Gopal Narayana Rama Rao v. Chitrluri Venkataramayya*.

36 Cr. L. J. 781 (2) :
155 I. C. 395 (2) : 1934 M. W. N. 1173 :
41 L. W. 280 : 68 M. L. J. 282 :
58 Mad. 430 : 7 R. M. 578 :
A. I. R. 1935 Mad. 257 (2).

———S. 215—*Scope.*

Cl. 15 of the Letters Patent is controlled by the specific provisions of S. 215, Cr. P. C. *Venkatagiri Aiyar v. N. M. Firm*.

21 Cr. L. J. 28 (b) :
54 I. C. 172 : 37 M. L. J. 652 : 10 L. W. 568 :
43 Mad. 361 : A. I. R. 1920 Mad. 144.

———S. 215—*Scope—Commitment made under S. 423, whether can be quashed—Revision.*

S. 215 has no application to an order of commitment passed by a Sessions Judge under S. 423, in dealing with the appeal of an accused person. Such an order of commitment can, however, be dealt with by the High Court in the exercise of its powers of revision. *Emperor v. Nga Thet She*.

25 Cr. L. J. 518 :
77 I. C. 982 : 11 L. B. R. 375 :
A. I. R. 1922 L. Bur. 40.

———S. 215—*Scope—Commitment to the*

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Sessions—Jurisdiction of Sessions Judge to refer back case to Magistrate.

Once a commitment is made to the Sessions by a competent Magistrate, the commitment can be quashed only by the High Court. *In re : Bheema.*

5 Cr. L. J. 99 :
16 M. L. J. 525.

———S. 215—Scope—High Court Judge, powers of.

A Judge, presiding over the Sessions of the High Court, has power under S. 215, Cr. P. C., to quash a commitment made to him by a competent Magistrate. *I. Mamsa v. The King.*

39 Cr. L. J. 470 :
174 I. C. 824 : 10 R. Rang. 433 :
A. I. R. 1938 Rang. 105.

———S. 215—Scope—High Court's power of quashing.

High Court is empowered to quash commitment to Court of Session in all cases in which Judge of High Court trying a Sessions case would stay proceedings under S. 273. *Maniram v. Emperor.*

34 Cr. L. J. 14 :
140 I. C. 485 : 26 S. L. R. 407 :
I. R. 1932 Sind 189 : A. I. R. 1932 Sind 157.

———S. 215—Scope—High Court's power of quashing.

When there is no evidence to justify a commitment, it is not open to the High Court to quash it. *In re : Sessions Judge of Coimbatore.*

15 Cr. L. J. 665 :
25 I. C. 993 : 27 M. L. J. 593 :
A. I. R. 1915 Mad. 24.

———S. 215—Scope—High Court's power to quash.

A Judge of the High Court when exercising original criminal jurisdiction has jurisdiction to quash a commitment under S. 215, Cr. P. C. *Emperor v. Girish Chandra Kundu.*

31 Cr. L. J. 184 :
120 I. C. 813 : 56 Cal. 785 :
A. I. R. 1929 Cal. 777.

———S. 215—Scope—Power of High Court.

The High Court can quash an illegal commitment at any stage of the case. *Hari Charan Misra v. Emperor.*

34 Cr. L. J. 938 :
145 I. C. 368 : 14 P. L. T. 281 : 12 Pat. 353 :
6 R. P. 164 : A. I. R. 1933 Pat. 273 (2).

———S. 215—Scope—Power of High Court to quash.

A Judge presiding over the Sessions of the High Court has power under S. 215 to quash a commitment, made to him by a competent Magistrate, and where a commitment is so quashed by the High Court, it is the duty of the Magistrate to treat that order as a valid and subsisting order. *Emperor v. Girish Chander.*

31 Cr. L. J. 506 :
123 I. C. 433 : 34 C. W. N. 13 : 50 C. L. J. 408 :
57 Cal. 1042 : A. I. R. 1929 Cal. 756.

———S. 215—Scope—Quashing of commitment when and by whom.

A commitment once made under S. 213, Cr. P. C., by a competent Magistrate can be questioned by the High Court only, and only

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on a point of law under the provisions of S. 215. *Wahid Bux v. Emperor.*

30 Cr. L. J. 1121 :
120 I. C. 81 : I. R. 1929 Sind 225 :
A. I. R. 1929 Sind 250.

———S. 215—Scope.

S. 215, Cr. P. C., has no application to a commitment made under the direction of the High Court under S. 526 (1) iv. It is applicable to such commitments only as are made under the four sections specified therein. *In re : Kalagaya Bopiah.*

1 Cr. L. J. 275 :
I. L. R. 27 Mad. 54 : 2 Weir 227.

———S. 215—Scope—Trial of civil suit on Original Side of High Court—Commitment under S. 478, to Sessions—Appeal.

No appeal lies against an order of commitment made under S. 478, Cr. P. C., by a Judge presiding on the Original Side of the High Court in the course of the trial of a suit, except under the provisions of S. 215. *Venkatagiri Aiyar v. N. M. Firm.*

21 Cr. L. J. 28 (b) :
54 I. C. 172 : 37 M. L. J. 652 : 10 L. W. 568 :
43 Mad. 361 : A. I. R. 1920 Mad. 144.

———S. 215—Scope.

Under S. 215 a commitment can be quashed by the High Court only on a point of law. *Emperor v. Baldeo.*

14 Cr. L. J. 304 :
19 I. C. 960 : 11 A. L. J. 439.

———S. 216.

See also (i) Cr. P. C., 1898, S. 211.

(ii) Criminal trial.

(iii) Penal Code, 1860, S. 300.

———S. 217.

See Criminal trial.

———S. 219.

See Criminal trial.

———S. 219—Scope.

New witnesses examined by prosecution long after commitment—Application for examination of new witnesses by accused—Application should be granted. *Brijnandan Prasad Singh v. Emperor.*

35 Cr. L. J. 85 :
146 I. C. 527 : 6 R. P. 269 :
A. I. R. 1933 Pat. 577.

———S. 221.

See also (i) Cr. P. C., 1898, S. 500.

(ii) Criminal trial.

(iii) Penal Code, 1860, Ss. 120-B, 147.

———S. 221—Appellate Court—Duty of.

Where several persons have been convicted of being members of an unlawful assembly, some of whom pleaded an *alibi*, it is the duty of the Appellate Court to discuss the evidence as against each of the accused. *Pakshinamurthi Rajoli v. Emperor.*

19 Cr. L. J. 200 :
43 I. C. 616 : 7 L. W. 83 :
1918 M. W. N. 129 :
A. I. R. 1918 Mad. 350.

———S. 221 (7)—Applicability.

An order under S. 505, Cr. P. C., though a punishment in the general sense, is not such a punishment as is meant by S. 221 (7). The provisions of the latter section, therefore,

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do not apply to an order under the former, and such an order can be legally passed without the provisions on which it is based having been mentioned in the charge. *Emperor v. Jhagroo*.

14 Cr. L. J. 390 :

20 I. C. 214 : 9 N. L. R. 88.

————S. 221 (7)—*Applicability*.

S. 221 (7) has no application where the sentence awarded is one within the limits laid down for the offence. The enhanced punishment, referred to in Sub-s. (7) relates to infliction of enhanced punishment as provided by S. 75, Penal Code and the provisions of S. 75 of the Penal Code are not to be brought into action where the sentence intended to be awarded is within the competence of the Court. *Abdul Karim v. Emperor*.

34 Cr. L. J. 1166 :

146 I. C. 15 (2) : 28 S. L. R. 309 :

6 R. N. 71 : A. I. R. 1933 Nag. 315.

————S. 221—*Charge for lesser offence*.

Charge for lesser offence implies discharge regarding more serious offence if commission of the latter has been alleged from the start. *Muhammad v. Emperor*.

32 Cr. L. J. 1029 :

133 I. C. 638 : I. R. 1931 Lah. 814 :

A. I. R. 1931 Lah. 402 (2).

————S. 221—*Charge of Conspiracy—Date and particulars*.

In cases of criminal conspiracy, there is no objection to approximate dates, as to when conspiracy began or ended, being entered in charge. *Dur Mahomed v. Emperor*.

35 Cr. L. J. 1337 :

151 I. C. 494 : 285 L. R. 119 :

7 R. S. 55 : A. I. R. 1934 Sind 59.

————S. 221—*Charge to Jury*.

A statement in the heads of charge that such and such sections of the Penal Code were "read and explained," to the Jury is bad if it is not shown in what manner the sections concerned were explained. *Rahamali Howladar v. Emperor*.

26 Cr. L. J. 1151 :

88 I. C. 463 : A. I. R. 1925 Cal. 1055.

————S. 221—*Charge*.

Trial under S. 124-A, Penal Code—Substance of speech made by accused not mentioned in charge—Charge held defective but the accused not being under misapprehension, was not prejudiced. *Chint Ram v. Emperor*.

32 Cr. L. J. 1202 :

134 I. C. 580 : 32 P. L. R. 13 :

I. R. 1931 Lah. 964 :

A. I. R. 1931 Lah. 186.

————S. 221, 222, 233—*Charges of extortion and wrongful confinement against Police Officers—Offences committed at different places by different accused—Joint trial—Misjoinder of charge—Omission to specify distinct offence against each accused—Investigation by Police Superintendent, statement recorded, inadmissibility of, as corroborative evidence*.

The Police put up a case of dacoity, which was committed for trial to the Sessions Court. The Superintendent of Police, suspecting that the case was concocted by the Police had it

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withdrawn by the District Magistrate. He then reported to the Police Station at K. that five Police Officers and Police Constable had prepared false records, wrongfully confined certain persons and caused them hurt to extort confession. The Superintendent afterwards investigated the matter under S. 551, Cr. P. C., recorded statements of witnesses and submitted a report and charge-sheet. The trial took under Ss. 348 and 380, Penal Code, and the accused were committed to the Court of the Assistant Sessions Judge. The 1st accused was charged with having wrongfully confined some persons, and tortured them in a certain place. The 2nd and 3rd accused were charged with wrongful restraint and torture of a different set of persons in another place. Accused Nos. 1, 3, 4 and 5 were charged with having together restrained and tortured certain other persons in a different place. The occurrences took place on different dates. The Assistant Sessions Judge framed a single charge containing a single Count against all to the effect that they had wrongfully confined different persons for the purpose of extorting a confession. The accused were convicted under Ss. 348 and 388, Penal Code. In the course of the trial, the statements of witnesses recorded by the Police Superintendent during his investigation were used as corroborative of their evidence at the Sessions trial: *Held, per curiam*, that the statements recorded by the Police Superintendent were wrongly admitted in evidence and that a re-trial of the accused was necessary. Per *Sadasiva Aiyar, J. (Napier, J. dissenting)*—That the joint trial of all the accused was illegal, as the part played by the accused was distinct. The wrongful restraint was of different persons at different places by accused acting independently of the others, but that the charge, as framed, though objectionable, was at the most an irregularity that did not vitiate the trial. Per *Napier, J.*—That the trial was not bad for misjoinder, as the acts of the accused were founded on a common purpose or design and were linked together as to form one and the same transaction; but that the charge framed was distinct violation of Ss. 221 and 222 of the Cr. P. C., so as to altogether vitiate the trial. *Kumaramathu Pillai v. Emperor*.

20 Cr. L. J. 354 :

50 I. C. 834 : 1919 M. W. N. 199 :

25 M. L. T. 379 : 10 L. W. 239 :

A. I. R. 1919 Mad. 487.

————Ss. 221, 222, 223, 224, 225—*Omission to state common object of unlawful assembly, effect*.

In an indictment charging the accused with being members of an unlawful assembly, the omission to specify the common object in the charge, though a defect, will not vitiate the trial unless it has really prejudiced the accused. *Dakshinamurthi Rajali v. Emperor*.

19 Cr. L. J. 200 :

43 I. C. 616 : 7 L. W. 83 :

1918 M. W. N. 129 : A. I. R. 1918 Mad. 350.

————S. 221 (2)—*Charge of rioting, essentials*

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of—Omission to set out that there were five persons, effect of.

It is not necessary in charge of a rioting to set out the allegation that there were five or more persons actuated by a common object. Rioting is an offence with a specific name and it is sufficient to describe the offence by that name only. S. 221, Cl. (2) contemplates a case of this description and was enacted to meet a case of this kind. *Emperor v. Ram Chandra Roy.*

29 Cr. L. J. 823 :
111 I. C. 327 : 55 Cal. 879 :
A. I. R. 1928 Cal. 732.

—S. 221 (7)—Charge, omission to set forth previous conviction in—Irrregularity; whether curable—Form to be used.

Magistrates should be careful to comply with the provisions of S. 221 (7), Cr. P. C. An omission to do so is an irregularity curable by S. 537, if it has not actually prejudiced the accused. Where it is intended to prove a previous conviction against an accused for the purpose of effecting the punishment which a Court is competent to award, Criminal Form 79 should invariably be used. *Nga Hla v. Emperor.*

18 Cr. L. J. 79 :
37 I. C. 63 : 8 L. B. R. 461 :
10 Bur. L. T. 169 : A. I. R. 1917 L. Bur. 58.

—S. 221—Contents of charge.

There is no objection to acts committed by conspirators in pursuance of a conspiracy being enumerated in a charge of criminal conspiracy. *Dur Mohamed v. Emperor.*

35 Cr. L. J. 1337 :
151 I. C. 494 : 28 S. L. R. 119 :
7 R. S. 55 : A. I. R. 1934 Sind 59.

—S. 221, 227—Penal Code—Contents of charge—Penal Code, S. 396—Dacoity with murder—Facts to be proved—Sessions Judge, duty of—Amendment of charge.

A charge-sheet should never contain more than what is necessary for the prosecution to prove. In a case under S. 396, Penal Code, it is not necessary for the prosecution to prove that the murder was committed jointly by all the accused. It is enough if any one of the accused who are jointly concerned in the committing of the dacoity commits murder in the commission of the dacoity. It is not, therefore, necessary for a charge under this section to state that the murder was committed by all the accused persons jointly. A Sessions Judge when he receives an indictment, should compare the charge-sheet with the language of the section under which the charge has been drawn up and, when necessary, amend the charge-sheet, using so far as possible the words of the section. *Bhulan v. Emperor.*

27 Cr. L. J. 57 :
91 I. C. 233 : A. I. R. 1926 Oudh 245.

—S. 221—Form of charge—Accused charged with offences of kidnapping and abduction in respect of same occurrence—Form of charge.

It is always wise where a charge is made in respect of the same occurrence both of kidnapp-

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ing and abducting that two heads should be made. But it is not illegal to make the two charges under one head. The point to be seen in each individual case is whether the accused person was prejudiced thereby. Where the Judge has carefully explained the difference between abduction and kidnapping and the jury fully understood the position and have acquitted the accused of the charge of kidnapping under S. 366, Penal Code, but convicted them of abduction under S. 366 of the Code, in other words, the jurymen were not satisfied that the girl was 16 or under 16 years, the charge cannot be said to have prejudiced the accused. *Ebadi Khan v. Emperor.*

39 Cr. L. J. 674 :
176 I. C. 104 : 11 R. C. 36 :
A. I. R. 1938 Cal. 460.

—S. 221—Form of charge.

An accused is entitled to know with certainty and accuracy the exact value of the charge brought against him, for unless he has this knowledge, he may be seriously prejudiced in his defence. In framing charge, it is always sound to adhere to the language of the Statute as far as possible. A departure from the words of the Statute benefits nobody and only introduces complications in many instances. *Chhakari Shaikh v. Emperor.* 26 Cr. L. J. 567 : 85 I. C. 711 : A. I. R. 1926 Cal. 439.

—S. 221—Form of charge—Previous conviction—Irrregularity.

Where it is intended to prove previous convictions for the purpose of affecting the punishment, the fact, date and place of the previous conviction should be stated in the charge and S. 75, Penal Code, has no application to such cases. *In re : Abdula.*

11 Cr. L. J. 217 :
5 I. C. 743 : 7 M. L. T. 77.

—S. 221—Form of charge—Murder, charge of.

The charge-sheet corresponds to the English indictment and it is very much more than a mere form. An accused person is entitled to be informed with the greatest precision what acts he is said to have committed, and under what sections of the Penal Code those acts fall. A charge of murder should set forth whether the blows were inflicted with the intention of causing death, or they were sufficient to cause death and were intentionally inflicted. A charge under S. 302, Penal Code, should follow the language of S. 300 of the Code, which contains the definition of murder. *Sheo Shankar v. Emperor.* 27 Cr. L. J. 62 : 91 I. C. 238 : 2 O. W. N. 862 : A. I. R. 1926 Oudh 148.

—Ss. 221, 222—Notice—Prosecution can charge abetment generally—Such charge, if sufficient notice under S. 222 (1).

It is open to the prosecution to charge abetment generally, and then, if the evidence did not establish abetment other than in one particular form, to rely on this particular form for a conviction. The charge would amount to notice to the accused that they had to meet a case of abetment in one or more of the

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different ways indicated in S. 107, Penal Code.
Harendra Kumar Mandal v. Emperor:

39 Cr. L. J. 395 :
174 I. C. 36 : 66 C. L. J. 196 : 10 R. C. 607 :
A. I. R. 1938 Cal. 125.

————S. 221—*Object of.*

It is one of the elementary principles of Criminal Law that an accused person must know what the precise accusation against him is, before he is called upon to enter on his defence. *Indar Pal v. Emperor*.

37 Cr. L. J. 732 :
162 I. C. 969 : 38 P. L. R. 1128 :
8 R. L. 978 : A. I. R. 1936 Lah. 409.

————S. 221 (7)—*Previous conviction—Enhanced punishment—Whipping.*

If previous convictions are to be used for the purpose of enhanced punishment, they must be set out in the charge, but if they are not so stated, enhanced punishment, even of whipping, cannot be given. *Ilahibakhsh v. Khaju*.

3 Cr. L. J. 97.

————S. 221 (7)—*Previous conviction—Proof.*

Where it is proved, by record, that a person whose name, whose father's name, and whose caste, are the same as those of the accused under trial, the accused may properly be asked if he is the previous convict. *Emperor v. Kissan Yessu*.

9 Cr. L. J. 56 :
4 N. L. R. 163 :

————S. 222.

- Applicability.
- Autrefois acquit.*
- Charge.
- Charge of Misappropriation.
- Charge for Criminal Misappropriation.
- Contents of Charge.
- Defective Charge.
- Effect of.
- Effect of non-compliance.
- Form of Charge.
- Joinder of Charges.
- Joint Trial.
- Misjoinder of Charges.
- Object of.
- One Transaction.
- Scope.
- Separate Trial.
- Trial.

————S. 222.

See also (i) Cr. P. C., 1898, Ss. 13 (3), 179, 233, 234.

(ii) Penal Code, 1860, S. 147.

(iii) Revision.

————S. 222—*Applicability.*

S. 222 has no application to S. 477-A, Penal Code. *Rameshwar Brijmohan v. Emperor*.

34 Cr. L. J. 673 :
144 I. C. 94 : I. R. 1933 Nag. 200 :
A. I. R. 1933 Nag. 327.

————S. 222 (2) — *Applicability — Criminal breach of trust and dishonest misappropriation of goods—Single charge.*

The case referred to in S. 222 (2), Cr. P. C.,

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is a case in which the charge is criminal breach of trust or dishonest misappropriation of money and it does not apply to a case of criminal breach of trust or dishonest misappropriation of goods, and affords no justification for mixing up money and goods or for framing single charge in respect of the total of the cash said to have been misappropriated and the total value of the goods said to have been misappropriated. *Public Prosecutor v. N. S. Sharma*.

40 Cr. L. J. 851 (b) :
184 I. C. 51 : 1939 M. W. N. 468 :
1939 2 M. L. J. 518 : 50 L. W. 515 (2) :
12 R. M. 401 : A. I. R. 1939 Mad 557.

————Ss. 222, 403—*Autrefois acquit—Previous acquittal—Bar to subsequent trial—Criminal breach of trust—Acquittal in respect of one item does not bar subsequent trial for another item.*

The accused was tried for criminal breach of trust in respect of Rs. 12 odd and acquitted. Subsequently the accused was tried for the offence of criminal breach of trust in respect of Rs. 19 odd, alleged to have been misappropriated during the same period as that to which the Rs. 12 related. The accused was found guilty, but on appeal, the Sessions Judge acquitted the accused on the ground that the trial for criminal breach of the trust in respect of Rs. 12 must be treated as having been for the same offence as that in respect of Rs. 19, because both these sums were alleged to have been misappropriated during the same period, July 1907 to 1908 : *Held*, that the previous acquittal did not, under the circumstances, bar the accused's conviction at the subsequent trial. *Emperor v. Kashi Nath*.

11 Cr. L. J. 337 :
5 I. C. 970 : 12 Bom. L. R. 226.

————S. 222—*Charge, legality of.*

Charge is not illegal when more particulars are given by prosecution than they are required to give. *Rahim Bux Sarkar v. Emperor*.

32 Cr. L. J. 321 :
129 I. C. 359 : 34 C. W. N. 901 :
I. R. 1931 Cal. 167 :
A. I. R. 1930 Cal. 717.

————S. 222—*Charge—Separate charges.*

Where an accused, in making entries which are charged against him, was in reality furthering a fraud that had already been committed, the case falls within the purview of S. 477-A. But it is safer to set out the separate items of falsification in separate charges. *Raman Behary Das v. Emperor*.

16 Cr. J. 153 :
22 I. C. 729 : 18 C. W. N. 1152 :
41 Cal. 722 : A. I. R. 1915 Cal. 296.

————Ss. 222, 234, 235—*Charge—Penal Code, S. 408—Charge referring to items misappropriated during two years—Such charge, bad in law.*

A charge referring to several embezzlements extending over a period of two years is distinctly opposed to the provisions of Ss. 222 and 234, Cr. P. C., and such an illegality in the charge is fatal to conviction. *Dhanjibhoy v. Kaim Khan*.

2 Cr. L. J. 130 :
14 P. R. Cr. 1905 : 6 P. L. R. 241.

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—S. 222 (2)—Charge—Omission of item—Subsequent trial.

Criminal breach of trust—Trial for gross sum embezzled—Subsequent trial for another item not included in previous charge is not barred—But in proper case High Court can prevent it for ends of justice. *Brijwan Das v. Emperor*.

32 Cr. L. J. 376 :

129 I. C. 558 : 1931 A. L. J. 98 :

I. R. 1931 All. 190 : A. I. R. 1931 All. 209.

—S. 222 (2)—Charge—Criminal breach of trust—Various offences within the course of 12 months—One charge for the gross sum misappropriated—Procedure.

Where a person commits a breach of trust in respect of various sums entrusted to him from time to time, he may be charged with an offence in respect to the gross sum so embezzled and it is not necessary to specify the particular items embezzled or the exact dates on which they were so embezzled; a charge so framed shall be deemed to be a charge of one offence provided that the period within which such embezzlement has taken place is not more than one year. *Emperor v. Ibrahim Khan*.

11 Cr. L. J. 442 :

7 I. C. 186.

—S. 222 (2)—Charge—Misappropriation of various amounts—Separate charges.

Where a person has misappropriated several amounts within a period of one year, he may under S. 222 (2), Cr. P. C., be charged for the gross sum that he has misappropriated during that period. But this section is only an enabling provision and it is nowhere prescribed that separate charges in respect of separate amounts misappropriated shall not be resorted to. *Seemakurti Kanakayya v. Emperor*.

32 Cr. L. J. 223 :

129 I. C. 75 : 32 L. W. 789 :

59 M. L. J. 854 : 1930 M. W. N. 1097 :

I. R. 1931 Mad. 219 :

A. I. R. 1930 Mad. 978.

—S. 222 (2)—Charge—Omission, error, or irregularity in charge, effect of.

Where a Court of Appeal has before it the question of confirming or setting aside a conviction, an omission by the trial Magistrate to frame a charge or an error or irregularity in the charge is no ground for setting aside a conviction unless a failure of justice has been occasioned by such omission, error or irregularity. When, however, a Court of Appeal is dealing with an appeal against the acquittal, there is no corresponding provision of the Code under which a defect in the charge can be condoned. *Emperor v. Abdul Rahman*.

28 Cr. L. J. 170 :

99 I. C. 602 : A. I. R. 1927 Lah. 109.

—Ss. 222 (2), 225—Charge—Penal Code, Ss. 147, 323—Rioting—Charge silent as to common object of unlawful assembly—Prejudice.

In all cases in which there is a charge under S. 147, Penal Code, the common object ought to be stated, but an omission to set out in the charge the common object would not invalidate the conviction unless the accused have been misled by such omission and it has caused a failure of justice. When there

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are direct findings as to the part which each accused took in the assault upon the complainant, the accused are prejudiced. *Budhu v. Mst. Lachminia*.

2 Cr. L. J. 275 :

9 C. W. N. 599.

—Ss. 222 (2), 403, 526—Charge of misappropriation—Penal Code (Act XLV of 1860), S. 403—Police chalan for subsequent misappropriations, legality of—Procedure to be followed—Transfer of case.

On a chalan submitted by the Police against the accused in respect of criminal breach of trust of a gross sum of Rs. 3,651-5-3 the Additional Presidency Magistrate of Calcutta issued warrant against the accused. The case was subsequently transferred to another Magistrate. Charges were framed in respect of three issues, viz., Rs. 257-8-3, Rs. 1,853-0-3 and Rs. 178-11-3 and the accused was convicted on those charges. Another chalan was again submitted by the Police to Additional Chief Presidency Magistrate against the accused in respect of Rs. 700, Rs. 100 and Rs. 100 which were included in the gross sum of Rs. 3,651-5-3 and the accused was convicted and sentenced on these charges: *Held*, (1) that the Police had no power to submit a second chalan, though they might have moved the Magistrate for a second or further trial; (2) that such application could be made only to the Magistrate who had tried the case; (3) that though S. 403, Cr. P. C., did not strictly apply the principle underlying the section applied and the second trial ought not to have been held; (4) that though the accused could have obtained an order staying the trial if he had moved in time, the conviction could not be held to be illegal on that ground alone; (5) the sentence should, however, be reduced to the minimum. *Sidhi Nath Awasthi v. Emperor*.

31 Cr. L. J. 747 :

124 I. C. 824 : 49 C. L. J. 378 :

57 Cal. 17 : 33 C. W. N. 454 :

A. I. R. 1929 Cal. 457.

—S. 222 (2)—Charge for criminal misappropriation.

In a charge for criminal misappropriation, it is not necessary to prove that the accused spent the items in any particular manner. *Shiam Sundar v. Emperor*.

33 Cr. L. J. 343 :

136 I. C. 810 : 6 Luck. 435 :

9 O. W. N. 216 : I. R. 1932 Oudh 194 :

A. I. R. 1932 Oudh 145.

—S. 222—Contents of charge.

Charge should contain such particulars of the manner in which the alleged offence was committed as will be sufficient to give the accused notice of the matter with which he is charged. *Ghousbux Mahomed Amin Khan v. Emperor*.

36 Cr. L. J. 598 :

154 I. C. 915 : 28 S. L. R. 304 :

7 R. S. 174 : A. I. R. 1935 Sind 34.

—S. 222—Contents of charge.

Particulars should be given in charge. *Rajabuddin Mandal v. Emperor*.

34 Cr. L. J. 1219 :

146 I. C. 305 : 37 C. W. N. 1074 :

60 Cal. 1394 : 6 R. C. 196 :

A. I. R. 1933 Cal. 676.

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———S. 222 (2)—*Contents of charge—Criminal breach of trust.*

In a charge of criminal breach of trust the gross sum in respect of which the offence is alleged to have been committed should be stated as well as the dates between which the offence is alleged to have been committed though it is not necessary to specify particular items or exact date. *Emperor v. Abdul Rahiman.*

28 Cr. L. J. 170 :

99 I. C. 602 : A. I. R. 1927 Lah. 109.

———S. 222—*Defective charge, effect of.*

Charge of defamation clear and unambiguous—Exact defamatory words not set out—Charge is not vitiated. *Samrathnal v. Emperor.*

34 Cr. L. J. 154 :

141 I. C. 438 : I. R. 1933 Nag. 63 :

A. I. R. 1932 Nag. 158.

———S. 222—*Defective charge.*

Where in charge of criminal misappropriation the inclusion of items extending beyond the period of one year prescribed in S. 222 has prejudiced the accused in his defence on the merits, this irregularity in framing charge cannot be condoned under Ss. 537 or 225 of Cr.P.C. *Munoo Lal v. Emperor.* 36 Cr. L. J. 477 :

154 I. C. 258 : 1935 O. W. N. 126 :

7 R. O. 459 : A. I. R. 1935 Oudh 241.

———S. 222—*Effect of.*

S. 222 is an exception to another general rule, viz., that at the trial of an offence certain particulars must be given in the charge. S. 222, Cl. 2, modifies that rule as to charges of criminal breach of trust, etc., but does not restrict in any way the scope and object of S. 234. *Emperor v. Kashinath.* 11 Cr. L. J. 337 :

5 I. C. 970 : 12 Bom. L. R. 226.

———S. 222—*Effect of non-compliance.*

No proper compliance with S. 222—Conviction should be set aside. *Deonarain Singh v. Emperor.* 35 Cr. L. J. 693 :

148 I. C. 519 : 15 P. L. T. 647 :

6 R. P. 484 : A. I. R. 1934 Pat. 132.

———Ss. 222, 235—*Form of charge—Charge under S. 409, Penal Code, and charge of conspiracy to commit such offence—Distinction.*

There is a distinction between a charge of an offence under S. 409, Penal Code, and a charge of conspiracy to commit such an offence or offences. In the former, particulars are no doubt necessary, and such particulars must be within certain limits as laid down in the Code, but not so in the latter. In stating the object of a conspiracy, the same certainty is not required as in indictment for the offence conspired to be committed. A charge of conspiracy in respect of an offence or offences under S. 409, Penal Code, need not, therefore, be as specific as a charge of an offence under that section. *Ram Krishna Sinha v. Emperor*

39 Cr. L. J. 417 :

174 I. C. 513 : 42 C. W. N. 246 :

10 R. C. 693 : A. I. R. 1938 Cal. 195.

———Ss. 222, 239—*Form of charge—Misjoinder—Criminal misappropriation or*

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breach of trust—Same parcel of money—More than one accused—Charges how to be framed—Abetment.

In S. 222, Cr. P. C., the wording refers to a single accused; and this must be so because it is impossible to hold that two persons can be guilty of misappropriating one and the same parcel of money; S. 239, therefore, has no application, because more than one person cannot be charged with the offence of misappropriation. If two persons are responsible for a misappropriation, the charges against them must be of misappropriation in one case and of abetment in the other. It is, of course, open to the Court to frame charges in the alternative: *firstly*, that A. misappropriated the money, B. being the abettor; or, *secondly*, B. misappropriated and A. was the abettor. *Girwar Narain v. Emperor.* 13 Cr. L. J. 506 :

15 I. C. 650 : 16 C. W. N. 600.

———Ss. 222 (2), 234—*Form of charge—Criminal misappropriation—Misappropriation of more than three sums on different dates within two months—Single charge and separate sentences, legality of.*

The accused was charged with having embezzled four sums of money on or about January 9, February 5 and February 13, 1929. Only one charge was framed in which all the four sums of money said to have been embezzled and the dates of the alleged embezzlements were specified. The trial Magistrate found the accused guilty of having embezzled the sums of money specified on the three dates, namely, January 9, February 5 and February 13, and sentenced him to rigorous imprisonment for the period of two years on each of the three counts, the sentences to run concurrently. The accused in appeal contended that he had, in effect, been tried on four charges of embezzlement and as S. 234, Cr. P. C., permits an accused person to be tried at one trial for not more than three offences of the same nature committed within twelve months, the trial was bad in law: *Held*, (i) that inasmuch as there was one charge setting out all the items embezzled and the dates of embezzlement and the time included between the first and the last of such dates was less than twelve months, the charge was correctly drawn up in accordance with the provisions of S. 222, Sub-s. (2) and the charge must be deemed to have been a charge of one offence within the meaning of S. 234; (ii) that the Magistrate was not correct in sentencing the accused separately on each of the three counts. He should have passed only one sentence for the one offence with which the accused was charged but the irregularity was of no practical importance as the sentences were to run concurrently. *Emperor v. Prem Narain.*

32 Cr. L. J. 155 :

128 I. C. 595 : 1930 A. L. J. 1130 :

I. R. 1931 All. 67 :

52 All. 941 : A. I. R. 1931 All. 267.

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———S. 222—*Joinder of charges—Joinder of more than three charges.*

A charge of cheating to the sum total of different items about twenty-six in number said to have been taken by the accused on false representation from the complainant is contrary to law. Such a charge is not justified by S. 222, Cr. P. C., and a conviction on such a charge cannot be upheld. *Raja Khan v. Emperor.*

1 Cr. L. J. 977 :
1 A. L. J. 599.

———S. 222 (2)—*Joinder of charges, legality of.*

A trial involving offences under S. 406, Penal Code, committed on five distinct dates is not bad in view of the provisions of S. 222 (2), Cr. P. C. *Anil Krista Das v. Badam Santra.*

30 Cr. L. J. 706 :
116 I. C. 722 : I. R. 1929 Cal. 498 :
A. I. R. 1930 Cal. 175.

———S. 222—*Joinder of charges.*

S. 222, Cr. P. C. clearly admits of the trial of any number of acts of breach of trust committed within the year as amounting only to one offence. It does not require any particular formulation of the accusation, but only enacts that it is sufficient to show the aggregate offence without specifying the details. It dispenses with the necessity of amplification : it does not prohibit enumeration of the particular items in the charge. *Emperor v. Datto Hanmant.*

2 Cr. L. J. 578 :
7 Bom. L. R. 633 : I. L. R. 30 Bom. 49.

———S. 222—*Joinder of charges.*

Where a charge alleges three distinct offences under S. 409, and three other distinct offences under S. 477-A, a conviction upon such charge at the same trial is not a mere irregularity, but an illegality wholly vitiating the trial. *Kasi Viswanathan v. Emperor.*

5 Cr. L. J. 341 :
2 M. L. T. 177 : 17 M. L. J. 141.

———Ss. 222, 234—*Joinder of charges.*

The accused was jointly tried of offences falling under six different charges, viz : (1) Criminal breach of trust of a sum during the period 17th September 1914, to 25th March, 1915 ; (2) Criminal breach of trust of a sum during the period 26th March, 1915, to 31st March, 1916 ; (3) Criminal breach of trust of a sum during the period 1st April to 31st May, 1916 ; (4) Criminal breach of trust of a sum during the period 1st June, 1916, to 9th October, 1916 ; (5) Preparation of a false balance sheet of the Lahore Electric Supply Company for the year ending 31st March, 1915 ; (6) Preparation of a false balance sheet for the year ending 31st March, 1915 ; and was acquitted. Government preferred an appeal to the Chief Court against the acquittal : *Held*, (1) that charges (1) and (5) could have been tried together, because the preparation of the false balance sheet for the year ending 31st March, 1915, was effected to conceal the criminal breach of trust which had been committed during the period ending 25th March, 1915 ; (2) that

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similarly charges (2) and (6) could have been tried together and charges (4) and (5) could also have been tried together in one trial, as they related to two offences of the same kind committed within the space of 12 months ; (3) but that the trial of all six charges in one trial being contrary to S. 234, Cr. P. C. was quite illegal ; (4) that charge (2) contravened S. 222, Cr. P. C., and the trial of that charge was in itself quite illegal ; (5) that the Court before the commencement of the trial should have recorded an order to the effect that it was trying such and such charge or charges and should have proceeded to take all the evidence relating thereto, the trials should have been distinct and the accused should have been apprised as to which charges were being tried in each trial and the opinions of the Assessors should have been recorded separately in each ; (6) that it would not be fair to the accused, who had been acquitted, to order a re-trial simply because the trial was illegal on account of misjoinder of charges, unless the Court was satisfied that the order of acquittal was obviously erroneous or was not one which should be maintained owing to the trial Court having omitted to consider material evidence or for some other sufficient reason ; (7) that the onus was on the prosecution to prove affirmatively that the accused received any sums beyond those entered by him as having been received ; (8) that it could not on the evidence be said for certain that the accused was in charge of all the money received by the Company ; (9) that in view of all these facts it was not one of those exceptional cases where, supposing the trial had been legal, the Chief Court would reverse the order and convict the accused and that, therefore, a re-trial should not be ordered. *Emperor v. Jagot Ram.*

19 Cr. L. J. 987 :
48 I. C. 167 : A. I. R. 1919 Lah. 440.

———S. 222—*Joinder of charges—Criminal misappropriation.*

Where a person has misappropriated several amounts within a period of one year, he may under S. 222 (2), Cr. P. C. be charged for the gross sum that he has misappropriated during that period. But this section is only an enabling provision and it is nowhere prescribed that separate charges in respect of separate amounts misappropriated shall not be resorted to and that if an accused has misappropriated several sums within a year, they all should be added together and made into one gross sum and tried as one charge. *Seemakurti Kanakaya v. Emperor.*

32 Cr. L. J. 223 :
129 I. C. 75 : 32 L. W. 789 :
59 M. L. J. 854 : I. R. 1931 Mad. 219 :
1930 M. W. N. 1097 :
A. I. R. 1930 Mad. 978.

———S. 221, Cl. (2)—*Joinder of charges—More than three acts of misappropriation in one charge.*

Where a charge against an accused person recited that the accused realised by certain rent receipts, 23 in number, the sum of Rs. 103 of which he misappropriated the sum of Rs. 67 : *Held*, that the charge clearly came

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within the provisions of S. 222 (2), Cr. P. C. *Samiruddin Sarkar v. Nibaran Chandra Ghose*.

1 Cr. L. J. 791 :
8 C. W. N. 807 : I. L. R. 31 Cal. 928.

———S. 222—*Joint trial, illegality of.*

Separate and distinct offences of breach of trust and cheating—Joint trial is illegal—High Court will interfere when accused is prejudiced by the illegality. *Seva Subramanian v. Emperor*.

32 Cr. L. J. 1068 :
133 I. C. 489 : I. R. 1931 Rang. 265 :
A. I. R. 1931 Rang. 161.

———Ss. 222, 234, 403—*Joint trial—Misappropriation of money entrusted to more than one person.*

Where in a trial for criminal misappropriation, it appears that there are several false entries in the accounts, that is sufficiently good evidence to show that the accused, who had the charge of the money and kept the accounts, misappropriated the sums of money to which the false entries or omissions relate. If a person entrusts a sum of money to more than one person and those persons in conclusion commit criminal breach of trust or dishonestly misappropriate the amount, all of them being accused of the same offence committed in the course of one transaction can be tried jointly, and there is nothing in the language of S. 222, Cr. P. C., which makes it compulsory that there should be a separate trial of each accused. *In re : Appadurai Ayyar*.

17 Cr. L. J. 30 :
32 I. C. 158 : A. I. R. 1917 Mad. 524.

———Ss. 222 (2)—*Misjoinder of charges—Misappropriation or theft, different charges of.*

Where accused was charged on three different counts with the theft or misappropriation of specific articles committed at different times and with the misappropriation of the aggregate of ten items of money : *Held*, that the trial was vitiated by a misjoinder of charges and should be set aside. *Asrafulla Sarkar v. Emperor*.

18 Cr. L. J. 310 :
38 I. C. 422 : A. I. R. 1917 Cal. 100.

———S. 222 (2)—*Misjoinder of charges.*

One of three accused charged with misappropriating sum of money and second with smaller portion of that sum and third with abetting the two—Each act of misappropriation complete in itself—There is misjoinder of charges. *K. Meeriah v. Emperor*.

32 Cr. L. J. 930 :
132 I. C. 548 : 9 Rang. 632 :
I. R. 1931 Rang. 180 :
A. I. R. 1931 Rang. 90.

———Ss. 222 (2), 233—*Misjoinder of charges—Misjoinder of different charges at one trial, legality of—Penal Code Ss. 409, 477-A.*

The charge against the accused was that he, being the *tahvildar*, embezzled a certain sum of money and further that he omitted to enter 120 *arzrisals* with intent to defraud, and wrote on three of such *arzrisals* false numbers with like intent. He was tried at one trial for all these counts and convicted under Ss. 409 and 477-A, Penal Code : *Held*, that there was misjoinder of the various charges amounting to an

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illegality which vitiated the trial. *Kalka Prasad v. Emperor*.

16 Cr. L. J. 813 :
31 I. C. 829 : 13 A. L. J. 1059 :
38 All. 42 : A. I. R. 1915 All. 462.

———S. 222—*Object of.*

S. 222 is intended to give accused full knowledge of particulars. *Rahim Bux Sarkar v. Emperor*.

32 Cr. L. J. 321 :
129 I. C. 359 : 34 C. W. N. 901 :
I. R. 1931 Cal. 167 :
A. I. R. 1930 Cal. 717.

———S. 222(2) 235—*“One transaction”—Several defalcations lumped together to obviate difficulty, arising under Cr. P. C., in respect of trial—Whether constitute one transaction.*

The assumption in case of an offence of criminal breach of trust, that, because under the provisions of S. 222 (2), Cr. P. C., the specification of a gross sum in respect of which an offence is alleged to have been committed and the dates between which it is committed is permissible, it must follow that only one offence has arisen out of the different misappropriations, and that it must be regarded as one transaction, is not warranted by the provisions of the section. That section provides that the charge so framed “shall be deemed to be” a charge of one offence within the meaning of S. 234, and not that it is one offence. Although several items of defalcations may be lumped together so as to obviate the difficulty arising under the provisions of the Code, they would not necessarily constitute one transaction for obvious reasons. Each act may retain its homogeneity and may be completely separated from the rest, unless under special circumstances they could be entwined in one transaction. *Ramchandra Rango Sorokar v. Emperor*.

40 Cr. L. J. 579 :
181 I. C. 870 : 41 Bom. L. R. 98 :
11 R. B. 356 : A. I. R. 1939 Bom. 129.

———S. 222 (2)—*Scope—Charge of cheating.*

S. 222 (2) is confined to charges of criminal breach of trust or dishonest misappropriation of money, and has plainly no application to other charges, e. g. cheating. *Abdur Rahim v. Emperor*.

32 Cr. L. J. 611 :
130 I. C. 796 : 12 P. L. T. 12 :
I. R. 1931 Pat. 204 :
A. I. R. 1931 Pat. 102.

———S. 222—*Scope.*

S. 222, Cr. P. C. does not cover two sets of offences, any number of which may be tried together. Sub-s. (2) of the section cannot be applied to S. 477-A of the Penal Code. *Raman Beharj Das v. Emperor*.

16 Cr. L. J. 153 :
22 I. C. 729 : 18 C. W. N. 1152 :
41 Cal. 722 : A. I. R. 1915 Cal. 296.

———S. 222 (2)—*Scope.*

S. 222, (2) Cr. P. C. is only an enabling provision. *Brijwan Das v. Emperor*.

32 Cr. L. J. 376 :
129 I. C. 558 : 1931 A. L. J. 98 :
I. R. 1931 All. 190 :
A. I. R. 1931 All. 209.

———S. 222 (2)—*Scope.*

S. 222 (2), Cr. P. C. only dispenses with the

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particulars which otherwise would be required, but it does not say that the gross sum is to include every act of misappropriation committed within the dates specified in the charge. The essence of the offence is the misappropriation and not the time within which it took place. *Nogendra Nath Bose v. Emperor*.

25 Cr. L. J. 156 :
76 I. C. 300 : 38 C. L. J. 286 :
27 C. W. N. 578 : 50 Cal. 632 :
A. I. R. 1923 Cal. 654.

—S. 222—Scope—Separate trials for misappropriating different items of money during same period, whether allowed.

The intention of the Legislature by enacting S. 222, Cr. P. C. is that where there is to be a trial for misappropriation of a gross sum, there should be only one trial for such an offence committed within the period covered by the defalcation. Where, therefore, a person was tried and convicted for misappropriating certain sums of money during a certain period and was again put on trial in respect of certain other sums of money alleged to have been misappropriated during the same period: *Held*, that the charge in the previous case should be taken to include all the items misappropriated by the accused in the course of the same transaction during that period and that the subsequent trial was barred by S. 403 of the Code. *In re : Appadurai Ayyar*.

17 Cr. L. J. 30 :
32 I. C. 158 : A. I. R. 1917 Mad. 524.

—S. 222—Scope.

Under S. 222, Cr. P. C. a charge of criminal breach of trust in respect of a gross sum, without specifying the items, is a charge for one offence within the meaning of S. 234. S. 222 does not apply only to cases where there is a general deficiency and the prosecution is unable to specify the particular items of the deficiency, but also to cases where the items may be, but or not, specified. *Thomas v. Emperor*.

5 Cr. L. J. 133 :
I. L. R. 29 Mad. 558.

—S. 222 (2)—Separate trial, illegality of.

Though a person who commits a breach of trust of, or misappropriates, different sums of money commits so many offences, it is not desirable that he should be tried as many times when he could be tried for all of them in one trial. *Sidh Nath Awasthi v. Emperor*.

31 Cr. L. J. 747 :
124 I. C. 824 : 49 C. L. J. 378 :
33 C. W. N. 454 : 57 Cal. 17 :
A. I. R. 1929 Cal. 457.

—Ss. 222, 233 to 235—Trial—Criminal Breach of Trust and Falsification of Accounts—Offence not of the same kind.

A person cannot be tried at one trial and convicted on a charge alleging three different acts of criminal breach of trust punishable under S. 409, I. P. C., and three different acts of falsification of accounts punishable under S. 477-A, I. P. C., although all such acts may have been committed within the course of a year. Offences committed within one year in the course of three separate transactions if they amount to more than three, cannot be

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tried at one trial. Although under S. 222, Cr. P. C., a person may be tried at one trial for a charge framed in respect of the gross sum misappropriated by him within the course of twelve months from first to last, the acts so charged shall not necessarily be deemed to constitute one transaction within the meaning of S. 235, Cr. P. C. *Kasi Viswanathan v. Emperor*.

5 Cr. L. J. 341 :
2 M. L. T. 177 : 17 M. L. J. 141.

—S. 222 (2), 403—Trial, competency of—Criminal breach of trust—Acquittal on charge under S. 409—Subsequent trial under S. 408 for different amount.

An accused was charged under S. 409, I. P. C., with criminal breach of trust in respect of a sum of money and was acquitted. He was subsequently prosecuted for criminal breach of trust as a servant under S. 408, I. P. C., in respect of a certain sum alleged to have been misappropriated by him within the period covered by the charge under S. 409, the case for the prosecution being that this amount was not included in the sum which was the subject-matter of the former charge and that the facts relating thereto were not known to them at the time of the previous charge. *Held*, that the previous acquittal did not operate as a bar to the subsequent trial. *Nogendra Nath Bose v. Emperor*.

25 Cr. L. J. 156 :
76 I. C. 300 : 38 C. L. J. 286 :
27 C. W. N. 578 : 50 Cal. 632 :
A. I. R. 1923 Cal. 654.

—S. 223.

See Penal Code, S. 147.

—S. 223—Charge—Charge of giving false evidence—Judgment in previous case—Admissibility of.

Where a person is on his trial on a charge of having given false evidence, the judgment in the proceeding in which he is alleged to have given false evidence is not admissible in evidence against him. A former statement by a witness can be used, in certain circumstances, to corroborate or contradict him, but it cannot be used as substantive evidence in a subsequent proceeding, and is inadmissible in evidence for this purpose. *Oates v. Emperor*.

25 Cr. L. J. 177 :
76 I. C. 417 : 38 C. L. J. 163 :
A. I. R. 1924 Cal. 104.

—Ss. 223, 225—Charge of cheating, contents of.

An accused person is entitled to know with certainty and accuracy the exact value of the accusation brought against him. In a case of cheating, the charge must set out the manner in which the offence was committed. Whether the words of the charge are reasonably sufficient to give the accused notice of the accusation which he has got to meet depends upon the circumstances of each particular case. The omission to set out the manner of the cheating is regarded as material or not according as the accused has or has not in fact been misled by the omission and the omission has or has not occasioned a failure of justice.

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In a case under S. 420, Penal Code, the manner of the cheating was set out in the charge as follows: "By deceiving with false representations and promises as well as by conduct:" *Held*, the expression used in the charge was too vague and indefinite to give the accused proper notice of the manner of the deception and was so dangerously wide as to include almost anything, and that a conviction based on such a charge could not be sustained. *Kedar Nath Chakravarti v. Emperor*.

26 Cr. L. J. 849 :
86 I. C. 705 : 29 C. W. N. 408 :
41 C. L. J. 172 : A. I. R. 1925 Cal. 603.

———S. 223—*Contents of charge—Charge of perjury—Particulars—Prejudice to accused.*

Where a person is charged with having given false evidence in the course of a long statement, it is incumbent on the prosecution to specify the particular answers given by the accused which, according to them, were intentionally false; and the accused has a legitimate grievance where no such particulars are specified. *Oates v. Emperor*. 25 Cr. L. J. 177 :
76 I. C. 417 : 38 C. L. J. 163 :
A. I. R. 1924 Cal. 104.

———S. 223—*Contents of charge—Penal Code, S. 149—Charge of offence read with S. 149—Section, whether ought to be named in charge—Prejudice to accused.*

S. 149, Penal Code, is not a section which in itself creates an offence and a Court trying an accused person for an offence which is an offence constructively by force of S. 149, ought, under S. 223, Cr. P. C., to state that fact and name that section in the charge. Failure to do so renders the charge defective and erroneous, and a conviction for such an offence will not be sustained where S. 149, was not mentioned in the charge. Where an accused person is charged with an offence by virtue of S. 149, Penal Code, it is essential that he should have notice that the charge against him is not that he has himself physically taken part in the offence, but that he was a member of an unlawful assembly, which in the prosecution of its common object, committed that offence, or that, being a member of such an assembly, he knew that such offence was likely to be committed by it in the prosecution of its common object. It is, therefore, necessary that in such a case S. 149 should be expressly mentioned in the charge. In such a case as the above, the inclusion of S. 149, Penal Code, in the charge also insures that the Court has given and will give its mind to the question of the guilt of the accused from the point of view of that section. *In re: Thaikottathil Kunhaen*. 25 Cr. L. J. 212 :
76 I. C. 644 : 18 L. W. 946 : 33 M. L. T. 210 :
1924 M. W. N. 47 : A. I. R. 1924 Mad. 338.

———S. 223, 225, 537—*Defective charge—Trial de novo, when justified—Re-trial from what stage to be ordered.*

S. 537, Cr. P. C. cures any omission in a charge there might be of the particulars required by S. 223 of the Code. When no charge has been framed or a defective one has been

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framed, there is no justification for ordering a trial *de novo* but the trial should proceed from the stage at which the illegality occurred. S. 537 (a), Cr. P. C. does not apply to cases of the disregard or provision of the Code, but applies only to cases of failure to comply with some part of such a provision in the course of a general compliance with the whole. If a Court trying an accused person entirely fails to question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence, the trial from that point onwards, and not the entire trial, is improper or illegal and the error cannot be condoned under S. 537 but must be corrected in a fresh trial, beginning from the point at which the error was made. *Gangadhar v. Bhangi Rao*.

25 Cr. L. J. 1152 :
81 I. C. 976 : A. I. R. 1925 Nag. 147.

———S. 223—*'Manner', meaning of.*

The word "manner" in S. 223, Cr. P. C., could fairly be interpreted as including every ingredient by virtue of which the act ceases to become one of mere non-criminal deception and becomes one of "cheating" within the meaning S. 415 and the effect of the deception upon the victim's body, mind, reputation or property would thus be a part of the "manner" of cheating. *Gian Singh v. Emperor*. 40 Cr. L. J. 371 :
180 I. C. 185 : 11 R. L. 689 :
A. I. R. 1938 Lah. 828.

———Ss. 223, 342—*Procedure—Penal Code, S. 143—Examination of accused, absence of—Procedure—Unlawful assembly—Charge, contents of—Common object, whether must be stated.*

Where it is found that the provisions of S. 342 Cr.P.C. have not been complied with, the proper course for the Appellate Court to follow is to set aside the conviction and to remit the case to the Trial Court in order that the provisions of S. 342 may be followed and the matter disposed of according to law. When a charge is framed under S. 143 or the connected sections of the Penal Code, the common object of the unlawful assembly must be stated in the charge. *Kashi Pramanik v. Damu Pramanik*.

25 Cr. L. J. 524 :
77 I. C. 988 : 27 C. W. N. 28.

———Ss. 224, 231—*Charge—Unlawful assembly—Statement of common object, sufficiency of—'Assault', meaning of—Alteration of charge—Duty of Court to recall witnesses.*

An accused charged with being a member of an unlawful assembly with the common object of committing 'assault' can be convicted for being member of an unlawful assembly with the common object of 'voluntarily causing hurt' without altering the charge. The word 'assault' is used in such a case in the sense of violence to person, whether it can be assault, hurt or grievous hurt. But, if a charge is once altered, the Court is bound to recall any witnesses which the prosecution or the accused may desire to examine. The provisions of S. 231 Cr.P.C., are peremptory and the Court cannot,

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when a charge has been altered, refuse to recall witnesses if so desired by the parties on the ground that the party applying for examination could not show on what points further cross-examination was necessary. *Chhanka Dhanuk v. Emperor*. 28 Cr. L. J. 769 :

104 I. C. 97 : 6 Pat 832 : 8 P. L. T. 825 : A. I. R. 1927 Pat. 398.

—S. 224—Jury—Summing up—Misdirection.

Every summing-up must be regarded in the light of the conduct of the trial and the questions which have been raised by the Counsel for the prosecution and for the defence, respectively. It is no misdirection not to tell the Jury everything which might have been told them; there is no misdirection unless the Judge, has told them something wrong, or unless what has been told them would make wrong that which he has left them to understand. Non-direction merely is not misdirection, and those who allege misdirection must show that something wrong was said or that something was said which would make wrong that which was left to be understood. *Emperor v. Barendra Kumar Ghose*. 25 Cr. L. J. 817 :

81 I. C. 353 : 38 C. L. J. 411 : 28 C. W. N. 170 : A. I. R. 1924 Cal. 257.

—S. 225.

See also (i)—Cr. P. C. 1898 : Ss. 13 (3), 222, 233, 234 :

(ii)—Penal Code, 1860 : Ss. 415, 419, 225.

—S. 225. Charge — Rioting — Common object, omission to state.

Charge under Ss. 147 and 149, I. P. C.—Omission to state common object is mere irregularity. *Ghaziuddin Khan v. Emperor*. 34 Cr. L. J. 393 : 142 I. C. 684 : 9 O. W. N. 1109 :

I. R. 1933 Oudh 127 : A. I. R. 1933 Oudh 19:

—S. 225 Charge—Unlawful assembly—Common object not mentioned—Effect.

Where the common object of the unlawful assembly is set out in the complaint and is found by the Magistrate, mere omission of it in the charge will not vitiate the trial. *Yeswant Satva Chaugule v. Emperor*. 27 Cr. L. J. 744 : 95 I. C. 72, 28 Bom. L. R. 497 :

A. I. R. 1926 Bom 314.

—S. 225—Charge—Unlawful assembly—Common object, omission to mention.

Omission to specify common object in charge under S. 147, Penal Code, is material only if it is shown that omission occasioned failure of justice. *Bishnath v. Emperor*. 36 Cr. L. J. 1198 :

157 I. C. 378 : 1935 O. L. R. 471 :

1935 O. W. N. 922 : 8 R. O. 20 :

A. I. R. 1935 Oudh 488.

—Ss. 225, 233, 537—Charge, separate, for each offence—Omission to frame separate charge—Irregularity, whether material.

Although S. 233, Cr. P. C., requires that for every distinct offence of which any person is accused, there shall be a separate charge, yet under Ss. 225 and 537, where this is not done the irregularity is immaterial unless the accused

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was misled by the error, and it has occasioned a failure of justice. *Emperor v. Mehrati Bachal*.

23 Cr. L. J. 320 :

66 I. C. 672.

—Ss. 225, 537—Charge—Three distinct offences in one charge—Irregularity—Re-trial—Failure of justice.

A Magistrate acts irregularly in specifying three distinct offences in one head of charge but such an irregularity is not a ground for re-trial unless it has occasioned failure of justice. *Bachchu v. Piyara*. 28 Cr. L. J. 409 :

101 I. C. 185 : 4 O. W. N. 341 :

2 Luck. 430 : A. I. R. 1927 Oudh 235.

—S. 225—Charge of conspiracy—Penal Code (Act XLV of 1860)—Conspiracy—Offence, what constitutes.

Even though the illegal act which he has agreed to do or caused to be done, has not been done, a person may be guilty of criminal conspiracy. *Amrillal Hazra v. Emperor*.

16 Cr. L. J. 497 :

29 I. C. 513 : 21 C. L. J. 331 :

19 C. W. N. 676 : 42 Cal. 957 :

A. I. R. 1916 Cal. 188.

—Ss. 225, 537—Charge of conspiracy—Construction—Defect, curable.

Where a charge for conspiracy contained the words that the accused agreed with each other "or" with others unknown to commit a certain offence : *Held*, that the word "or" in the charge was not used as a disjunctive, meaning that the charge was the one alternative or other, but it was used merely because the complicity of other persons in the conspiracy was not so certain as that of the three accused : *Held*, also, that it was impossible to say that the terms in which the charge was actually framed could or did mislead the accused in any way, at no stage were they left in any uncertainty as to what was alleged against them. Even supposing there was any defect, it was not such as would not be sufficiently met by S. 225 or S. 537, Cr. P. C. *Ram Krishna Sinha v. Emperor*. 39 Cr. L. J. 417 :

174 I. C. 513 : 42 C. W. N. 248 :

10 R. C. 693 : A. I. R. 1938 Cal. 195.

—S. 225—Charge of dacoity—Defect.

Where accused persons charged with dacoity are not identified as being present at the scene of the dacoity, the charge must fail. If the charge for dacoity omits to set out or indicate the particular dacoity in respect of which the accused are being tried, the conviction must be set aside. *Mandi Ghasi v. Emperor*.

13 Cr. L. J. 125 :

13 I. C. 781 : 1912 M. W. N. 49.

—S. 225—Contents—Defect, effect of.

Although an indictment, which omits to set out the particular false pretence alleged, is held bad where an objection is taken before verdict, the defect is deemed cured by verdict if no such objection is taken and there is a verdict of guilty on such an indictment. The indictment in all cases of conspiracy must, in the first place, charge the conspiracy, but in stating the object of the conspiracy the same

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degree of certainty is not required as in an indictment for the offence conspired to be committed. When a charge is drawn up, the Court should adhere to the language of the Statute as far as practicable. *Amritlal Hazra v. Emperor*.

16 Cr. L. J. 497 :
29 I. C. 513 : 21 C. L. J. 331 :
19 C. W. N. 676 :
42 Cal. 957 : A. I. R. 1916 Cal. 188.

—S. 225—Defective charge, effect of.

Any defect or omission from the charge as actually framed would not be fatal unless it has occasioned a failure of justice. *Emperor v. Mohammad Yakub*.

33 Cr. L. J. 373 :
137 I. C. 73 : I. R. 1932 All. 270 :
A. I. R. 1932 All. 73.

—Ss. 225, 537, 256, 257, 342—Defective charge, effect of—Accused, right of, to know charge against him—Explosive Substances Act (VI of 1908), S. 4 (b), charge under, essentials of.

Where it is alleged on behalf of the accused that the charge under S. 4 (b) of Act VI of 1908 is materially defective inasmuch as it omits to state, *first*, that the accused were in possession of explosive substances or had them under their control "unlawfully and maliciously," and *secondly*, that it was the intent of the accused to endanger life in British India : *Held*, that these defects in the charge do not vitiate the trial and conviction, and that the case would be covered by S. 225 and by Cl. (a) of S. 537, Cr. P. C. An accused is entitled to know with certainty and accuracy the exact value of the charge brought against him, otherwise he may be seriously prejudiced in his defence. It is not essential to specify in the charge the explosive substances which the accused have conspired to have in their possession or under their control, where the illegal act, charged under S. 120-B, Penal Code, is unlawful and malicious possession of explosive substances within the meaning of S. 4 of the Explosive Substances Act, 1908. *Amritlal Hazra v. Emperor*.

16 Cr. L. J. 497 :
29 I. C. 513 : 21 C. L. J. 331 :
19 C. W. N. 676 :
42 Cal. 957 : A. I. R. 1916 Cal. 188.

—Ss. 225, 233, 234, 235, 236 and 237—Joinder of charges—Indian Penal Code, Ss. 124-A and 153-A—Publication of sedition.

The accused was convicted of offence under Ss. 124-A and 153-A, Penal Code, in respect of each of two articles that appeared in his newspaper. The Magistrate, who tried the case, had framed a charge, with two heads, one bearing on each article, and each head mentioned that the accused was punishable under Ss. 124-A and 153-A for publishing the article. It was contended on behalf of the accused (1) that the receipt of his paper by Government servants in their capacity as such servants was no publication; (2) that each of the offences ought to have been charged separately; (3) that from the articles passages which offended against S. 124-A and those against S. 153-A ought to have been distinctly pointed out in separate charges; and (4) that the trial of four offences at one trial was illegal : *Held*, (1) that it is a sufficient publication if a newspaper

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containing a seditious article has been received by a Government servant; (2) that the accused had distinct notice of the charges he had to answer, and the informal mode, if any, in which the charges were drawn up was cured by S. 225, Cr. P. C.; (3) that as each of the two articles taken as a whole brought the act of the accused within each of the Ss. 124-A and 153-A, no specification of particular passages was necessary; (4) that as the charge under S. 124-A in respect of one article could have been legally joined with a charge under S. 124-A in respect of the other article, and as the accused could have been convicted under S. 153-A by the application of Ss. 236 and 237, Cr. P. C., even though S. 153-A was not the subject-matter of the charge, the addition of S. 153-A in the charge was not illegal. *Emperor v. Tribhuvandas*.

8 Cr. L. J. 272 :
1 I. C. 641 : 10 Bom. L. R. 801 :
33 Bom. 77.

—S. 225—Misjoinder of charges.

Where it is established that there has been a misjoinder of charges, the trial must be deemed illegal, because held contrary to an express provision of the law relating to the mode of trial. A comprehensive formula of universal application cannot be framed to determine whether two or more acts constitute the same transaction; but circumstances which must bear on the determination of the question in an individual case may be easily indicated: they are proximity of time, unity or proximity of place, continuity of action and community of purpose or design. *Amritlal Hazra v. Emperor*.

16 Cr. L. J. 497 :
29 I. C. 513 : 21 C. L. J. 331 :
19 C. W. N. 676 : 42 Cal. 957 :
A. I. R. 1916 Cal. 188.

—S. 226—Charge—Additional charge—Sessions Court, power.

It is on the facts disclosed by the Magisterial inquiry, and those facts alone, that any action under S. 226, Cr. P. C., can be taken by the Sessions Judge. Where the facts appearing in the Magisterial enquiry warrant the framing of a charge omitted by the Committing Magistrate, the Sessions Court has the power to add the charge so committed. *Mula Singh v. Emperor*.

25 Cr. L. J. 177 :
71 I. C. 593.

—S. 226—Charge—Additional charge.

Under S. 226 a Sessions Judge is not authorised to frame an additional charge when the charge is neither imperfect nor erroneous. *In re : Bhogi Reddi Ankamma*.

34 Cr. L. J. 278 :
142 I. C. 138 : 1932 M. W. N. 1162 :
65 M. L. J. 6 : I. R. 1933 Mad. 199 :
A. I. R. 1933 Mad. 247.

—Ss. 226, 227—Charge—Additional charge—Sessions trial—Murder, trial for—Chemical Examiner, report of—Blood, absence of, at place of occurrence, effect of.

Under proper circumstances a Sessions Judge has power to add a charge distinct from the charges framed by the Committing Magistrate. Certain accused were committed for trial to

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the Sessions Court on a charge relating to the murder of one man and hurt caused to another. The Sessions Judge added to the charge Counts relating to the murder of the latter: *Held*, that the Session Judge acted properly and within his powers in adding the charges. Where there is strong direct evidence of a murder having been committed at a particular place, the mere fact that the Chemical Examiner is unable to discover blood on leaves, grass and earth collected from the alleged place of occurrence, is not sufficient to rebut the direct evidence. *Hassenullah Sheikh v. Emperor*.

26 Cr. L. J. 5 :
83 I. C. 485 : 28 C. W. N. 561 :
A. I. R. 1924 Cal. 625.

S. 226—Charge—Alteration of charge.

Evidence recorded by Committing Magistrate disclosing offence of dacoity—Magistrate disbelieving evidence—Sessions Judge framing charge for dacoity—No prejudice to accused—Alteration of charge, held proper. *Gulzari v. Emperor*.

35 Cr. L. J. 63 :
146 I. C. 424 : 10 O. W. N. 738 :
6 R. O. 114 : A. I. R. 1933 Oudh 375.

S. 226—Charge, alteration of—Imperfect, meaning of.

A Judge's power to alter a charge after commitment is limited by S. 226, Cr. P. C., to imperfect or erroneous charges. The word "imperfect" implies defect in form. The evidence of a spy requires corroboration to practically the same extent as that of an accomplice. *Surat Bahadur v. Emperor*.

25 Cr. L. J. 1162 :
81 I. C. 986 : 11 O. L. J. 640 :
1 O. W. N. 362 : A. I. R. 1925 Oudh 158.

Ss. 226, 227—Charge—Amendment of charge—Sessions Court's power—Amendment beyond subject-matter of indictment—Remand by High Court.

A Court of Sessions is not a Court of Original Jurisdiction and though vested with large powers of amending and adding to charges, can do so only with reference to the immediate subject of the prosecution and committal and not with regard to a matter not covered by the indictment. Where a remand order of the High Court directed the accused to be tried under S. 417/511, Penal Code, and the Sessions Judge altered the charge to one under S. 420/511: *Held*, that the order of the High Court was not intended to fetter the discretion of the Sessions Judge, and he had the power to alter the charge. But on being found, that these charges related to events which did not form the subject-matter of the complaint as originally lodged and that the Magistrate also had not committed the case with reference to them: *Held*, that the Sessions Judge could not try the accused on the amended charge notwithstanding the remand order of the High Court, this objection not having been raised and dealt with when that order was made. *Birendra Lal v. Emperor*.

1 Cr. L. J. 794 :
8 C. W. N. 784 : 32 Cal. 22.

S. 226—Charge, change in—Duty of Sessions Judge.

In a Sessions case a Sessions Judge should,

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before he begins the trial, scrutinise the preliminary register and see for himself whether alterations or additions should be made to the charge under S. 226, Cr. P. C., *Karuppa Goundan v. Emperor*.

18 Cr. L. J. 346 :
38 I. C. 730 : A. I. R. 1918 Mad. 821.

Ss. 226, 227—Charge, meaning of.

The word 'charge' in the Criminal Procedure Code means a whole series of counts or heads of charge for various offences. *Dodo v. Emperor*.

16 Cr. L. J. 573 :
30 I. C. 125 : 9 S. L. R. 37 :
A. I. R. 1915 Sind 50.

S. 227.

See also (i) Cr. P. C., 1898, S. 226.

(ii) Penal Code, 1860, Ss. 147, 302.

S. 227—Charge, addition of, in appeal—Added charge under S. 143, Penal Code—Addition, whether valid—Penal Code, Ss. 143, 426, 451.

The addition by an Appellate Court to charges under Ss. 451 and 426 of a charge under S. 143, Penal Code in appeal is not permissible, inasmuch as the addition would have the effect of imposing a constructive responsibility for individual acts of all persons who were members at the time of the assembly. The mere carrying of *savali kalis* will not be presumed to be unlawful, and in determining the object of a unlawful assembly, the Court must find that the accused had an intention to use criminal force or commit some other offence at all costs and were not acting in self-defence. *In re : Mukka Muthiriyam*.

16 Cr. L. J. 737 :
31 I. C. 337 : A. I. R. 1916 Mad. 1222.

S. 227—Applicability.

S. 227 applies only after some evidence has been taken at the trial in the Sessions Court. *In re : Bhogi Reddi Ankamma*.

34 Cr. L. J. 278 :
142 I. C. 138 : 1932 M. W. N. 1162 :
65 M. L. J. 6 : I. R. 1933 Mad. 199 :
A. I. R. 1933 Mad. 247.

S. 221—Charge—Addition of a charge—Irregularity—Penal Code (Act XLV of 1860), Ss. 363, 366 and 498.

The accused was committed to the Sessions on charges under Ss. 363 and 366, Penal Code. At the conclusion of the evidence to establish these charges in the Sessions Court, the Court added a charge under S. 498 of the Code after the evidence for the defence had been recorded. The Court then convicted the accused on all the three charges: *Held*, that the procedure followed by the Sessions Judge was not regular: the additional charge, framed at the stage it was framed, was prejudicial to the accused, and that, therefore, the conviction under S. 498, should be set aside and the case be further investigated into on the other charges. *Emperor v. Isap Mahmad*.

5 Cr. L. J. 164 :
9 Bom. L. R. 148 : I. L. R. 31 Bom. 218.

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———Ss. 227, 537—*Charge—Addition of charges by Sessions Judge.*

The Sessions Court is not a Court of original jurisdiction and though vested with large powers for amending and adding to charges, it can only do so with reference to the immediate subject of the prosecution and committal, and not with regard to the matter not covered by the indictment. The addition of a new charge by the Sessions Judge is not a mere irregularity but an illegality not covered by S. 537. *Shah Din v. Emperor.*

11 Cr. L. J. 131 :

4 I. C. 993 : 20 P. W. R. 1909 Cr.

———S. 227—*Charge—Alteration of charge—Legality of.*

An alteration of a charge by a Court of Session, under S. 227, Cr. P. C., is only permissible upto the time of the taking of the opinion of the assessors. The accused was one of a party of burglars who invaded the house of one M, robbed his widow, ransacked his house, and on his seizing the accused as he was escaping, a scuffle ensued and the latter dealt him mortal blow with a spear-head. The accused was tried by the Court of Session under S. 460, Penal Code, but after the assessors had given their opinion to the effect that the accused was caught in the house of M in the act of committing burglary and struck him a blow from which he died, the Sessions Judge recorded an order to the effect that the accused should have been charged under S. 302, Penal Code, as well as under S. 460, and amending the charge under S. 227, Cr. P. C., convicted the accused under S. 302, Penal Code: *Held*, that the alteration of the charge by the Sessions Judge after the assessors had given their opinion was illegal: *Held*, further, that the accused was guilty of causing the death of M under S. 460, Indian Penal Code, but that the offence committed by him did not amount to murder. *Harbans v. Emperor.*

17 Cr. L. J. 454 :

36 I. C. 134 : 33 P. R. 1916 Cr. :

50 P. W. R. 1916 Cr. :

A. I. R. 1916 Lah. 52.

———S. 227—*Charge—Alteration of charge—Powers of Court.*

The Court's powers, as contained in S. 227, Cr. P. C., to alter a charge are very wide. Any restriction of those powers must inevitably lead to failure of justice. If the Court's power under S. 227 can be exercised within certain limits, the provisions of the section would be rendered nugatory. If, therefore, the alteration of the charge leads necessarily to the discharge of the former jury, that result must be implied in the power of the Court to alter the charge. *Emperor v. Yeshwant Vithi.*

38 Cr. L. J. 850 (b) :

170 I. C. 153 : 39 Bom. L. R. 355 :

I. L. R. 1937 Bom. 369 :

10 R. B. 49 :

A. I. R. 1937 Bom. 260.

———S. 227—*Charge—Alteration of charge—Stage.*

A Court may alter a charge at any time

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before judgment is pronounced and the discretion conferred by Statute in this behalf cannot be whittled away by rulings. *P. K. Subramania Ayyar v. Emperor.*

32 Cr. L. J. 756 :

131 I. C. 461 (1) : 1931 M. W. N. 399 :

I. R. 1931 Mad. 525 :

A. I. R. 1931 Mad. 439.

———S. 227—*Charge—Alteration of charge—Without assigning reason—Dacoity—Robbery—Pointing out place where stolen articles were concealed.*

A Sessions Judge should not alter a charge under S. 395, Penal Code, of being concerned in dacoity, to one of robbery, without assigning any reason and before hearing the evidence. Where the sole evidence against an accused is that he pointed out the place where some of the stolen properties were concealed, it was held that this in itself was not sufficient evidence to support a conviction under S. 411, Penal Code, far less was it any evidence that the accused took any part in any robbery or dacoity. *Paimulla v. Emperor.*

13 Cr. L. J. 127 :

13 I. C. 783 : 16 C. W. N. 238.

———Ss. 227, 228, 229—*Charge—Alteration of charge—Session trial—Sessions Court, power of, prejudice to accused.*

Where upon the trial of an accused person upon specific charges in a Court of Session, it is found at the conclusion of the trial that the charges as framed disclose no offence against the accused, it is illegal and prejudicial to the accused to alter or amend the charges and to convict him thereon without affording him an opportunity of meeting the altered or amended charges. The fact that the accused cross-examined the prosecution witnesses to prove the unsustainability of the charges as originally framed, is no ground for holding that by substantially altering the charges the accused was not prejudiced. A Court of Session is not a Court of original jurisdiction, and though vested with large powers of amending and adding to charges, can only do so with reference to the immediate subject of the prosecution and committal, and not with regard to matter not covered by the indictment. *Muthu Goundan v. Emperor.*

21 Cr. L. J. 57

54 I. C. 409 : 1920 M. W. N. 149

11 L. W. 317 : 27 M. L. T. 231

A. I. R. 1920 Mad. 131.

———S. 227, 237—*Charge—Alteration of charge—Procedure.*

S. 227, Cr. P. C., deals with an alteration of a charge, but the alteration must be read and explained to the accused and the latter must know what he is charged with and what offence he has to answer. S. 237 of the Code must be read with S. 227, and a Court has no power to convict an accused person of an offence of which he has not been told anything. *Raghunath Kandu v. Emperor.*

27 Cr. L. J. 152 :

91 I. C. 888 : 24 A. L. J. 168 :

A. I. R. 1926 All. 227.

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———Ss. 227, 269—*Charge—Alteration of charge by Sessions Judge—Prejudice.*

Ss. 34 and 149, Penal Code, create no distinct offences and are merely rules of evidence or of Common Law which fix liability upon joint wrong-doers. Therefore, where a charge is altered from one under S. 436 to one under S. 436 read with S. 149, the trial still remains a trial under S. 436. And where a trial under S. 436 is triable with the aid of the Jury, a trial under S. 436 read with S. 149 with the aid of assessors is without jurisdiction. It is open to a Sessions Judge to add an alternative charge but it is not a proper exercise of discretion to withdraw the charge which the Committing Magistrate thought to be proved and put the accused under a disadvantage by substituting another so that he might be deprived of the right of trial by Jury. *Ramsunder Isser v. Emperor*.

27 Cr. L. J. 512 :
93 I. C. 976 : 7 P. L. T. 178 :
5 Pat. 238 : A. I. R. 1926 Pat. 253.

———Ss. 227, 238, 234 and 537—*Charge—Amendment of charges—Charge of four offences at one trial—One charge struck off by the Magistrate at close of trial—Conviction on remaining three charges.*

Where the accused was charged with and tried for four offences, committed during the year, and after the close of the case the Magistrate purporting to act under S. 227, Cr. P. C., struck out one of the charges and convicted the accused on the remaining three charges: *Held*, that it was not open to the Magistrate at the stage of the proceedings when he struck out the charge to amend the charge under S. 227, Cr. P. C., so as to reduce the offences to three, that the charge was bad on the face of it and could not be cured by the subsequent amendment and that the conviction must be set aside. *Manavala Chetty v. Emperor*.

5 Cr. L. J. 94 :
1 M. L. T. 409 : I. L. R. 29 Mad. 569 :
17 M. L. J. 219.

———Ss. 227, 417, 449—*Charge—Amendment of charge—Interlocutory order—Appeal by Government; when lies—Amendment of charge, when permissible.*

An interlocutory order which has resulted in the acquittal of a prisoner on charges for which he was tried may, no doubt, be made a ground of appeal under S. 417, Cr. P. C. But where the interlocutory order is one passed under S. 227, Cr. P. C., refusing to add a fresh charge for which a fresh prosecution is permissible, in that case there has been no acquittal of the prisoner in respect of such additional charge and cannot be relied on as a ground in support of an appeal against the acquittal on other charges altogether. An order excluding evidence is one which can legitimately be attacked in appeal. Besides asking for an amendment of charge, which is likely to prejudice the prisoner, it is always open to the Crown to have the prisoner acquitted on the original charges and to have him charged

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anew before a Magistrate according to new facts. It is doubtful if S. 227, Cr. P. C., intended to confer jurisdiction on a Sessions Court to add or substitute a new charge on fresh evidence led or to be led in the Sessions Court for the first time. *Emperor v. Stewar*.

27 Cr. L. J. 1217 :
97 I. C. 1041 : A. I. R. 1927 Sind 28.

———S. 227—*Charge, amendment of—Discretion of trial Court, interference with.*

A Court of Appeal or Revision would always be slow to interfere with the exercise of discretion vested in the lower Court under S. 227, Cr. P. C., to allow amendment of a charge and would not interfere unless such discretion has been perversely or arbitrarily exercised. *Emperor v. Stewar*.

27 Cr. L. J. 1217 :
97 I. C. 1041 : A. I. R. 1927 Sind 28.

———S. 227—*Scope.*

What can be done under S. 227, Cr. P. C., is only to alter or modify the charge at any time before judgment. The section does not permit a Court to try two distinct offences, such as assault and abuse, which are in no way connected with one another, and which were committed at different times, in the same trial. Where it is discovered that two charges have been improperly joined together, the proper procedure is to initiate separate trials in respect of each charge. *Krishnamurthi Iyer v. Narayanaswami Iyer*.

26 Cr. L. J. 1618 :
90 I. C. 914 : 49 M. L. J. 93 :
22 L. W. N. 402 : 1925 M. W. N. 746 :
A. I. R. 1925 Mad. 1065.

———S. 227, 237—*Scope.*

Ss. 227 and 237, Cr. P. C. necessarily go together and it is not the intention of the Legislature to empower a Court to convict an accused person of an offence of which he has not been told anything. *Dhum Singh v. Emperor*.

26 Cr. L. J. 1057 :
88 I. C. 1 : 23 A. L. J. 436 :
A. I. R. 1925 All. 448.

———S. 228.

See Cr. P. C., S. 227.

———S. 228, 231—*Charge—Alteration of charge not affecting accused's defence—Right of accused to recall prosecution witnesses.*

Under S. 231, Cr. P. C., the accused has the right to recall prosecution witnesses after the alteration of the charge even if that alteration could not affect his defence, and the Magistrate has no discretion in the matter. *In re : Ramalinga Odayar*.

30 Cr. L. J. 223 :
113 I. C. 672 : 1928 M. W. N. 838 :
29 L. W. 111 : I. R. 1929 Mad. 208 :
52 Mad. 346 : 56 M. L. J. 600.
A. I. R. 1929 Mad. 200.

———S. 228—*Scope.*

Depositions taken in the Committing Magistrate's Court which contradict the evidence given in the Sessions Court cannot be put in

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under S. 228, Cr. P. C., without putting them to the witnesses. *Nanhu Mahlon v. Emperor*.

32 Cr. L. J. 438 :
129 I. C. 666 : 11 P. L. T. 772 :
12 P. L. T. 239 : I. R. 1931 Pat. 122 :
A. I. R. 1930 Pat. 338.

———S. 231.

See Cr. P. C. 1898, S. 228.

———S. 231—*Alteration of charge from one under S. 363 to 366, I. P. C.—Recall of witnesses.*

Complaint under S. 363, I. P. C.—Examination and cross-examination of prosecution witnesses—Charge framed—Defence witnesses examined and cross-examined—Charge amended and accused committed to Sessions for offence under S. 366, I. P. C.—No right to accused for further examination and cross-examination to disprove amended charge. *Ram Ghulam v. Emperor*.

32 Cr. L. J. 849 (2) :
132 I. C. 47 : 1931 A. L. J. 587 :
53 All. 692 : I. R. 1931 All. 479 :
A. I. R. 1931 All. 434.

———S. 231—*Alteration of charge—Recall of witnesses—Duties of Court and parties.*

S. 231 does not lay down any duty upon the Court to ask the accused to state whether he wishes to re-call any of the prosecution witnesses whose evidence has been taken or to summon new ones. To make those provisions applicable, there must be some evidence that the Court refused the request of the complainant or the accused to re-call or summon witnesses. *Konmal v. Emperor*.

32 Cr. L. J. 22 :
127 I. C. 587 : 1930 A. L. J. 572 :
I. R. 1930 All. 939 : 52 All. 455 :
A. I. R. 1930 All. 215.

———S. 231—*Alteration of charge—Refusal to call witnesses—Effect.*

Refusal to recall witnesses after alteration and in charge vitiates trial—Prejudice to accused is immaterial. *Nagendra Nath v. Emperor*.

33 Cr. L. J. 265 (2) :
136 I. C. 136 (2) : 55 C. L. J. 111 :
I. R. 1932 Cal. 184 (2) :
36 C. W. N. 542 : A. I. R. 1932 Cal. 486.

———Ss. 231, 257—*Alteration of charge—Right of accused to examine new witnesses.*

When a charge has been altered, the accused is not confined, to the examination of witnesses already examined, but is also entitled to examine new witnesses, unless for reasons mentioned in S. 257 the Magistrate thinks that the application to examine new witnesses is made for the purpose of vexation or delay or for defeating the ends of justice. *Ramalinga Udayar v. Ramaswami Mudaliar*.

31 Cr. L. J. 455 :
122 I. C. 785 : 57 M. L. J. 478 :
1929 M. W. N. 580 : 30 L. W. 741.

———S. 231—*Amendment of charge—Accused's right to re-call witnesses.*

If a charge is amended, the accused is entitled to re-call and cross-examine any of the prosecution witnesses and not only those witnesses on the basis of whose evidence the charge was amended. *Hazara Singh v. Emperor*.

26 Cr. L. J. 1497 :
90 I. C. 153 : A. I. R. 1926 Lah. 60.

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———S. 231—*Duty of Court, making alteration.*

Under S. 231, Cr. P. C. it is imperative that a Court, when it alters or adds to a charge after the commencement of a trial, should allow the prosecutor and the accused to re-call or re-summon and examine, with reference to such alteration or addition, any witness who may have been examined, and also to call any further witness whom it may think to be material. If the Chief Court thinks that in consequence of material errors in a charge the accused has been misled, it is bound to direct a new trial to be had upon a charge framed in the proper manner. *Harbans v. Emperor*.

17 Cr. L. J. 454 :
36 I. C. 134 : 33 P. R. 1916 Cr :
50 P. W. R. 1916 Cr :
A. I. R. 1916 Lah. 52.

———S. 232.

See also (i) See Penal Code, 1860, Ss. 147, 498.

———S. 232, 233, 234, 235—*Misjoinder of charges—Distinct and separate offences—Forgery of three cheques—Cheating thereby—Falsification of Account Books—Joint trial, legality of.*

Where the accused was charged, tried and convicted in the same trial for (a) forgery of three cheques; (b) cheating in respect of each cheque and falsifying account books to conceal the forgery of each cheque : *Held*, that the trial was illegal and must be set aside. A re-trial in accordance with law was directed. *Bhagwati Dial v Emperor*.

2 Cr. L. J. 34 :
2 P. R. Cr. 1905 : 6 P. L. R. 175.

———Ss. 232, 537—*Misjoinder of charges—Effect.*

Including kidnapping and abduction under one charge may be an irregularity. But if the defence is not misled and no failure of justice follows, it is condoned by S. 537. *Allahrakhio v. Emperor*.

36 Cr. L. J. 231 :
152 I. C. 1061 : 7 R. S. 110 :
A. I. R. 1934 Sind 164.

———S. 233.

———Application of.

———Charge.

———Cross-cases.

———Distinct offences:

———Joinder of charges.

———Joint trial.

———Misjoinder of charges.

———Non-compliance.

———Prohibition.

———Revision.

———Same transaction.

———Scope.

———Separate trials.

———Simultaneous trial.

———S. 233.

See also (i) Bombay Abkari Act, 1878, S. 43 (1) (i).

(ii) Companies Act, 1913, S. 32 (4).

(iii) Cr. P. C., 1898, Ss. 195 (b), 215, 222, 225, 227, 232, 234.

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- (iv) Epidemic Disease.
- (v) Joinder of charges.
- (vi) Joint trial.
- (vii) Penal Code, 1860, Ss. 124-A, 147, 500.

———S. 233, 537—*Penal Code (Act XLV of 1860), Ss. 149, 326—Charge under Ss. 326, 149, Penal Code—Conviction under S. 326—Legality—Prejudice.*

When a charge has been framed under Ss. 326, 149, Penal Code, a conviction under S. 326 is not necessarily bad but it depends on whether the accused has or has not been materially prejudiced by the form of the charge. The omission of S. 149 from a charge does not create an illegality by reason of S. 233, Cr. P. C. which provides that for every distinct offence of which any person is accused, there shall be a separate charge. *Theethumalai Gounder v. Emperor.* (F. B.) 25 Cr. L. J. 1297 : 82 I. C. 465 : 47 Mad. 746 : 47 M. L. J. 221 : 20 L. W. 261 : 35 M. L. T. 21 : A. I. R. 1925 Mad. 1.

———Ss. 233, 537—*Object of S. 233—'Distinct offence', meaning of—Hurt caused to two persons—Separate charges—Illegality—'Irregularity, meaning of—Words "subject to the provisions hereinbefore contained," in S. 537, whether refer to the entire preceding Code—English decisions, force of—Privy Council judgment—General observations, force of—Trial.*

Per Sharfuddin and Beachcroft, JJ. (Fletcher, J. dis.)—The joinder in one charge of two distinct offences of causing hurt to two distinct individuals is not an illegality which vitiates the trial but it is an irregularity which is cured by S. 537, Cr. P. C. The qualifying words "subject to the provisions, hereinbefore contained" in S. 537, do not refer to the entire Code that precedes that section but only to Ss. 529 to 536. Per Sharfuddin, J.—The first portion of S. 233 is not so imperative as to render a trial null and void if the direction enjoined therein is disobeyed. In other words, a disobedience of the first portion of S. 233 is not an illegality which vitiates a trial but is a mere irregularity curable by S. 537 of the Code. A charge is a first notice to the prisoner of the matter whereof he is accused and it must convey to him with sufficient clearness and certainty that which the prosecution intended to prove against him and of which he will have to clear himself. When two offences have been committed and either of them has no connection with the other, they are distinct offences. Although illustrations have no force of law, they go a great way to explain the intention of the Legislature. The object of S. 233 is two-fold : in the first place, to give an accused person notice of the charges which he has to meet; in the second, to see that he is not embarrassed by having to meet charges in no way connected with one another. Where the offences form part of the same transaction, the law allows them to be tried together; in such a case, the accused is not likely to be embarrassed or the Court confused. The first part of the section is designed to give the accused notice of the charges against him.

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The object is that he shall not be convicted of an offence of which he has not been charged. This object is not frustrated, and the accused is not prejudiced, if the accusations against him are written in one sentence or on one sheet of paper, instead of in two sentences or on two sheets of paper. *Ram Subhag Singh v. Emperor.* 16 Cr. L. J. 641 : 30 I. C. 465 : 19 C. W. N. 972 : A. I. R. 1916 Cal. 693.

———S. 233, application of.

S. 233 applies to summons cases also. *Lakshmana Mudaliar v. Emperor.* 33 Cr. L. J. 589 : 138 I. C. 317 : 1932 M. W. N. 1157 : 35 L. W. 661 : I. R. 1932 Mad. 553 : A. I. R. 1932 Mad. 497.

———S. 233, application of, to summons cases.

S. 233 and the sections therein referred to relating to joinder of charges and the joint trial of several accused, apply to the trial of summons cases under Chap. XX of the Code. *Emperor v. San Dun.* 2 Cr. L. J. 739 : 3 L. B. R. 52.

———S. 233—Charge—Cheating complainant on three different occasions—One count, bad in law.

Where two persons were charged in one count with having cheated the complainant and two other persons on three different occasions; *Held*, that the charge is bad. *Srish Chandra Mukerjee v. Emperor.* 10 Cr. L. J. 469 : 4 I. C. 16 : 13 C. W. N. 1067.

———S. 233—Charge, contents of.

A charge to the accused should specify each of the alleged offences separately, that is to say, it should contain as many counts as there are offences. *In re : Venkatigadu.* 7 Cr. L. J. 178 : 12 M. C. C. R. 49.

———S. 233—Charge, contents of.

Defrauding the public by deceitful means is an offence and the allegation in the charge of such an object without specifying the persons defrauded is sufficient to maintain a charge of conspiracy. *Dur Mahomad v. Emperor.* 35 Cr. L. J. 1337 : 151 I. C. 494 : 28 S. L. R. 119 : 7 R. S. 55 : A. I. R. 1934 Sind 57.

———S. 233—Charge—Different charges mentioned in one charge-sheet but dealt with separately.

Where not only Ss. 452, 323 and 379, I. P. C. but also the alleged charges under those sections were specifically and separately mentioned, the fact that the charge-sheet shows that charges under those sections were mentioned together, does not contravene the provisions of S. 233. *Madho Singh v. Emperor.* 41 Cr. L. J. 725 : 189 I. C. 258 : 1940 O. L. R. 420 : 1940 O. W. N. 607 & 927 : 13 R. O. 92 : A. I. R. 1940 Oudh 396.

———S. 233.

Charges framed under S. 165, Penal Code—

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Subsequent addition of charge, under S. 161.
Girdhari Lal v. Emperor. 12 Cr. L. J. 217 :

10 I. C. 156 : 11 P. R. 1911 Cr. :
32 P. W. R. 1911 Cr. : 146 P. L. R. 1911.

———S. 233—Charges, joinder of—Stolen property—Possession of property stolen from several persons at different times—Charge, defect in.

Unless it appears that articles for the possession of which the accused is charged under S. 411, I. P. C., came in his possession on different occasions, the trial is not irregular on account of the fact that the articles were stolen from several persons at different times. When it is not shown that the accused is prejudiced on account of a defect in the charge, the Court of Appeal will not interfere with the conviction. *Wasava Singh v. Emperor.*

11 Cr. L. J. 597 :
8 I. C. 229 : 36 P. L. R. 1910.

———Ss. 233, 234—Charge—Bribe collected by subscription from several persons—Form of charge.

Where a bribe was collected from certain inhabitants of a village by subscription and handed over to the recipient in a lump sum it was held that the recipient could not be charged under S. 161 of the I. P. C., merely with the receipt of the whole sum collected but that he must be charged in respect of not more than three separate items constituting the total collection. *Emperor v. Nand Lal.*

1 Cr. L. J. 875.

———Ss. 233, 234, 236, 239, 537—Charges, misjoinder of—Evidence Act (II of 1872), S. 27—Statement of accused—Pointing out places where stolen property was concealed—Independent prior discovery by police—Penal Code (XLV of 1860), Ss. 395, 411, 412.

Fifteen accused were charged under S. 395 of the Penal Code. Three of these were also charged under Ss. 411 and 412, on the strength of an incident which is a part of the evidence against them on the charge under S. 395: *Held*, there has been no misjoinder of charges which vitiates the whole proceedings. *Janki v. Emperor.*

11 Cr. L. J. 244 (b) :
5 I. C. 769 : 11 C. L. J. 182.

———Ss. 233, 234, 239—Charge—Framing of charge—Distinct offences, distinct charge—Offences of "same kind"—Procedure.

For every distinct offence of which any person is accused, there should be a separate charge and every charge shall be tried separately. This is a broad rule and applies to all trials for offences under the Criminal Law. In S. 233 of the Cr. P. C., this rule is made subject to four exceptions. But a Court cannot and ought not to treat a case before it as an exception to the general and broad rule, unless it is satisfied that in the case before it, the charge should be brought within one of the four exceptions. A trial in contravention of S. 233, unless justified by the exception section, is not a mere irregularity but it is an illegality. The offence of murder and the offence of voluntarily causing hurt are not what are defined in S. 234 as offences of the "same kind." The provisions contained in the former part of Chapter XIX

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apply to all charges falling under S. 239, which is thus governed by Ss. 234 and 235. The charge-sheet is a very important document and the drawing of it a very important act in a criminal trial. Magistrates cannot exercise too much care when they proceed to frame a charge. *Shanker v. Emperor.*

14 Cr. L. J. 116 :
18 I. C. 676 : 11 A. L. J. 188.

———S. 233, 234, 535, 537—Charge—Separate complaints—Distinct offences—One trial—Omission to frame separate charges—Accused understood what he was being tried for—Irregularity.

Three tenants standing to have been charged by the landlord's rent collector while he was engaged in the collection of rent, laid three separate complaints against him before a Magistrate, who purporting to act under S. 234, Cr. P. C., tried the accused for the three offences at one trial and framed only one charge setting out only one offence of cheating in respect of all the three complaints: *Held*, that as the accused clearly understood what he was being tried for, he was not in any way prejudiced and that there was no cause for interference by the High Court. *Musai Singh v. Emperor.*

15 Cr. L. J. 224 :
22 I. C. 1008 : 41 Cal. 66 : 18 C. W. N. 183 :
A. I. R. 1914 Cal. 288.

———Ss. 233, 235, 537—Charges, lumping together of several—Irregularity—Four murders—Joint trial.

The lumping together of several charges against an accused person although contrary to the provisions of S. 233 amounts to an irregularity which does not vitiate the proceedings, the error being covered by S. 537. Accused was tried at one trial for the murder of his wife and three children, the acts done by him were connected both by continuity of action and purpose and the four persons were murdered successively within a very short period of time: *Held*, that there was no legal bar to the trial of the accused on the four charges of murder at one trial. *Kallu v. Emperor.*

22 Cr. L. J. 344 :
61 I. C. 158 : 8 O. L. J. 10 :
3 U. P. L. R. (J. C.) 4 :
A. I. R. 1921 Oudh 49.

———Ss. 233, 236, 535, 537 (A)—Charge—Rioting—Conviction for hurt—Common object of causing hurt to complainant—Conviction for causing hurt to another, "Merely on the ground that no charge was framed"—Meaning of.

Where an accused person is charged with rioting under S. 147, I. P. C. with the common object of causing hurt to the complainant, he cannot be convicted of causing hurt to another person. S. 233 of the Cr. P. C. is mandatory, and for every distinct offence, there should be a separate charge which should, except in certain cases specified, be tried separately. The words "merely on the ground that no charge was framed" in S. 535 of the Cr. P. C. mean a case where the offence being a petty one and the evidence being fairly taken, the Court framed no charge at all. But where the

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Court frames a charge, then it cannot be said that the conviction is invalid merely on the ground that no charge was framed. Such a case does not come under S. 537 (a) of the Cr. P. C. S. 236 does not apply to the case. *Sita Ahir v. Emperor*. 13 Cr. L. J. 593 : 16 I. C. 161 : 40 Cal. 168.

———S. 233, 237—*Charge for murder—Conviction for offence under S. 194, Penal Code, legality of.*

When a person is charged with an offence punishable under S. 302, I. P. C. he cannot be convicted of an offence punishable under S. 194 without a charge being framed against him for such an offence. *Achhut Rai v. Emperor*. 27 Cr. L. J. 1351 : 98 I. C. 471 : A. I. R. 1927 All. 75.

———S. 233, 423 (1) (b)—*Charges, joinder of—Joint trial and conviction of several accused for one offence—Alteration of conviction of one of the accused.*

The petitioner and four others were tried jointly under S. 454, I. P. C. The other four were convicted of the offence with which they were charged and the petitioner of abetment thereof. On appeal, the petitioner was convicted only under Ss. 411 and 414, I. P. C. : *Held*, that the conviction must be set aside, for the petitioner could not have been tried jointly with the four other accused under Ss. 411 and 414, I. P. C., while they were being tried under S. 454, I. P. C. *Sahib Singh v. Emperor*. 2 Cr. L. J. 694 : 6 P. L. R. 436 : 38 P. R. Cr. 1905.

———Ss. 233, 537—*Charge—One charge for three different offences, if legal—Error in form—Prejudice.*

Where under an arrangement made with the concurrence of their pleaders the accused were jointly tried for three offences committed against 3 different persons on the same date and forming part of the same transaction, and there was framed one charge against them, instead of three, and it ran thus : "That you on or about the 3rd July at B. committed theft of paddy from the fields of (a) Srinath Das, (b) Jhumar Pramanick, (c) Laskar Pramanick and thereby committed an offence punishable under S. 379, I. P. C. and within my cognizance : " *Held*, that although strictly speaking, three separate charges should have been drawn up in identical terms for the three offences under S. 379, I. P. C., yet as in the one charge framed the three offences had been kept separate and were distinguished by the letters (a), (b) and (c), the error in framing one charge, was an error in form rather than in substance, and as such, did not amount to an illegality but was an irregularity which would be cured by the provisions of S. 537, Cr. P. C., unless it was shown that the accused had been prejudiced or that a failure of justice had been occasioned in consequence thereof. *Moharuddi Malita v. Jadunath Mandal*. 4 Cr. L. J. 415 : 11 C. W. N. 54.

———S. 233—*Cross-cases—Joint trial—Pro-*

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secution evidence in one case treated as defence evidence in other—Illegality.

In two cross-cases arising out of a riot, although two separate records were prepared, in reality only one joint trial was held and the prosecution evidence in each case was treated as the defence evidence in the other : *Held*, that the procedure adopted was illegal and the trials were bad and must be set aside. *Muhammad v. Emperor*. 25 Cr. L. J. 551 : 81 I. C. 39 : A. I. R. 1925 Lah. 149.

———S. 233—*Joint trial—Distinct offences—Offence of theft and restoring stolen property on receipt of gratification.*

The accused was jointly tried and convicted of theft and of receiving gratification for restoring the property stolen (S. 215, I. P. C.). The latter offence, it was alleged, was committed some days after the former : *Held*, that the trial was bad : (2) that the result of trying the two distinct offences charged together is that a conviction under one involves an acquittal under the other : (3) that a real thief cannot be charged with an offence under S. 215, I. P. C. The accused was acquitted of both offences. *Imperator v. Alu*. 12 Cr. L. J. 72 : 9 I. C. 421.

———S. 233 — *Distinct offences — Separate charges for distinct offences of Dacoity.*

Where certain persons looted the houses of three persons, if not four, on the same night, and the charge formed against them all was that they committed dacoity, and therefore committed an offence punishable under S. 395, I. P. C. : *Held*, that the offences proved being distinct offences, there should have been a separate charge in respect of each of them. *Emperor v. Fattu*. 1 Cr. L. J. 364 : I. L. R. 26 All. 195 : 1903 A. W. N. 231.

———Ss. 233, 239—*Distinct offences—Joint trial—Defamatory resolutions—Transmission of resolutions to a newspaper—Concert.*

Where accused Nos. 1 to 3 who were charged with passing and publishing resolutions defamatory of the complainant, were tried jointly with the 4th accused who was charged with transmitting the resolutions to a newspaper : *Held*, that in the absence of a concert between all the accused, their joint trial was illegal as the offences committed by accused Nos. 1 to 3 and the offence committed by the 4th accused were not committed in the same transaction within the meaning of S. 239, Cr. P. C. *Subrahmanyayya Aiyar v. Emperor*, 25 M. 61, applied. *Krishna Doss v. Emperor*. 11 Cr. L. J. 135 : 5 I. C. 436.

———Ss. 233, 537—*Distinct offences—Placing record of evidence of one case in another—Illegality—Separate trial, necessity of.*

Where the accused was charged with two offences, namely, under S. 307, I. P. C. and under S. 20 of the Arms Act, and the witnesses in the two cases being more or less the same, the trying Magistrate recorded the evidence of the witnesses in the case under S. 307, I. P. C.

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and placed copies of the statements of these witnesses on the record of the case under S. 20 of the Arms Act: *Held*, that the procedure adopted was illegal and that the trial was vitiated by this illegality of procedure. *Muhammad Khan v. Emperor*. 29 Cr. L. J. 521 :

109 I. C. 345 : 9 L. L. J. 329 :
A. I. R. 1928 Lah. 34.

———S. 233—*Joinder of charges—Insertion of unnecessary facts in charges—Failure to prove them—Doctrine of surplusage.*

In order to convict a man of an offence, all the material facts which constitute the offence, and which are necessary to enable the parties to avail themselves of the verdict and judgment, should the same charge be again brought forward, must be stated upon the indictment, and all these requisite allegations must be satisfied in evidence, and proved as laid. But allegations not essential to such a purpose, which might be entirely omitted, without affecting the charge against the prisoner and without detriment to the indictment, are considered as mere surplusage, and may be disregarded in evidence. Where a person was charged with conspiracy and with having committed cheating in pursuance of that conspiracy: *Held*, that it was open to the Court to convict him of cheating even though the conspiracy was not proved, inasmuch as the words in pursuance of the conspiracy in the second count were only words of surplusage. *Satya Narain Mohata v. Emperor*. 29 Cr. L. J. 1022 :

112 I. C. 350 : 55 Cal. 858 : 32 C. W. N. 319 :
A. I. R. 1928 Cal. 675.

———S. 233—*Joinder of charges.*

S. 233, Cr. P. C. must be strictly followed, save and except where the law itself provides an exception. A joinder of three charges under S. 409, Penal Code, and three charges under S. 477-A is not covered by any of the exceptions provided in the subsequent sections of the Code. A series of alterations in accounts made to cover a defalcation might all be charged in one charge under the provisions of S. 477-A. It cannot be said that there are three distinct offences committed by an accused person merely by reason of the fact that he makes more than one false entry to cover one defalcation. But a series of false entries referring to three different defalcations, cannot be taken in the same trial, although three defalcations or a whole series of falsified accounts may be tried in one charge. Therefore the joinder of three charges under S. 409, Penal Code, and three charges under S. 477-A, is bad and fatal to the trial. *Raman Behary Das v. Emperor*. 16 Cr. L. J. 153 :

22 I. C. 729 : 18 C. W. N. 1152 :
41 Cal. 722 : A. I. R. 1915 Cal. 296.

———Ss. 233 and 234—*Joinder of charges—Offences committed within 12 months—One trial.*

Offences committed by an accused person within twelve months against a series of persons, not exceeding three of a similar nature, may be tried at one trial. *Sri Bhagwan Singh v. Emperor*. 10 Cr. L. J. 272 :

3 I. C. 319 : 9 C. L. J. 149 :
13 C. W. N. 507 : 5 M. L. T. 349.

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———Ss. 233, 234, 235—*Joinder of charges—Procedure, compliance with—Necessity of following procedure relating to joinder of charges.*

The necessity of following the procedure regarding joinder of charges laid down by the law is obviously dictated by reasons of practical expediency and justice, namely to simplify the enquiry from the point of view of the accused. *Ramchandra Rango Sowkar v. Emperor*. 40 Cr. L. J. 579 :

181 I. C. 870 : 41 Bom. L. R. 98 :
11 R. B. 356 : A. I. R. 1939 Bom. 129.

———Ss. 233, 234, 235, 236, 237 and 239—*Joinder of charges.*

Ss. 233, 234, 235, 236, 237 and 239 of the Cr. P.C., referred to as exceptions in S. 233, are not mutually exclusive; otherwise the provisions of Ss. 236 or 237 can never be invoked to prevent a miscarriage of justice arising from a failure to make good all the details of a charge joined with two other charges under S. 234. The Legislature hardly intended that a joint trial of three offences under S. 234 should prevent the prosecution from establishing at the same trial the minor or alternative degrees of criminality involved in the same acts complained of. Ss. 235 and 236 may be resorted to in framing additional charges where the trial is, under S. 234, of three offences of the same kind committed within a year. *In re : Bal Gangadhar Tilak*.

9 Cr. L. J. 226 :
2 I. C. 277 : 10 Bom. L. R. 973 :
33 Bom. 221 : 4 M. L. T. 450.

———Ss. 233, 234, 239—*Joinder of charges—Conspiracy—Same transaction—Offences, whether can be tried together.*

Twenty-three persons obtained a loan from Government on a joint bond. Accused, who were asked by the Revenue Collector to collect the first instalment of the loan from the borrowers, made a misrepresentation to each borrower of the amount due by him and thus obtained a sum of money in excess of that really due by the borrowers: *Held*, that the misrepresentation in each case being the same, and the offences having all been committed at the same time and place, all in pursuance of the same conspiracy, they were all committed in the course of the same transaction and could be tried together. *Kailash Chandra Pal v. Emperor*. 20 Cr. L. J. 122 :

49 I. C. 106 : 29 C. L. J. 31 :
46 Cal. 712 : A. I. R. 1919 Cal. 367.

———Ss. 233, 235—*Joinder of charges—Offence arising out of same transaction—Trial, whether vitiated.*

A charge which relates to more than one distinct offence, is a bad charge under the law. But where in a trial the distinct offences included in the charge were one series of acts so connected together as to form the same transaction, and the accused could have been charged with, and tried at one trial for each such offence, the fact that the charge contravened the law, would not vitiate the trial. *Radha Nath v. Emperor*. 24 Cr. L. J. 72 :

71 I. C. 120 : 36 C. L. J. 149 :
50 Cal. 94 : A. I. R. 1922 Cal. 573.

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—Ss. 233, 235, 537—*Joinder of charges—Police Officer preparing incorrect record consisting of several documents—Separate charge in respect of each document, whether necessary—Irregularity.*

Accused, a Police Inspector, was charged in one trial with having prepared certain documents incorrectly in order to screen one H. and to save him from legal punishment. He was convicted of an offence under S. 218, I. P. C. The documents set forth in the charge were a *rugqa* addressed to the officer in charge of the Police Station, a first information report based upon the *rugqa*, seven Police diaries relating to the investigation held in the case and the final report to the Magistrate: *Held*, (1) that the various documents formed part of one continuous whole the same purpose, namely the saving of H. from legal punishment, and therefore, the offences having been committed in the same transaction, they could all be tried in the same trial; (2) that the documents in question together comprised the Police record of an investigation into a charge and that the accused being charged with having prepared an incorrect Police record, there was nothing defective in framing a single charge in respect of all the documents; (3) that even if it were held that the accused should have been charged with separate offences in regard to each document, the trial was not illegal merely because one charge was framed in regard to all the documents, the irregularity being covered by S. 537. *Emperor v. Muhammad Hussain.*

19 Cr. L. J. 510 :
45 I. C. 270 : 12 P. R. 1918 Cr. :
89 P. L. R. 1918 : 23 P. W. R. 1918 Cr. :
A. I. R. 1918 Lah. 242.

—S. 233, 239—*Joinder of charges of—Abduction and rape on different occasions.*

K and B abducted a woman and committed rape upon her at a place called D. The woman was subsequently taken by B to different places where he alone committed rape upon her. On these facts: *Held*, (1) that a joint charge under S. 366 of the Penal Code against both K and B was justified; (2) that a joint charge under S. 376 of the Penal Code against both of them in respect of the occurrence which took place at D was also justified; (3) that a joint charge against both of them of having committed rape upon the woman at D and in other places was both improper and embarrassing; (4) that if it was intended to prosecute B with regard to the offences that he was accused for having committed elsewhere, there should be separate charges with regard to those offences. *Keramat Mandal v. Emperor.*

27 Cr. L. J. 263 :
92 I. C. 439 : 42 C. L. J. 524 :
A. I. R. 1926 Ca 1. 320.

—Ss. 233, 239, 222—*Joinder of charges—Joint trial—Ss. 233 and 239 are governed by S. 222 and first part of S. 233.*

Ss. 235 and 239, Cr. P. C., which deal with the joinder of charges of different offences and the joint trial of a number of accused persons, are not controlled by the latter part of S. 233

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or by S. 234. If offences are committed in the course of the same transaction, they may be tried together, although they are more than three in number and extending over a period of more than a year. But there is nothing in S. 235 or S. 239 to suggest that they are not governed by S. 222 or the first part of S. 233. On the contrary, the Illustrations to S. 235 make it clear that when different offences are tried together, they must be separately charged. *Emperor v. Karamalli Gulamalli.*

40 Cr. L. J. 118 :
178 I. C. 706 : 40 Bom. L. R. 1092 :
11 R. B. 184 : I. L. R. 1939 Bom. 42 :
A. I. R. 1938 Bom. 481.

—S. 233—*Joint trial—Conviction of some accused under S. 457 and of others S. 411, I.P. C., legality of.*

In one and the same trial there cannot be convictions against some accused under S. 457 and against others under S. 411 of the Penal Code. *Muhammad v. Emperor.*

18 Cr. L. J. 112 :
37 I. C. 20 : 49 P. W. R. 1916 :
A. I. R. 1917 Lah. 191.

—S. 233—*Joint trial—Cross-complaints—Prosecution evidence in one treated as defence in other, legality of.*

Where cross-complaints arising out of the same occurrence are filed, the prosecution evidence in one case should not be treated as defence evidence in the other, otherwise trial shall be vitiated. *L. B. Mamsa v. Emperor.*

22 Cr. L. J. 707 :
63 I. C. 867 : 13 Bur. L. T. 245.

—S. 233—*Joint trial—Distinct offences—Illegality.*

Non-compliance with the provisions of S. 233, is not merely an irregularity but an illegality and vitiates the whole trial. Where two offences are quite distinct and separate and there is also an interval of time between their commission, they cannot be said to form the same transaction and a joint trial in respect of them is illegal. *Shafi v. Emperor.*

25 Cr. L. J. 964 :
81 I. C. 612 : 21 A. L. J. 859 :
A. I. R. 1924 All. 211.

—S. 233—*Joint trial for prejury—Illegality.*

The joint trial of several persons for prejury under S. 193, Penal Code, is illegal. *Lachman Singh v. Emperor.*

23 Cr. L. J. 439 :
67 I. C. 615 : 15 P. W. R. 1922 Cr.

—S. 233—*Joint trial—Illegality, criterion of.*

The illegality of a joint trial depends on the accusation and not on the result of a trial. *Emperor v. Mohammad Yakub.*

33 Cr. L. J. 373 :
137 I. C. 73 : I. R. 1932 All. 270 :
A. I. R. 1932 All. 73.

—S. 233—*Joint trial—Offences of mischief and riot—Misjoinder of charges.*

A joint trial for offences of mischief and riot where they do not form part of the same

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transaction and the persons accused are not the same is bad for misjoinder of charges. *Baba Mal v. Ghasi*. 29 Cr. L. J. 34 : 106 I. C. 450 : A. I. R. 1928 Lah. 185.

———S. 233—*Joint trial—Theft and escape from lawful custody, offences of.*

The trial of the two charges (theft and escape from lawful custody) at one trial is contrary to S. 233 as the theft and escape are not so connected as to form one transaction, and none of the sections mentioned in S. 233 covers the joinder. *Emperor v. Po Hla*. 4 Cr. L. J. 389 : 12 Bur. L. R. 246 : 3 L. B. R. 221.

———S. 233—*Joint trial—Two accused tried jointly for one offence—Power of Appellate Court to convict one of them of different offence.*

Where two persons are tried together and convicted of a certain offence, the Appellate Court can acquit one of them of the offence of which he was found guilty by the trial Court and convict him of a different offence found proved against him on the facts. *In re : Suryanarayana Row*. 15 Cr. L. J. 680 : 25 I. C. 1008 : A. I. R. 1915 Mad. 302.

———Ss. 233, 234—*Joint trial—Property stolen from two different persons at two different times—Possession of stolen property.*

One trial for two offences, for having been found in possession of stolen property belonging to two different persons and stolen at two different times, is illegal and without jurisdiction. *Ali Mahomed v. Emperor*.

9 Cr. L. J. 277 : 8 C. L. J. 561.

———Ss. 233, 234 and 537—*Joint trial—Separate offences—Irrregularity.*

Where two separate offences which should have been tried separately were as a matter of fact together, it was held that this did not amount to more than an irregularity, which, as it did not appear that the accused were in any way prejudiced, was covered by S. 537, Cr. P. C. *Emperor v. Ram Singha*.

6 Cr. L. J. 215 : 27 A. W. N. 208.

———Ss. 233, 235—*Joint trial—Joint charges—Complaint, offence disclosed in.*

Where an act of the accused is done in pursuance of the conspiracy mentioned in the original complaint, a charge in respect of that act may be framed without any further complaint. Where the offences form part of the same transaction and law allows their joint trial, it is immaterial whether the two offences are included in one charge or whether they are separated and each of them made basis of a charge. *Abdur Rahman v. Emperor*.

27 Cr. L. J. 669 : 94 I. C. 717 : 4 Bur. L. J. 213 : A. I. R. 1926 Rang. 53.

———Ss. 233, 239—*Joint trial of offences under Ss. 379, 411, Penal Code, legality of.*

The joint trial for offences under Ss. 379 and 411 of the Penal Code is, with reference

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to Ss. 233 and 239, Cr. P. C., illegal, and vitiates the trial. *Sohan Singh v. Emperor*. 25 Cr. L. J. 274 : 76 I. C. 866 : A. I. R. 1923 Lah. 394.

———Ss. 233, 239—*Joint trial of persons charged with giving false evidence in same judicial proceedings is illegal—"Same transaction."*

The joint trial of two or more persons charged with giving false evidence in the same judicial proceedings is not permissible under S. 239 of the Cr. P. C. The false evidence given by one witness is a transaction complete in itself and not connected with false evidence given by another witness even though in the same case and on the same point. Such a joint trial is more than an irregularity; it is an illegality which vitiates the whole trial. *Imperator v. Alu*.

13 Cr. L. J. 23 : 13 I. C. 215 : 5 S. L. R. 129.

———Ss. 233, 239—*Joint trial of several persons for distinct offences—Penal Code, Ss. 411 and 458.*

Two accused were charged by police under S. 458 of the I. P. C., and having been tried jointly, the Magistrate convicted one of them under S. 411 and the other under S. 458, I. P. C.: *Held*, that the joint trial being illegal, the convictions must be set aside. That when the Magistrate found that S. 458 was not applicable to one of the accused, he should have tried the two accused separately. *Jagga v. Emperor*.

3 Cr. L. J. 76 : 6 P. L. 575 : 51 P. R. Cr. 1905.

———Ss. 233, 239—*Joint trial of thieves and persons in possession of stolen property—Legality.*

The theft of certain articles by one person and the dishonest possession of them by another knowing them to be stolen form one transaction even though the receipt is not simultaneous with the theft. The joint trial of such persons, therefore, is not bad in law under the provisions of S. 239, Cr. P. C. *Anwar v. Emperor*.

23 Cr. L. J. 414 : 67 I. C. 510 : 20 A. L. J. 96 : 44 All. 276 : A. I. R. 1922 All. 208.

———S. 233, 239—*Joint trial—Receiving stolen property.*

Accused No. 1 received from certain thieves stolen property. Subsequently, accused No. 1 delivers to accused No. 2 a portion of the stolen property in satisfaction of the debt which he owed to the latter. From accused No. 3 was found a further portion of the property identified as stolen but there was nothing to show when he received it and from whom. The three accused were, under these circumstances, tried at one trial on charges of receiving stolen property knowing it to be stolen : *Held*, that the three offences against the three accused were distinct offences which could not be regarded as offences committed in the same transaction within S. 239, Cr. P. C., and that the trial of the three accused together was thus in

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contravention of S. 233. *Emperor v. Jethalal Harlochand.*

2 Cr. L. J. 486 :

7 Bom. L. R. 527 :

I. L. R. 29 Bom. 449.

———Ss. 233, 239, 438, 537—*Joint trial of two accused for distinct offences, under Ss. 379 and 341, Indian Penal Code.*

On 29th April 1905, A dishonestly took a sewing machine out of II's possession. On 30th April, 1905, G restrained II from proceeding in a direction in which he had a right to proceed. A and G were jointly tried and convicted under Ss. 379 and 341, I. P. C., respectively: *Held*, that the joint trial of the two accused for distinct offences, committed on different dates and not in the same transaction, was illegal. *Abdul Sattar v. Emperor.*

4 Cr. L. J. 496 :

1 P. W. R. Cr. 31.

———Ss. 233, 239, 439 and 537—*Joint trial of two parties arrayed against each other in a riot—Illegality—Revision.*

The joint trial of two parties arrayed against each other in a riot is not warranted by Ss. 233 and 239 and is altogether illegal and void and not merely irregular within the purview of S. 537. However the revisional jurisdiction under S. 439, being by its terms entirely discretionary, the Chief Court is not bound to interfere on the Revision Side in such a case, when no prejudice is shown to have been caused by the joint trial. *Ala Dya v. Emperor.*

4 Cr. L. J. 75.

5 P. R. Cr. 1906.

———S. 233, 239 and 537—*Joint trial—Penal Code—S. 411—Separate retainers by separate persons at different places—Joint trial, legality of.*

Per Harington and Stephen, JJ. (Brett, J., contra).—Separate retainers by separate persons, of separate articles, at different places, although the articles may have been the proceeds of one dacoity, cannot be said to be in course of the same transaction. Persons charged with such retention cannot be tried jointly. S. 537, Cr. P. C., does not apply to such a case. *Abdul Majid v. Emperor.*

3 Cr. L. J. 391 :

3 C. L. J. 412 : 10 C. W. N. 912 :

33 Cal. 1256.

———Ss. 233, 239, 537—*Joint trial of distinct offences—Legality of trial.*

Where two persons who harboured different offenders, without any conspiracy between them and not in the course of the same transaction, were jointly tried: *Held*, that the trial was contrary to the express provisions of the Cr. P. C. and, therefore, entirely illegal. *Sewak v. Emperor.*

30 Cr. L. J. 214 :

113 I. C. 721 : 26 A. L. J. 623 :

I. R. 1929 All. 197 :

A. I. R. 1928 All. 317.

———Ss. 233, 239, 537—*Joint trial of several accused for giving false evidence, validity of.*

The joint trial of several witnesses to the

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same transaction for giving false evidence is not merely an irregularity which can be cured, but an illegality which cannot be condoned by any assent of the accused, and is fatal to the trial. A definite rule of law, such as that enacted by S. 233, Cr. P. C., cannot be disregarded to accelerate or facilitate the disposal of a case against several offenders. S. 239 Cr. P. C., does not permit the joint trial of different offences committed by different persons in pursuance of a conspiracy, but only where their acts form part of the same transaction. *Gumcant v. Emperor.* 18 Cr. L. J. 339 : 38 I. C. 723 : 13 N. L. R. 35 : A. I. R. 1916 Nag. 73.

———Ss. 233, 272, 344, 537—*Joint trial—Simultaneous trials with aid of Assessors—Illegality.*

Five persons, accused of the same class of offences with reference to the same sort of property, were committed to stand their trial before a Court of Sessions. The Sessions Judge thinking that a joint trial of all would be void for misjoinder of charges and of accused persons, split the case into two cases. Two of the accused were tried in one and the remaining three in the other case. All the accused were placed in the dock simultaneously and both cases were heard simultaneously with the aid of the same set of Assessors. A number of witnesses were common to both cases and each witness was first examined in one case and then, where necessary, in the other. There were separate and complete records with a separate judgment in each case: *Held*, (1) that the five accused were substantially tried together in two simultaneous trials: (2) that the two trials were "prohibited in the mode" in which they were conducted; (3) that the simultaneous hearing of the two cases by one set of Assessors was more than a mere irregularity: (4) that neither set of accused could be benefited by the two cases being heard simultaneously and that nothing but prejudice to them could arise therefrom; (5) that one case should have been adjourned under S. 344, Cr. P. C., while the other was being tried. *L. B. Eusoof v. Emperor.*

23 Cr. L. J. 49 :

64 I. C. 833 : 11 L. B. R. 73.

———Ss. 233, 342—*Joint trial—Accused consisting of two groups gambling at two different places—No connection between them.*

Accused person consisting of two groups having no connection with one another showing that they were engaged in the same transaction and playing at different places, cannot be summarily tried together under S. 12, Bombay Prevention of Gambling Act, and their conviction will be set aside. *Emperor v. Shivdalomal.*

39 Cr. L. J. 59 (a) :

172 I. C. 80 : 10 R. S. 135 :

32 S. L. R. 30 : A. I. R. 1937 Sind 304.

———Ss. 233, 439—*Joint trial—Receiving stolen property at different times—Separate charges, necessity of—Joint trial, legality of—Objection—Revision.*

Where several persons are charged with receiving stolen property, the proceeds of one burglary

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at different times, there should, under S. 233, be a separate charge in respect of each of the stolen articles, and each of the accused should be tried separately. In such a case, a joint trial of the accused is illegal, and objection to the trial may be taken for the first time in revision. *Padmanabh Patnaik v. Emperor*.

21 Cr. L. J. 619 :
57 I. C. 283 : 2 U. P. L. R. Pat. 147 :
2 P. L. T. 47 : A. I. R. 1921 Pat. 291.

———Ss. 233, 537—*Joint trial for distinct offences, legality of.*

When three persons were brought up before a Magistrate for having committed acts amounting to an offence under Sanitation Rule IV, Clause 6, and admitted the commission of the act, and were convicted as if they had been concerned in a single case, such joint conviction was held not illegal. *In re : Kalamma*.

9 Cr. L. J. 524 :
13 M. C. C. R. 102.

———Ss. 233, 537—*Joint trial—Property, stolen, recovered from accused separately—Procedure.*

Where stolen property is recovered from the possession of several persons at different times, there should be a separate trial under S. 411, Penal Code, of each of such persons. The joint trial of such persons is illegal, and the illegality is not curable by the application of S. 537, Cr. P. C. *Jiwan v. Emperor*.

23 Cr. L. J. 409 :
67 I. C. 505 : 19 A. L. J. 409.

———S. 233—*Misjoinder of charges—Charges covering many cases of cheating—Defect, if curable.*

Lumping of various cases of cheating in a charge under S. 420, I. P. C., should be avoided. But where by such a defect no prejudice is caused to the accused and there is no miscarriage of justice, the defect is curable under Ss. 225 and 537, Cr. P. C. *Chandra Narain Jha v. King-Emperor*.

41 Cr. L. J. 523 :
187 I. C. 862 : 6 B. R. 564 :
12 R. P. 662 : A. I. R. 1940 Pat. 603.

———S. 233—*Misjoinder of charges—Distinct offences forming part of the same transaction.*

There shall be a separate charge for every distinct offence, even though it forms part of the same transaction. The joinder in one charge of two such offences vitiates the trial. *Gul Mahomed Sircar v. Cheharu Mandal*.

3 Cr. L. J. 141 :
10 C. W. N. 53.

———S. 233—*Misjoinder of charges—Effect.*

Single charge framed for grievous hurt to one person and simple hurt to another—Accused not prejudiced—Formal defect, is cured. *Meddi Lal v. Emperor*.

35 Cr. L. J. 935 :
149 I. C. 231 : 11 O. W. N. 680 :
6 R. O. 538 : A. I. R. 1934 Oudh 244.

———S. 233—*Misjoinder of charges—Effect.*

The joinder of two distinct offences under one

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charge is an illegality which is fatal to the proceedings. *Asghar Ali v. Emperor*.

14 Cr. L. J. 449 :
20 I. C. 609 : 17 C. W. N. 827 :
40 Cal. 846.

———S. 233—*Misjoinder of charges—Effect.*

The joinder of two distinct offences in a single charge amounts only to an irregularity curable under S. 537, Cr. P. C. *Ajgar Shaikh v. Emperor*.

30 Cr. L. J. 799 :
117 I. C. 596 : 32 C. W. N. 839 :
48 C. L. J. 138 : I. R. 1929 Cal. 548 :
A. I. R. 1928 Cal. 700.

———S. 233—*Misjoinder of charges—Thefts committed during riot—Same transaction—Distinct offences.*

The accused went to certain colliery premises for purpose of taking forcible possession thereof, and on the same day, two of the accused stole from the office premises of the colliery two articles—one a box and the other a bicycle. The theft was committed as part and parcel of the same transaction. The main charge against the accused was one under S. 147, I. P. C. The second charge against two of them was in respect of the theft of the box and the bicycle. *Held*, that the second charge on the face of it charged the theft of the two articles as one offence and did not include two distinct offences so as to contravene the provisions of S. 233. *Bejoy Krishna Mukherjee v. Satish Chandra Mittra*.

21 Cr. L. J. 682 :
57 I. C. 22 : A. I. R. 1920 Cal. 571.

———S. 233—*Misjoinder of charges—Charges under Ss. 408 and 477-A, I. P. C.*

The accused falsely entered the name of his private servant in the muster-roll of labourers and paid him wages every month out of the Municipal funds for over a year. He was charged under S. 408, Penal Code, and under S. 477-A. The charge covered the acts committed by him during 12 months: *Held*, that the trial was illegal. *Dubri Misir v. Emperor*.

32 Cr. L. J. 540 :
130 I. C. 350 : 8 O. W. N. 92 :
I. R. 1931 Oudh 158 :
A. I. R. 1931 Oudh 86.

———S. 233—*Misjoinder of charges.*

Where three distinct charges, each comprising offences under Cl. (a), (3) (b) and (2) of S. 103, Presidency Towns Insolvency Act, are joined together in the same charge, the joinder is illegal. *Khimchand v. Emperor*.

35 Cr. L. J. 1477 :
151 I. C. 934 : 36 Bom. L. R. 639 :
7 R. B. 96 : A. I. R. 1934 Bom. 303.

———Ss. 233, 234—*Misjoinder of charges—Falsification of accounts—Each entry, whether separate offence—Joinder of more than three charges at one trial—Illegality.*

The joinder of more than three charges at a single trial is fatal to the trial. Each false entry which amounts to an act of falsification, constitutes a separate offence, although a number of false entries might be proved to cover one defalcation. Where

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under one of three charges against an accused person in the same trial, there were two acts of defalcation covered by two false entries and the only thing to connect them together was the fact that the goods were received the same day from the same depositor: *Held*, that this amounted to a joinder of really more than three charges in a single trial and was fatal to the trial and that the convictions were liable to be quashed. *Chakrakodi Shama Shastri v. Emperor*.

24 Cr. L. J. 462 :

72 I. C. 622 : 1922 M. W. N. 476 :

44 M. L. J. 67 : A. I. R. 1922 Mad. 435.

—Ss. 233, 234—*Misjoinder of charges—Ferry contractor's servant—Excessive toll—Former's guilty connivance—Presumption.*

The fact that the servant of a ferry contractor, levied toll without the knowledge of his master, does not give rise to a presumption as to the latter's guilty connivance. Each individual levy of excess toll constitutes a separate offence, and Ss. 233 and 234, Cr. P. C. would apply. *Emperor v. Arumukham Pillai*.

13 Cr. L. J. 124 :

13 I. C. 780 : 1912 M. W. N. 69.

—Ss. 233, 234, 235—*Misjoinder of charges—Charge for theft of several articles—Conviction for criminal breach of trust on various occasions not within one year—Separate charges, necessity of.*

An accused was charged under S. 381, Penal Code, with theft in respect of eight necklaces, which were in the possession of his employer. The Magistrate found that the accused had not committed theft but that he had committed criminal breach of trust in a series of transactions. The actual misappropriation with regard to one of the necklaces was found to have happened in February, 1922, and with regard to another in January, 1924: *Held*, that the offence in regard to the necklaces being one of criminal breach of trust, and the transaction in regard to each necklace being apparently a separate one, it was necessary to charge the accused separately with each offence, and that although it might technically be said that there was no misjoinder of charges as only one charge was drawn, the trial was vitiated in the same way as if there had been a misjoinder of charges. *Raman Lal v. Emperor*.

28 Cr. L. J. 171 :

99 I. C. 603 : 25 A. L. J. 217 :

49 All. 312 : A. I. R. 1927 All. 223.

—Ss. 233, 234, 235—*Misjoinder of charges—Single charge combining several murders unconnected with each other, legality of.*

The accused committed five murders one day—three in one village in the forenoon and two in another in the afternoon. The trial Court, under the impression that the accused was being tried for two murders, framed a single charge against him, upon which he was convicted and sentenced to death: *Held*, that the charge as framed contravened Ss. 233 and 234, and as the triple murder and the double murder was not so connected together as to represent a series

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of acts forming the same transaction, the procedure of the Court was not justified by S. 235. *Fauja v. Emperor*. 20 Cr. L. J. 353 : 50 I. C. 833 : 1 U. P. L. R. (A.) 21 : 17 A. L. J. 614 : A. I. R. 1919 All. 239.

—Ss. 233, 234, 235, 195 (1) (b)—*Misjoinder of charges—Accused tried for offences under Ss. 409, 193, 477-A read with S. 109, Penal Code—Complaint by Civil Court held necessary to give jurisdiction to Magistrate to inquire into charge, having regard to charge under S. 193, Penal Code—Fabrication of false evidence relating to items unconnected with charge of criminal breach of trust—Distinct offence,—S. 234 Application of—Different advances of money made by accused from time to time—"Same transaction" meaning of—Charge joining together offences under S. 193 and S. 477-A, Penal Code, legality of.*

Accused Nos. 2 and 3 were directors of a certain bank and accused No. 8 was its manager and accused No. 1 its legal adviser. Accused Nos. 1 to 7 were partners in a certain firm. The Articles of Association of the bank required that all advances to customers beyond Rs. 100 were to have the sanction of the director. Accused No. 8 advanced large amounts during the period 1928 to 1931 to the firm of which accused Nos. 1 to 7 were partners, without the sanction of the director and without taking any security from them. Thus on November 13, 1931, the firm was indebted to the bank to the extent of Rs. 32,008-7-0, and on that date, accused Nos. 1 to 7 executed an instalment bond for Rs. 30,000 in favour of the bank and the balance was carried over to the new account. The bond was placed on the record of the bank and the corresponding entries were made in the books of the bank. The bank instituted a suit against the firm to recover the amount due and obtained a decree. While this suit and an application for winding-up the bank were pending, criminal proceedings were started against the accused in respect of the different transactions and they were charged with offences under Ss. 408, 409, 193 and 477-A read with S. 109, I. P. C. The charge of criminal breach of trust was in respect of six items between November 23, 1930, and April 21, 1931: *Held*, (i) that having regard to the charge under S. 193, I. P. C., a complaint by the Civil Court was necessary to give jurisdiction to the Magistrate to inquire into that charge and the defect affected the entire proceedings before the Committing Magistrate and the trial Court and the whole proceedings were vitiated by the illegality committed; (ii) that the offence of fabrication of false evidence relating to items partly or wholly unconnected with the charge of criminal breach of trust was a distinct offence and the joinder of the two charges offended against the prohibition contained in S. 233, Cr. P. C., unless the case was brought within the exception to that section; (iii) that S. 234, Cr. P. C., did not apply, for the offences were not of the same kind, i. e. punishable with the same amount of punishment under the same section of the I. P. C. The different advances between

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1928 and 1931, made from time to time upon different applications, though a series of similar acts, did not constitute one transaction within the meaning of the expression "the same transaction" in S. 235, Cr. P. C.; (iv) that the charge framed was seriously defective in that it had joined together the offences under S. 193, and S. 477-A of the I. P. C. contrary to the provisions of S. 235 (1), Cr. P. C. *Ramchandra Rango Sorekar v. Emperor*.

40 Cr. L. J. 579 :

181 I. C. 870 : 41 Bom. L. R. 98 :

11 R. B. 356 : A. I. R. 1939 Bom. 129.

———Ss. 233, 234, 235, 236, 239—*Misjoinder of charges—Criminal breach of trust—Falsification of accounts—Penal Code, Ss. 408, 477-A.*

The accused was arraigned on three charges: (1) that on a certain date, he committed criminal breach of trust in respect of Rs. 500 entrusted to him by his employer; (2) that he, on the same day, falsified his employer's cash book by making an incorrect entry regarding the said Rs. 500, and committed an offence under S. 477-A, I. P. C., and (3) that on a subsequent day he again falsified his employer's cash book by showing the total on the credit side as less by Rs. 500 than he ought to have shown it, and so committed another offence under S. 477-A, I. P. C.; *Held*, that although there was a similarity as to the amount dealt with the second falsification alleged had nothing whatever to do with the alleged breach of trust in the first charge and the first falsification; that, therefore, there was no connection between the third charge on the one hand and the first and second on the other; that there was a misjoinder of charges and therefore, either the first or the third charge must go. *Nitya Gopal v. Jiban Krishna*.

14 Cr. L. J. 428 :

20 I. C. 412 : 40 Cal. 318.

———Ss. 233, 234, 235, 236 and 239—*Misjoinder of charges—More than three offences at one trial—Irregularity.*

The appellant was tried at one and the same trial for three offences under S. 408 and three offences under S. 467, Penal Code; *Held*, that the proceedings were irregular and that the trial of the accused in respect of six offences at one and the same trial, although they were committed within the space of 12 months, contravened the rule laid down in S. 233 even when read with S. 234, Cr. P. C. To hold that S. 234 covers all offences, committed in the course of separate transactions, when the number of offences is more than three, would be straining the language beyond all bounds. *Sheo Saran Lal v. Emperor*.

11 Cr. L. J. 285.

5 I. C. 896 : 7 A. L. T. 225.

———Ss. 233, 234, 235, 423—*Misjoinder of charges—Criminal breach of trust—Falsification of accounts—Separate transactions.*

Where a person is charged with committing one act of criminal breach of trust and also with falsifying accounts with a view to conceal that particular defalcation, the two may be

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said to form part of the same transaction. Where, however, an accused person is charged with three separate acts of breach of trust and three separate acts of falsification of accounts, one in respect of each act of breach of trust, the charges cannot be tried together in one trial as there are three separate transactions in respect of each act of breach of trust coupled with the corresponding falsifying of accounts, and that the two offences are not offences of the same kind. *Emperor v. Manant K. Mehta*.

27 Cr. L. J. 305 :

92 I. C. 689 : 27 Bom. L. R. 1343 :

49 Bom. 892 : A. I. R. 1926 Bom. 110.

———Ss. 233, 235—*Misjoinder of Charges—One transaction.*

The accused who was in the service of the complainant was entrusted with two cheques for encashment on September 20, 1908, and told to pay the freight and take delivery of certain goods from a Railway Co. from the proceeds. He cashed them on 21st, but on the following day when asked by his master, he denied having done so. On September 26, he induced under promise of immediate payment a clerk of the Railway Co. to give him delivery of the goods without payment and then absconded. He was tried in one trial for the offences of Criminal misappropriation and cheating and convicted; *Held*, that the offence of Criminal misappropriation against the master of the accused was complete on September 21, and he committed the offence of cheating afterwards, that the two offences committed against two separate persons were wholly unconnected, and that the joinder in one trial of the two charges was illegal. *Parmeshwar Lal v. Emperor*.

10 Cr. L. J. 476 :

4 I. C. 28 : 13 C. W. N. 1089.

———Ss. 233, 235, 239—*Misjoinder of charges—Charges of murder, arson and conspiracy—Joint trial of several accused—Prejudice to accused—Embarrassment to Jury—Re-trial.*

The accused were charged at one trial with the offences of conspiracy to murder, murder and arson, in that they were alleged to have set fire to a house, barred the doors, burnt most of the inmates and killed such as tried to escape. It appeared that there was really no foundation for the charges of murder and arson as regards most of the accused according to the facts alleged by the prosecution. The Jury, however, found all the accused guilty on all the charges; *Held*: that since a multitude of charges not having any proper foundation and obscuring the case which the accused had to meet were put forward, the accused were prejudiced in their defence and the Jury misled and confused, and that, therefore, the accused should be re-tried. Per *Mukerji, J.*—The provisions of S. 233 of the Cr. P. C. are mandatory. The provisions of Ss. 235 and 239, Cr. P. C. are merely enabling ones, and if there is a risk of embarrassing the defence by a joinder of the charges, such joinder should not be resorted to. *Alimuddin Naskar v. Emperor*.

26 Cr. L. J. 487 :

85 I. C. 231 : 29 C. W. N. 173 :

40 C. L. J. 541 :

52 Cal. 253 : A. I. R. 1925 Cal. 341.

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—Ss. 233, 235 239—*Misjoinder of charges—Joint trial—Distinct and separate offences—One transaction—Prosecution's duty to prove—Receiving and retaining stolen property—Presumption of dishonest receipt or retention.*

Where the accused were charged with having dishonestly received or retained eight sets of cooking utensils belonging to, and stolen from, eight different persons on eight different dates: *Held* that in the absence of evidence that the acts of receiving or retaining the stolen property were so connected together as to form one transaction, the charge as well as the trial were illegal: *Held further*, that the mere fact that there was no evidence of separate receipt or retention did not justify the procedure. It lay upon the prosecution to establish the facts which would justify such a charge. The dishonest receipt or retention of each article constituted a separate offence, and the accused could only be tried for three of such offences committed within one year unless it were shown that the receipt or retention of all the articles formed one transaction.

Ram Sarup Benia v. Emperor. 2 Cr. L. J. 847 : 9 C. W. N. 1027.

—Ss. 233, 239—*Misjoinder of charges—One transaction.*

After certain Civil Court peons had been obstructed in executing a decree, the rioters, after consultation and at the instance of two of them, proceeded to the *kutchery* of the decree-holder in order to beat his son and his *tahsildar*, and brought out the latter whom they took to the house of the judgment-debtor and violently assaulted him there: *Held*, that it cannot be said that there was one and the same transaction in the course of which the two offences, one of obstructing the execution of the decree and the other of assaulting the *tahsildar*, were committed. *Laskiri v. Emperor.* 10 Cr. L. J. 452 : 4 I. C. 1 : 13 C. W. N. 1113.

—Ss. 233, 239—*Misjoinder of charges or offences—Illegal gratification—Receipt of lump sum collected from different persons—Penal Code (Act XLV of 1860), Ss. 161, 165.*

Certain sums of money were collected from land-holders of various villages and were paid in a lump sum by the persons who had collected them to the accused, a *zilladar* in the Irrigation Department, with the object of inducing him to show favour in his official capacity to their village as a whole. The accused was charged at the trial with having received a lump sum: *Held*, that the charge, as framed, was legal and correct. It was not necessary to charge the accused with an offence under S. 161, Indian Penal Code, in respect of every item contributed by the various landholders, and consequently there was no misjoinder of offences or charges. *Girdhari Lal v. Emperor.*

12 Cr. L. J. 217 :

10 I. C. 156 : 11 P. R. 1911 Cr. : 32 P. W. R. 1911 Cr. : 146 P. L. R. 1911.

—Ss. 233 and 239—*Misjoinder of charges—Receiving stolen property knowing it to be stolen—House-breaking.*

Where a Magistrate jointly tried and convicted at one trial three accused persons, one

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of an offence under S. 457, I. P. C., and the other two of an offence under S. 411, I. P. C., and it did not appear that the theft and the receiving of stolen property were parts of the same transaction: *Held*, that the trial was illegal and the conviction must be set aside. *Gurditta v. Emperor.*

2 Cr. L. J. 30 :

6 P. L. R. 36.

—Ss. 233, 239—*Misjoinder of charges—Rescue and theft, offences of.*

Charges of theft and rescuing an offender, cannot be tried together; and when there has been one trial in respect of both the offences, the case is within the purview of *Subrahmanya Ayyar's* case 25 Mad. 61 : 28 I. A. 257, and a new trial must be directed. *Tilakdhari Mahdon v. Lali Singh.*

9 Cr. L. J. 147 :

1 I. C. 69 : 13 C. W. N. 804.

—Ss. 233, 239, 537—*Misjoinder of charges and parties, effect of—"Offences committed in same transaction", meaning of—Joint trial of bribe-taker and bribe-giver.*

A misjoinder of charges and parties vitiates the trial for a disregard of an express provision of law as to the mode of trial is not a mere irregularity curable under S. 537, Cr. P. C. In "offences committed in the same transaction" there should be clear proximity of time and space, clear continuity of action and sufficiently specific community of purpose. The law punishes the giver as well as the taker of bribe and the transaction must be regarded as one although there are two parties to it and separate offences may be said to be committed in respect of it. *C. B. Ring v. Emperor.*

31 Cr. L. J. 65 :

120 I. C. 340 : 31 Bom. L. R. 545 :

53 Bom. 479 : A. I. R. 1929 Bom. 236.

—Ss. 233, 239, 537—*Misjoinder of charges—Joint trial—Offences in different villages on different nights—One accused charged with offences under Ss. 457 and 380, Penal Code, and other with offences under Ss. 457 and 380 or 411, Penal Code—Same transaction—Irregularity or illegality, whether curable.*

S. 239, Cr. P. C. does not permit the joint trial of accused for different offences committed in the course of different transactions. Where, in respect of offences of house-breaking and theft committed in two different villages on two distinct nights, the 1st accused was charged with the offences under Ss. 457 and 380, I. P. C., and the second accused with those under Ss. 457 380 or 411, I. P. C. and both the accused were tried at one trial in respect of the above charges: *Held*, that the trial was bad: *Held further*, that the charge was bad for vagueness, as it did not specify the articles stolen or the name of the person whose house was broken into and the place of offence was given only as one village whereas the trial was for offences committed at that village as well as another. Per *Seshagiri Aiyar, J.*—Disregard of a plain duty cast by law on a Magistrate cannot be condoned with reference to S. 537, Cr. P. C. *Mala Mchalakali v. Subbadu.*

16 Cr. L. J. 298 :

28 I. C. 522 : 2 L. W. 265 :

38 M. L. J. 381 : A. I. R. 1916 Mad. 571.

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———Ss. 233, 535—*Misjoinder of charges—Persons separately fabricating evidence to defraud complainant, whether can be tried jointly.*

Four persons were convicted in a joint trial under S. 193, I. P. C., two of them for having falsely executed one *kabuliyat* and the other two for having falsely executed another *kabuliyat* for the purpose of defrauding the complainant: *Held*, that there was a misjoinder of charges, that is to say, there ought to have been at least two trials, one in respect of each *kabuliyat*. *Emperor v. Fazal Sheikh*.
18 Cr. L. J. 833 :
41 I. C. 657 : 21 C. W. N. 756 :
A. I. R. 1918 Cal. 471.

———Ss. 233, 537—*Misjoinder of charges—Attempts to cheat on different dates,—Defect, if cured—Several charges, if necessary.*

A joinder of two offences committed on two different dates, one following the other, in one charge is an illegality which vitiates the trial and cannot be cured by S. 537, Cr. P. C. Where an accused person attempts to cheat a whole body of villagers and speaks to them in a body and not to each individual villager for the purpose, he may be tried on one charge for each attempt to get money from them. *Johan Subrana v. Emperor*.
3 Cr. L. J. 111 :
2 C. L. J. 618 : 10 C. W. N. 520.

———Ss. 233, 537—*Misjoinder of charges—Different offences—Trial, separate.*

A joinder in one charge of two offences committed on one and the same date is an illegality which vitiates the trial and is not covered by S. 537, Cr. P. C. There should be a separate charge for each distinct offence as provided by S. 233. Two persons accused of different offences committed in different transactions relating to different persons should be tried separately. *Tilakdhari Das v. Emperor*.
6 Cr. L. J. 442 :
6 C. L. J. 757.

———Ss. 233, 537—*Misjoinder of charges—Joinder of charges under Ss. 380 and 414, Indian Penal Code, legality of.*

The joinder of charges under Ss. 414 and 380, I. P. C., being opposed to S. 233, Cr. P. C. is not merely irregular within the meaning of S. 537, Cr. P. C., but illegal. *Emperor v. Was-sanji Dayal*.
1 Cr. L. J. 834 :
6 Bom. L. R. 725.

———S. 233—*Non-compliance—Effect.*

A failure to comply with the provisions of S. 233, Cr. P. C., may or may not be fatal according to the circumstances of the case. *Ramdin Lal v. Emperor*.
38 Cr. L. J. 97 :
165 I. C. 970 : 18 P. L. T. 91 :
3 B. R. 117 : 9 R. P. 246 :
A. I. R. 1937 Pat. 176.

———S. 233—*Non-compliance—Effect.*

Breach of the provisions of S. 233, Cr. P. C., is not a mere irregularity but an illegality which vitiates the whole trial. *Dubri Misir v. Emperor*.
32 Cr. L. J. 540 :
130 I. C. 350 : 8 O. W. N. 92 :
I. R. 1931 Oudh 158 :
A. I. R. 1931 Oudh 86.

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———S. 233—*Non-compliance—Effect.*

Failure to comply with the provisions of S. 233 will be condoned where the offences are committed in one transaction, the evidence is identical and where care has been taken to arrive at a distinct finding each regarding one of the offences charged. *Sachchidanand Parsad v. Emperor*.
34 Cr. L. J. 892 :
144 I. C. 936 : 14 P. L. T. 580 :
6 R. P. 130 : A. I. R. 1930 Pat. 488.

———S. 233—*Non-compliance—Effect.*

The illegality with regard to S. 233, Cr. P. C., does not necessarily vitiate the trial as a whole. *Dur Mahomed v. Emperor*.
35 Cr. L. J. 1337 :
151 I. C. 494 : 28 S. L. R. 119 :
7 R. S. 55 :
A. I. R. 1934 Sind 57.

———Ss. 233, 238, 537—*Non-compliance with S. 233—Effect—Accused committed to Court of Session under S. 304, Penal Code—No charge under S. 385 nor opportunity given to meet such charge—Conviction under S. 385, legality of.*

The disregard of an express provision of law as to the mode of trial is not a mere irregularity which could be remedied by S. 537, Cr. P. C. S. 385, I. P. C., is not a minor offence with particulars common with an offence under S. 300. Both of these sections have got distinct and independent ingredients. An offence under S. 385 brings into the field an entirely different set of circumstances which have nothing whatsoever to do with an offence under S. 300. Where therefore an accused is committed to the Court of Session under S. 304, I. P. C., and is never charged under S. 385, I. P. C., and no opportunity is given to him to meet that charge, he cannot be convicted under that section. *Thakur Singh v. Emperor*.
40 Cr. L. J. 948 :
184 I. C. 409 : 1939 A. L. J. 547 :
12 R. A. 226 : 1939 A. W. R. 577 :
A. I. R. 1939 All. 665.

———S. 233—*Prohibition.*

An enquiry before a Committing Magistrate is not a trial and does not come within the prohibition contained in S. 233, Cr. P. C. *In re : Sessions Judge of Tanjore*.
20 Cr. L. J. 514 :
51 I. C. 674 : 35 M. L. J. 259 :
A. I. R. 1919 Nag. 158.

———Ss. 233, 231, 439—*Revision—Duty—Illegal joinder of charges—Interference.*

The accused was tried at one trial for committing eleven different offences of the same kind: *Held*, that although the joinder of charges was illegal and the conviction therefore bad, the High Court was not bound to interfere in revision as the accused did not appear to have been prejudiced by the misjoinder, but had pleaded guilty and had made no application for revision. *Emperor v. Tha Byaw*.
9 Cr. L. J. 15 :
4 L. B. R. 315.

———Ss. 233 and 235—*Same transaction,*

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what is — Multifariousness — Misappropriation extending to two years.

The accused were charged with misappropriation of certain amounts belonging to a company during a period of 2 years and with fabrications of accounts and cheating. Objection taken to the trial under S. 233 was overruled and the accused were acquitted of the charge of falsification of accounts and cheating but were convicted of misappropriation. On appeal, *held*, per *Benson, J.*, that the misappropriation extending over the whole period of the company's existence could not be said to have been committed in the course of the same transaction within S. 233 of the Cr. P. C. and the trial was, therefore, illegal. Per *Abdur Rahim, J.*—The mere fact that the company was in fact a bogus concern and that the object of all the accused was to defraud the public would not make the various offences charged against them fall within S. 233. *Chorugudi Venkatadri v. Emperor.*

11 Cr. L. J. 258 (b) :
5 I. C. 847 : 1 M. W. N. 65 :
7 M. L. T. 299.

———S. 233—Same transaction—Manufacturing, bottling, possessing and selling excisable article and attempting to render denatured spirit, fit for human consumption, if same transaction—Trial as in summons case—S. 233, if excluded.

The acts of manufacturing an excisable article seized and brought into Court, bottling it, possessing it, selling from time to time various other articles not before the Court, and attempting to render denatured spirit fit for human consumption do not constitute the same transaction. Where an accused is charged with doing all those things in one charge, and tried at one trial, the trial is vitiated by a misjoinder of charges in contravention of the provisions of S. 233 of the Cr. P. C. The fact that the trial has taken place as in a summons case does not exclude the application of S. 233 of the Cr. P. C. *C. U. N. Biswas v. Emperor.*

15 Cr. L. J. 73 :
22 I. C. 425 : 9 C. L. J. 53 :
18 C. W. N. 586 : 41 Cal. 694 :
A. I. R. 1914 Cal. 603.

———S. 233—Scope—Joint trial, what is—Discharge of accused in warrant case—Obligation as to joint trial.

The provision contained in S. 233 relates to trials and not to enquiries into the guilt of the accused, and as, in a warrant case, the trial proper does not begin until the accused is charged and called upon to answer, no question of an illegal joint trial arises when the accused are discharged under S. 253, Cr. P. C. *Manbodh Singh v. Jhaboolal.*

30 Cr. L. J. 404 :
115 I. C. 164 : I. R. 1929 Nag. 100 :
A. I. R. 1929 Nag. 237.

———Ss. 233 to 239—Scope of.

The general rule is that contained in S. 233, Cr. P. C., namely, that for every distinct offence of which any person is accused, there shall be a separate charge, and every such, charge shall be tried separately. To this rule

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there are several exceptions, *viz.*, those contained in Ss. 234, 235, 236, 239. The exception embodied in S. 234, although authorising the combination of three charges at one trial, does not bar the separate trial of the accused for each separate offence. *Emperor v. Kanshinath.*

11 Cr. L. J. 337 :
5 I. C. 970 : 12 Bom. L. R. 226.

———S. 233—Separate trials—Possession of stolen property.

Where a quantity of stolen property is found in the possession of an individual in circumstances which lead to the conclusion that he was retaining the whole of such property knowing it to have been stolen, there cannot be separate trials in respect of separate portions of the stolen property. *Ramnath Rai v. Emperor.*

36 Cr. L. J. 342 :
153 I. C. 423 : 13 Pat. 161 : 7 R. F. 339 :
A. I. R. 1934 Pat. 483.

———Ss. 233, 234, 537—Simultaneous trial—Cross-cases of rioting—Irrregularity.

In trial of two cross-cases of rioting, one case was taken up first, and some witnesses for the prosecution were examined. The other case was taken up on the next day, and certain witnesses for the prosecution in that case were examined. The order sheets showed that on certain days certain witnesses were examined in both the cases, while, on other days, witnesses in one or the other case were examined, and in some instances, some of the accused in one case were examined as witnesses for the prosecution in the other. The charges in the two cases were framed at an interval of four days, but the evidence was completed, and arguments were heard on one and the same day, and two days after both the cases were disposed of by separate judgments: *Held*, that the trial was not vitiated by reason of the procedure adopted by the Magistrate, nor were the accused in any way prejudiced thereby. It was an advantage to the accused rather than a disadvantage that the Magistrate had had before him the evidence in both the cases before he made up his mind as to which case was true and which untrue. *Sahadev Abir v. Emperor.*

1 Cr. L. J. 199 :
8 C. W. N. 344.

———Ss. 233, 239—Simultaneous trial—Counter-cases—Accused, whether entitled to have trial set aside.

The Cr. P. C., contains no prohibition to the holding of simultaneous trials in counter-cases and the provisions of Ss. 233 and 239 are in applicable to such trials, as a simultaneous trial is in no sense a joint trial, and unless it can be shown that the procedure adopted has prejudiced the accused in his defence, he is not entitled to have the whole trial set aside. *Dhako Singh v. Emperor.*

21 Cr. L. J. 739 :
51 I. C. 243 : 1 P. L. T. 498 :
A. I. R. 1920 Pat. 177.

———S. 234.

———Applicability of.

———Application of.

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- Charge.
- Irregularity.
- Joinder of charges.
- Joint trial.
- Misjoinder of charges.
- Order.
- Scope.
- S. 234.

See also (i) Benal Ferries Act, 1885, S. 16.

(ii) Cr. P. C., 1898, Ss. 222, 225, 227, 232, 233, 234, 239, 333.

(iii) Joinder of charges.

(iv) Joint trial.

(v) Penal Code, Ss. 124-A, 147, 409, 420, 477-A.

(vi) Revision.

———S. 234—*Penal Code (Act XLV of 1860), S. 120-B—Misjoinder of charges—Joint trial for conspiracy and several murders and other offences committed in pursuance thereof, legality of.*

Five persons were charged with twenty-two others on eight charges. The main charge was one under S. 120-B, I. P. C., of criminal conspiracy. The other charges related to various incidents and offences committed in pursuance of that conspiracy including seven murders, two attempted murders, four of robbery, two of grievous hurt, and eleven of dacoity. The petitioners were found guilty of three murders specified in one of the charges and sentenced to death. The High Court upheld the conviction holding that there was no misjoinder. The petitioners applied for special leave to appeal to the Privy Council contending that there was misjoinder of charges and that the trial was consequently illegal. Their Lordships dismissed the petition. *Mukand Singh v. Emperor*. 29 Cr. L. J. 673 : 110 I. C. 225 : 8 Lah. 230 : 55 I. A. 45 : A. I. R. 1929 P. C. 215.

———S. 234—*Penal Code (Act XLV of 1860), S. 411—Receiving or retaining stolen property—Several parcels, charge relating to—Procedure—Stolen property, whether can be restored to owner by anybody except Court.*

Where no evidence, one way or the other, exists as to whether receipt of various parcels of stolen property by an accused person took place at the same or different dates, no presumption can be drawn or assumption made as against the accused either that the offence of retention by receiver constitutes one or more than one connected transaction. The prosecution cannot base its case or justify its procedure upon any presumption or assumption operating against an accused unless such presumption or assumption is grounded upon evidence. In answer to a charge under S. 411, I. P. C., relating to several parcels of property, an accused person may plead either that his retention of the various parcels of stolen goods was one transaction in which case he can only be tried once under S. 403, Cr. P. C.; or that such retention constituted a set of disconnected separate offences in which case he can, at one trial, be charged only in

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respect of three parcels, under S. 234, Cr. P. C. But he cannot plead both. If he contends that his retentions were one transaction, he can be charged at one trial with retention of the whole of the stolen property bunched and listed together; whereas if he pleads that the retentions were all distinct and separate offences, separate trials could be held in respect of each parcel of stolen property. The only safe course to adopt, in cases where no date of reception of stolen property is known or can be proved by the prosecution, is to frame a charge on the presumption that the property retention constituted one transaction. If property is found in the possession of an individual which is alleged to be stolen property, and if a charge embodying three parcels of such stolen property is preferred against the retainer and the retainer is convicted or acquitted, it by no means permits him to maintain possession of other property found in his possession which persons other than he claim as their own; and, although it may be that he cannot, in respect of that other property, be further criminally proceeded against, the rightful owners, have a civil claim for recovery which can be enforced in a simple manner. There is no warrant for handing over by any authority other than through the medium of a Court, property not included in the criminal proceedings to persons who alleged that such property has been stolen from them and is in the wrongful possession of the party in whose possession it has been found. *Emperor v. Bishan Singh*. 25 Cr. L. J. 738 : 81 I. C. 226 : 1924 Pat. 126 : 5 P. L. T. 319 : 3 Pat. 503 : A. I. R. 1925 Pat. 20.

———Ss. 234, 537—*Penal Code (Act XLV of 1860), S. 406—Charge—Charge not limited to offences committed within 12 months—Validity of trial.*

Where the charge in a case under S. 406, Penal Code, was not limited to offences committed within a period of twelve months but included offences committed within a period of fifteen months: *Held*, (i) that the charge offended against the provisions of S. 234, and was illegal; (ii) that the defect was more than a mere irregularity curable by S. 537, and the question whether it had occasioned a failure of justice did not arise. *Kalu Mian v. Emperor*. 32 Cr. L. J. 195 : 128 I. C. 816 : 34 C. W. N. 959 : I. R. 1931 Cal. 112 : A. I. R. 1931 Cal. 357.

———Ss. 234, 235—*Construction "a person", meaning of.*

The words 'a person' in S. 234 and 235 include a set of persons acting together, having reference to S. 13 (2) of the General Clauses Act. *Kumaramathu Pillai v. Emperor*. 20 Cr. L. J. 354 : 50 I. C. 834 : 1919 M. W. N. 199 : 25 M. L. T. 379 : 10 L. W. 239 : A. I. R. 1919 Mad. 487.

———S. 234—*Applicability of—Joint trial of two accused for distinct offences, legality of.*

S. 234 only applies to the trial of a single person for separate offences of the same kind,

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and not to cases in which more persons than one are tried jointly. *Nga Sa Pa v. Emperor*.

21 Cr. L. J. 794 :

58 I. C. 522 : 3 U. B. R. 1919 187 :

A. I. R. 1920 U. Bur. 28.

———**S. 234—Application of—Charge under S. 401, I. P. C.**

S. 234 has no application to a charge under S. 401 of the Penal Code. *Kasem Ali v. Emperor*.

21 Cr. L. J. 386 :

55 I. C. 994 : 47 C. L. J. 192 :

A. I. R. 1920 Cal. 87.

———**S. 234—Charge—Criminal breach of trust—Form of charge.**

In a charge of criminal misappropriation, there were three counts. Each count specified the sum of money alleged to have been misappropriated by the accused on a particular day ; but in two out of the three cases, the total sum consisted of three separate items in each instance: *Held*, that a charge so framed did not offend against S. 234. *Emperor v. Ishtiaq Ahmed*.

1 Cr. L. J. 637 :

24 A. W. N. 165 : I. L. R. 27 All. 69.

———**S. 234—Charge—Trial for object of conspiracy not within Court's cognizance—Other objects within Court's cognizance—Omission of one head beyond Court's cognizance—Agreement between conspirators sufficient for charge of conspiracy.**

Where a trial starts for an object of the conspiracy, which is beyond the cognizance of the Court, and other objects of the conspiracy which are within the cognizance of the Court, the omission of the head which is beyond the cognizance of the Court, cannot affect the jurisdiction of the Court as regards the rest of the charge. For a charge of conspiracy only an agreement between the conspirators is sufficient, and an accused person can be tried for all other offences committed in the course of the conspiracy even if those offences are more than three. *Bishambhar Nath Tandon v. Emperor*.

26 Cr. L. J. 1602 :

90 I. C. 706 : 2 O. W. N. 760 :

A. I. R. 1926 Oudh 161.

———**Ss. 234, 235, 227, 229—Charge, alteration of—Power of trying Magistrate to direct new trial—Discretion under S. 229.**

There is nothing in the wording of S. 227, Cr. P. C., which limits the operation of that section to mere irregularities or its operation to any particular stage of the case prior to the time that judgment is given or the verdict of the jury is returned. Until that time, it is open to the Court to alter or add to the charge and the provisions of Ss. 228, 229, 230 and 231, Cr. P. C., amply provide that the accused shall not be embarrassed or prejudiced by the alteration of the charge. The Magistrate must use a careful and wise discretion and where, evidence relating to six charges has gone on the record, whereas there should be evidence only as to three, it may be well the Magistrate would exercise a wise and just discretion in directing a new trial under the provisions of S. 229, Cr. P. C., but the trying Court itself has that power and there is no need to refer

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the case to the High Court. *Emperor v. Mohammad Ismail*.

38 Cr. L. J. 324 :

166 I. C. 815 : 9 R. S. 156 :

30 S. L. R. 391 : A. I. R. 1937 Sind 1.

———**Ss. 234, 235—Irrregularity of procedure.**

Where a Magistrate on discovering that he had improperly joined together two charges, merely struck out one of the charges already framed and convicted the accused under the other charges: *Held*, that the procedure adopted was illegal and that the conviction could not be sustained. *Krishnamurthi Iyer v. Narayanaswami Iyer*.

26 Cr. L. J. 1618 :

90 I. C. 914 : 49 M. L. J. 93 :

22 L. W. N. 402 : 1925 M. W. N. 746 :

A. I. R. 1925 Mad. 1065.

———**S. 234—Joinder of charges—Falsification of accounts.**

When a person is charged with falsification of accounts, any number of falsifications may be proved in order to sustain the principal charge of falsification. *Prafulla Chandra Kharghoria v. Emperor*.

32 Cr. L. J. 318 :

129 I. C. 356 : 34 C. W. N. 925 :

I. R. 1931 Cal. 164 : A. I. R. 1931 Cal. 8.

———**S. 234—Joinder of charges.**

Making any number of false statements in the same deposition is one aggregate case of giving false evidence, and charges of false evidence cannot be multiplied according to the number of false statements contained in the deposition. Therefore, a separate charge need not be drawn up for every single utterance of the accused alleged to be false. *Rakhal Chandra v. Emperor*.

10 Cr. L. J. 150 :

2 I. C. 697 : 9 C. L. J. 690.

———**S. 234—Joinder of charges—Offences against different individuals committed by one person—Procedure.**

The conviction of an accused person at one trial for three acts of misappropriation committed against three different persons is not illegal. S. 234 is not limited to cases where the offences have been committed against the same person. *Krishnayya v. Emperor*.

20 Cr. L. J. 71 (a) :

48 I. C. 871 : A. I. R. 1918 Nag. 147.

———**S. 234—Joinder of charges—Offences committed within a year against different individuals, joint trial of—Legality—'Offences of the same kind,' meaning of.**

A joint trial of an accused for offences committed within a year, although the offences may have been against different individuals, is not obnoxious to S. 234. The accused was charged with three counts of theft which took place at three different places and in the houses of three different persons within the course of a year: *Held*, that there was no misjoinder of charges and the trial was not illegal. The expression 'offences of the same kind' in S. 234 means offences punishable under the same section of the Penal Code. *In re : M. S. Raja Rao*.

17 Cr. L. J. 479 :

36 I. C. 159 : 20 M. L. T. 234 :

1916 2 M. W. N. 252 : 4 L. W. 337 :

A. I. R. 1917 Mad. 879.

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———S. 234—*Joinder of charges—'Offences of the same kind', meaning of—Two acts of theft committed in the same night.*

'Offences of the same kind', as referred to in S. 234 and as defined by sub-cl. (2) of the section, need not necessarily have been committed against the same person. Accused was tried at one trial for theft of *bajra* from one man's field and of rice from another man's field on the same night. The Sessions Judge, on appeal, held that the trial was illegal and ordered a re-trial: *Held*, that the accused could be tried at one trial for both the charges. *Emperor v. Jagardeo*. 18 Cr. L. J. 41 : 36 I. C. 873 : 38 All. 458 : A. I. R. 1917 All. 369.

———S. 234—*Joinder of charges—Several accused jointly concerned in one transaction—Joint trial, legality of.*

The sections following S. 233 are empowering sections which require to be used with due discretion and in suitable cases. They specify possible exceptions to the principle laid down in S. 233. Where six accused persons were charged that they while carrying on a systematic swindle, had committed each of the three offences specified in the several charges: *Held*, that there was nothing illegal in the framing of the three joint charges against all the accused or in the trial of these three charges at one and the same trial. *Emperor v. Bechan Pande*. 18 Cr. L. J. 47 : 36 I. C. 879 : 14 A. L. J. 700 : 38 All. 457 : A. I. R. 1917 All. 404.

———S. 234—*Joinder of charges.*

The joinder in one trial of charges of criminal breach of trust in respect of two distinct items with a charge in respect of a gross sum (the items constituting which may be but are not specified) is a joinder of only three charges, and is not bad as contravening the provisions of S. 234, Cr. P. C. "The essence of a Code is to be exhaustive on the matter in respect of which it declares the law and it is not the province of Judge to disregard or go outside the enactment according to its true construction." *Thomas v. Emperor*. 5 Cr. L. J. 133 : I. L. R. 29 Mad. 558.

———S. 234—*Joinder of charges—Trial joint on eight counts, legality of—Procedure.*

Accused was sent up for trial under Ss. 218, 409 and 460 of the Penal Code on eight counts and was convicted on four counts under Ss. 409 and 460: *Held*, (1) that having regard to the provisions of S. 234, the accused could only be tried on three counts in one trial: (2) that the procedure adopted in this case being in contravention of S. 234, the trial was illegal and must be set aside. *Avadh Behari Lal v. Emperor*. 20 Cr. L. J. 784 (b) : 58 I. C. 624 : A. I. R. 1919 All. 413.

———Ss. 234, 222, 225—*Joinder of charges—Joint trial—Charge of cheating—Date of offence not specified, effect of—Charge relating to three offences committed within the same month—Misjoinder.*

In a charge under S. 420, I. P. C., it is proper to state the exact date on which the offence

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is alleged to have been committed, but when the time of the alleged offence is approximately indicated and there is nothing to show that the omission to give the exact date has materially prejudiced the accused at his trial, the omission does not affect the legality of the trial. An accused person was charged with having deceitfully induced three separate persons on three different occasions in the same month to deliver property to him under circumstances which amounted to offences under S. 420 of the Penal Code: *Held*, that having regard to the provisions of S. 234 of the Cr. P. C., there was no misjoinder of charges and that the joint trial was perfectly legal. *Farzand Ali v. Emperor*. 27 Cr. L. J. 909 : 96 I. C. 221 : 1926 Pat. 207 : A. I. R. 1926 Pat. 347.

———Ss. 234, 235—*Joinder of charges—Irregularity—Penal Code, Ss. 408, 477.*

Under S. 235, read with S. 234 of the Cr. P. C. there cannot be a joint trial of three charges for offences under S. 408, Penal Code, and of one under S. 477 (A), Penal Code. *Shuja-ud-Din Ahmad v. Emperor*. 23 Cr. L. J. 258 : 66 I. C. 322 : 20 A. L. J. 320 : 44 All. 540 : A. I. R. 1922 All. 214.

———Ss. 234, 235—*Joinder of charges—Penal Code (Act XLV of 1860), Ss. 408, 477-A—Charge under S. 408—Court, competency of, to try with this charge three charges under S. 477-A.*

Where a person is charged, under S. 408, I. P. C., with criminal breach of trust committed in one year in respect of a lump sum of money, the Court is competent, by virtue of the provisions of Ss. 234 and 235, to try with this charge three charges for an offence under S. 477-A, I. P. C., if committed within the period of one year and forming part of the same transaction as the offence under S. 408. *Gajadhar Lal v. Emperor*. 22 Cr. L. J. 230 : 60 I. C. 424.

———Ss. 234, 235—*Joinder of charges.*

Under Ss. 234 and 235 of the Cr. P. C., a Magistrate is entitled to try an accused person for more offences than one in one trial, if the offences have been committed in the course of the same transaction, or for three different offences of the same kind committed during the course of a year. *Krishnamurthi Iyer v. Narayanaswami Ayer*. 26 Cr. L. J. 1618 : 90 I. C. 914 : 49 M. L. J. 93 : 22 L. W. N. 402 : 1925 M. W. N. 746 : A. I. R. 1925 Mad. 1065.

———Ss. 234, 239—*Joinder of charges—Offences of different kinds committed on different days—Joint trial—Illegality.*

A misjoinder of charges constitutes an illegality invalidating the entire trial. Ss. 234 and 239, Cr. P. C. cannot be combined. Several accused persons were tried at one trial for offences under Ss. 147 and 325, I. P. C. alleged to have been committed on one day and for offences under Ss. 147, 323 and 342, I. P. C. alleged to have been committed on the next day: *Held*, that the joint trial was illegal as the offences for which the accused were tried were neither of the same kind nor committed

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in the same transaction. *Putloo Lal v. Emperor.*

25 Cr. L. J. 466 :

77 I. C. 818 : 21 A. L. J. 820 :

46 All. 54 :

A. I. R. 1924 All. 316.

———Ss. 234 to 240—*Joinder of charges—Joint trial of several accused persons.*

S. 234 which in terms refers to a single person does not apply where several persons are accused jointly. It would be repugnant to the context to read the words "a person" in the section as including several persons. Where the same persons were alleged to have looted some linseed on the 22nd and 23rd days of the same month: *Held*, that they could not be tried jointly for the two offences. *Budhai Sheikh v. Tarap Shcikh.*

3 Cr. L. J. 126 :

10 C. W. N. 32 : I. L. R. 33 Cal. 292.

———Ss. 234, 439—*Joinder of charges—Committal to Sessions on distinct charges—Form of order—Joint trial, illegality of—Sessions Judge, discretion of, to try separately—High Court, jurisdiction of, to revise committal order—Revision.*

A Magistrate ordered the accused to stand his trial before the Sessions Court on three distinct charges of breach of trust and of falsification of accounts in respect of each breach of trust. The accused moved the High Court in revision to quash the commitment on ground that he could not be tried at one and the same trial for six charges: *Held*, that the order was not materially defective as the charges were distinctly specified and that it would be premature for the High Court to interfere with it at that stage as the Sessions Judge could try separately each of the charges. If a joint trial on all the six charges was intended, it was illegal and opposed to Ss. 222 and 234, Cr. P. C. *In re : Krishnamurthi Ayyer.*

17 Cr. L. J. 369 :

35 I. C. 801 : 1916 2 M. W. N. 179 :

A. I. R. 1917 Mad. 612.

———Ss. 234, 535, 537—*Joinder of charges—Misappropriation—Charges in respect of more than three items tried together—Illegality.*

Accused was convicted of criminal misappropriation in respect of twenty-six items which were alleged to have been misappropriated by him within the space of a year: *Held*, that the joinder of charges was illegal and vitiated the trial. *Ganga Prasad v. Emperor.*

25 Cr. L. J. 220 :

76 I. C. 652 : A. I. R. 1923 All. 483.

———Ss. 234 (2), 222—*Joinder of charges of embezzlement.*

One S. N. was put upon his trial for embezzlement of three sums on two days in one year. Only one charge was drawn up, in which all the three sums and the persons from whom they had been collected were specified. He was not charged with three offences but only with one offence under S. 409, I. P. C., and the conviction also was for one offence: *Held*, that the charge was valid, as it was in accordance with Ss. 234 and 222, Sub-s. (2), Cr. P. C. *Sat Narain Tewari v. Emperor.*

3 Cr. L. J. 138 :

10 C. W. N. 51 : I. L. R. 32 Cal. 1085.

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———S. 234—*Joint trial—Offences of same kind within one year—Joint trial, whether regular.*

An accused can be tried for three offences in one trial if the offences are of the same kind within the meaning of S. 234 and if they were committed within the space of one year. *Jamuna Prasad v. Emperor.*

29 Cr. L. J. 287 :

107 I. C. 826.

———S. 234—*Joint trial—"Person," whether includes persons—Joint trial of two accused for criminal breach of trust—Procedure.*

In S. 224 the word "person" includes the plural number and is not restricted to the singular number. S. 234 is an empowering section and no Magistrate or Judge should try or allow an accused to be put on trial jointly with another if he thinks the effect of so doing would be prejudicial to the interest of accused. But as to the method of procedure, it is for the trial Court in the exercise of its discretion to settle and determine whether the trial should be joint or not. If a joint trial would prejudice the accused, then the trial should be separate. Two accused were jointly tried for criminal breach of trust in respect of three sums of money committed on three different dates within one year: *Held*, that the joint trial was legal. *Kailash Prasad v. Emperor.*

19 Cr. L. J. 673 :

46 I. C. 33 : 3 P. L. J. 124 :

5 P. L. W. 34 : A. I. R. 1918 Pat. 168.

———S. 234—*Joint trial.*

Where more than three distinct offences of criminal breach of trust are tried together in one trial, an illegality vitiating the trial is committed. *Nga San Mya v. Emperor.*

34 Cr. L. J. 1179 :

146 I. C. 176 : 6 R. Rang. 74 :

A. I. R. 1933 Rang. 325.

———Ss. 234, 235—*Joint trial—Distinct offences committed within 12 months.*

Where an accused person commits more than three offences of the same kind within 12 months by distinct, separate and wholly unconnected acts, he may be tried in batches of three at each trial under separate charges. Where the motive or object which actuates an accused in the commission of several distinct offences of the same kind is the same, the offences do not necessarily constitute one and the same transaction within S. 235. *Sital Prasad v. Emperor.*

19 Cr. L. J. 255 :

44 I. C. 47 : 4 P. L. W. 105 :

A. I. R. 1918 Pat. 343.

———Ss. 234, 235, 233, 537—*Penal Code (Act XLV of 1860), Ss. 380, 457—Joint trial—Theft—House-breaking by night—Joint trial of offences, committed at different times and places—Sentences, illegal.*

The accused was convicted at one trial of (1) house-breaking by night with intent to commit theft on the night of the 27th August under S. 457, (2) theft at the same time in the verandah in a different part of the

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same building under S. 379, and (3) theft in a building used for the custody of property on the night of the 29th August, under S. 380 : *Held*, that the separate sentence for theft of the shoes was not legal : *Held* further, that the joinder of the two charges under Ss. 457 and 380, was illegal : *Held also*, that the misjoinder could not be cured by S. 537, Cr. P. C. *Emperor v. Asgar Ali*.

1 Cr. L. J. 537 :
U. B. R. 1904, 1st. Qr. Cr. P. C. 2.

———Ss. 234, 235, 227, 229—*Joint trial—Charge of falsification of accounts and breach of trust—Joint trial, if legal.*

Offences of falsification of accounts and criminal breach of trust even though they relate to the same transaction, are not one offence and three charges of criminal breach of trust and three charges of falsification of accounts cannot be combined together at one trial. *Emperor v. Mohammad Ismail*.

38 Cr. L. J. 324 :
166 I. C. 815 : 9 R. S. 156 :
30 S. L. R. 391 : A. I. R. 1937 Sind 1.

———Ss. 234, 235, 239 (d)—*Joint trial—Distinct offences by several persons in same transaction—Joinder of alternative charges, effect of.*

S. 239, Sub-s. (d), Cr. P. C., contemplates all the offences committed by the accused persons, whether substantive offences or abetment of those offences, being tried together provided they were committed by the accused in the course of the same transaction. Therefore, two persons can be jointly tried of three substantive charges and one of them of abetting those three offences. The legality of a joint trial depends upon the accusation and not on the result of the trial. *Kali Kumar Das v. Nawab Ali Dhali*.

30 Cr. L. J. 619 :
116 I. C. 369 : I. R. 1929 Cal. 465 :
A. I. R. 1929 Cal. 160.

———Ss. 234, 236, 237—*Joint trial—Offences of same kind, what are—Joint trial of offences, when permissible—Penal Code (Act XLV of 1860), Ss. 379, 380.*

It is illegal, with reference to S. 234 to charge a person in the same trial and convict him in the same trial of two offences not of the same kind as, e.g., one under S. 379 and the other under S. 380, I. P. C. Under S. 234 (2) offences are of the same kind when they are punishable with the same amount of punishment under the same section and where this is not the case, neither S. 236 nor S. 237 can be read with S. 234. *Harising v. Emperor*.

20 Cr. L. J. 751 :
53 I. C. 159 : A. I. R. 1919 Nag. 107.

———Ss. 234, 239—*Joint trial—Joint trial of two persons for two distinct offences—Misjoinder—Re-trial of appellant.*

To enable more persons than one to be charged and tried together for more offences than one, the offences must all form part of the same transaction. Where there is a misjoinder of charges, the convictions and sentences must be set aside and a re-trial

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ordered in the case of the accused who appeals, whether he has been prejudiced by the misjoinder or not. *Po Mya v. Emperor*.

16 Cr. L. J. 44 :
26 I. C. 636 : 7 L. B. R. 272 :
A. I. R. 1914 L. Bur. 263.

———Ss. 234, 239—*Joint trial—Misjoinder of charges—Charge, amendment of.*

A charge which is bad on the face of it, cannot be cured by an amendment made at a stage of the proceedings when the mischief, which the Legislature intended to guard against by the enactment which has been contravened, may already have been done. Eight accused were tried for an offence under S. 395, I. P. C., and in the same trial, one of the accused was also tried for an offence under the Arms Act, which did not form part of the same transaction with the offence under the Penal Code. The irregularity was discovered after the case was completed and the opinions of the Assessors were taken, and the accused charged with the offence under the Arms Act was acquitted of that offence : *Held*, that the trial was illegal and that the defect in the trial could not be cured by the Court recording an acquittal for the charge under the Arms Act. *Jai Singh v. Emperor*.

19 Cr. L. J. 100 :
43 I. C. 324 : 44 P. R. 1917 Cr. :
A. I. R. 1918 Lah. 148.

———Ss. 234, 239—*Joint trial—Misjoinder of charges—"Transaction", meaning of.*

S. 234 applies to the case of one accused person only. The word "transaction", as used in S. 239, Cr. P. C., means "carrying through" and suggests not necessarily proximity in time so much as continuity of action and purpose. Five persons D., L., H., T. and K. were convicted in a joint trial of the following offences, respectively : D of (1) forgery under S. 467, I. P. C., (2) counterfeiting seals under S. 472, I. P. C. and (3) three offences of cheating committed on the 18th, 20th and 21st of the same month. L. of (1) abetment of the forgery aforesaid, and (2) the offences of cheating aforesaid. H. and T. of (1) abetment of the forgery, and (2) abetment of the offences of cheating. K. of (1) the forgery, and (2) abetment of the offences of cheating. It was found that D. alone was concerned in counterfeiting the seals, and that the rest of the accused joined him subsequently in a conspiracy to cheat, and forged certain receipts : *Held*, (1) that the forgery and the cheating were committed in the same transaction, and, therefore, all five accused could be tried jointly for these offences under S. 239, Cr. P. C., (2) that the offence of counterfeiting seals was not committed in the same transaction, and, therefore the trial of the offence along with the other offences rendered the whole trial illegal. *Tulsi v. Emperor*.

18 Cr. L. J. 282 :
38 I. C. 314 : 17 P. R. 1917 Cr. :
11 P. W. R. 1917 Cr. :
A. I. R. 1917 Lah. 78.

———Ss. 234, 239—*Joint trial—Three dacoities committed at different times and places—Same transaction—One trial, legality of.*

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The joint trial of four accused persons at one trial for three offences of dacoity committed on two different dates, at different places, and not forming part of the same transaction, is illegal. When the Cr. P. C., lays down as a general principle, that each person should be tried separately and there should be a separate charge except as otherwise specially laid down, the exceptions to the rule must be construed strictly in favour of the accused. *Ram Prasad v. Emperor*.

22 Cr. L. J. 657 :
63 I. C. 449 : 19 A. L. J. 798 :
3 U. P. L. R. (A) 151 :
A. I. R. 1921 All. 246.

—Ss. 234, 239—Joint trial—Three persons tried jointly for cheating—Cheating committed by each against different persons on different dates—Legality of trial.

Three persons were tried jointly for cheating. The charges against them were that each of them had cheated a different person on a different date: *Held*, that the trial was illegal; because the three acts of cheating were wholly distinct, and there was no continuity between the three acts, each act being a completed act in itself, and the original design was accomplished, so far as that act was concerned, before the next succeeding act was embarked upon. S. 234, Cr. P. C. can only be applied in the case of a single accused. *Karm Singh v. Emperor*.

12 Cr. L. J. 208 :
10 I. C. 63 : 122 P. L. R. 1911 :
28 P. W. R. 1911 Cr.

—Ss. 234, 239—Joint trial—Two accused tried jointly for three offences—Validity of trial.

S. 234, Cr. P. C. refers only to the case of a single accused and is not applicable where more persons than one are tried jointly under S. 236 of the Code. S. 239, Cr. P. C. is not inapplicable to a case in which each of two accused persons tried jointly, throws the blame and responsibility on the other. *Mahbub Ali v. Emperor*.

12 Cr. L. J. 266 :
10 I. C. 331 : 168 P. L. R. 1911 :
37 P. W. R. 1911 Cr.

—Ss. 234, 537—Joint trial—Different complainants in offences of same kind—One trial, legality of.

If an accused is charged at one trial with three separate offences, under the same section, and the complainant is a different person in each case, it is an irregularity, as for the purposes of S. 234, Cr. P. C., offences are not of the same kind when the complainants are different, and it is also an irregularity to pass one sentence for three separate offences; and both these irregularities fall under S. 537, Cr. P. C. *In re : Khavas Vasu Monji*.

1 Cr. L. J. 489.

—S. 234—Joint trial of accused, legality of.

A and B abducted a girl and took her to the house of C, where she was wrongfully confined. A, B and C were jointly tried, A

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and B for offences under S. 366 and C for an offence under S. 368 of the Penal Code: *Held*, that the joint trial of the accused was not illegal. *Dosa v. Emperor*.

29 Cr. L. J. 496 :
109 I. C. 224 : A. I. R. 1928 Lah. 751.

—Ss. 234, 239—Joint trial of several persons for separate offences, legality of.

The joint trial of several accused persons for two or more separate offences is illegal. S. 234 applies only to offences committed by a single person. It is not applicable when several persons are tried jointly under S. 239 of the Code. S. 239 is the only section which refers to a trial of more persons than one jointly, but it does not authorise such trial for two or more distinct offences, unless they form part of the same transaction or unless one is the actual offence and the other or others are offences of abetting or attempting that offence. *Sayad Lal v. Emperor*.

20 Cr. L. J. 7 :
48 I. C. 482 : A. I. R. 1918 Nag. 139.

—Ss. 234, 239—Joint trial and joinder of charges—Three separate offences charged against first accused—Abetment of two of them charged against second accused—Joint trial, whether legal.

Where one of two accused is charged with the separate offences under S. 408, Penal Code, and the second accused is charged with abetment of the first two offences but not with abetment of the third, a joint trial of both the accused is illegal on account of misjoinder of charges. *Ah Kiti v. Emperor*.

26 Cr. L. J. 319 :
84 I. C. 463 : 3 Bur. L. J. 254 :
A. I. R. 1925 Rang. 198.

—S. 234—Misjoinder of charges—Charges for falsification of pay bills and cash accounts for three months—Conviction for falsification of pay bills—No finding on falsification of accounts—Legality of trial.

The accused, a Forest Ranger, was charged with having entered the name of a Forest Guard who was no longer in service at a role of pay in the pay bill and the monthly cash accounts for three months, whereas as a matter of fact, another man was employed at a lower rate of pay for these months, and was sentenced to each of the three charges relating to the pay bill: *Held*, that the trial was illegal though the Magistrate had not recorded any finding in respect of the falsification of the cash accounts, inasmuch as in the charge as framed by the Magistrate there were six distinct and separate charges of falsification of six separate and distinct documents, namely, three pay bills and three cash accounts. *Krishna Lal Mitra v. Emperor*.

28 Cr. L. J. 291 :
100 I. C. 371 : 45 C. L. J. 1.

—S. 234—Misjoinder of charges.

Joinder of three offences under S. 406, I. P. C. and three offences under S. 477-A, I. P. C. is illegal. *Nagendra Nath v. Emperor*.

33 Cr. L. J. 265 (2) :
136 I. C. 136 (2) : 55 C. L. J. 111 :
36 C. W. N. 542 : I. R. 1932 Cal. 184 (2) :
A. I. R. 1932 Cal. 486.

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———S. 234—*Misjoinder of charges—Offences, for theft of same person's property on two successive days.—Joint-trial, legality of.*

Two persons, accused of offences under Ss. 379 and 380, I. P. C. for committing theft of the complainant's property in a building and of his paddy in a field on two successive days, cannot be charged with and tried at one trial for both the offences under S. 234. *Rahman Bibi v. Mobarak Mondal.* 17 Cr. L. J. 224 : 34 I. C. 336 : 20 C. W. N. 672 : A. I. R. 1916 Cal. 124.

———Ss. 234—*Misjoinder of charges.*

S. 409—Offence under—Six items of—Penal Code embezzlement—Single charge and single trial—Charge is defective—Defect in charge sheet is not curable under S. 225 or S. 537—Accused having suffered major portion of sentence—Dismissal from service and deposit of money alleged to have been embezzled held reasons for not ordering re-trial. *Piarcy Lall v. Emperor.* 36 Cr. L. J. 518 : 154 I. C. 320 (b) : 1935 O. W. N. 185 : 7 R. O. 472 : A. I. R. 1935 Oudh 273.

———S. 234—*Misjoinder of charges—Receiving stolen property—Ingredients of offence—Charge relating to several items forming subject-matter of separate thefts, legality of.*

The offence of receiving stolen property is an offence of receiving a particular article of stolen property or property stolen in a particular theft and it is necessary that the particular articles stolen should be alleged to be stolen and, if possible, retracted to its origin. A charge under S. 411, Penal Code, of having received six specific animals belonging to five specific persons and stolen by five different acts of theft is illegal and wholly vitiates the trial. *Heyder v. Emperor.* 27 Cr. L. J. 32 :

91 I. C. 64 : 20 S. L. R. 3 : A. I. R. 1926 Sind 129.

———Ss. 234, 235—*Misjoinder of charges—Criminal misappropriation and forgery, offences of.*

An accused person was charged with and tried for, first three separate acts of criminal misappropriation committed within a year, and, secondly, two separate offences of forgery with intent to conceal two of such acts of criminal misappropriation: *Held*, that this was an illegality not covered by the provisions of S. 537, Cr. P. C. *Emperor v. Mala Parsad.*

8 Cr. L. J. 4 : 28 A. W. N. 152 : 30 All. 351 : 5 A. L. J. 400.

———Ss. 234, 235—*Misjoinder of charges—Criminal misappropriation.*

Where to three charges of criminal misappropriation, alleged to have been committed by the accused within a year, was added another charge of an offence under S. 210, I. P. C., not committed within the same year: *Held*, that there was a misjoinder of charges as the last offence charged did not form one transaction with the other three offences. *Emperor v. Rajendra Roy.* 19 Cr. L. J. 868 :

47 I. C. 64 : 27 C. L. J. 311 : 22 C. W. N. 596 : A. I. R. 1918 Cal. 237.

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———Ss. 234, 235—*Misjoinder of charges—Falsification of document—Charge in respect of more than three offences, legality of—Illegality.*

Each act of falsification of a distinct document amounts to a separate offence under S. 477-A of the Penal Code, and an accused person can only be charged with and tried at one trial in respect of any number of such falsifications not exceeding three committed in the space of one year. Where an accused person is charged at the same trial with falsification of four different documents, the trial is illegal and the illegality cannot be cured by striking out one of the charges and retaining charges only in respect of three falsifications. *Fitzmaurice v. Emperor.* 27 Cr. L. J. 793 :

95 I. C. 393 : A. I. R. 1926 Lah. 193.

———Ss. 234, 235—*Misjoinder of charges—No prejudice to accused—Revision—Penal Code, Ss. 380, 420.*

Complainant purchased some bars of silver being assured by the accused that they were all right but later on he found them to be base alloy and remonstrated with the accused. Same night accused was found stealing the bars from complainant's clothes. Accused was tried at one trial for cheating and theft and was convicted. It was argued in revision that the joint trial was illegal: *Held*, that it was difficult to find that the two offences were committed "in one series of acts so connected together as to form the same transaction," but as the evidence which went to establish the charge of theft would have been admissible even if no such charge had been framed, not to prove the charge of theft but as evidence in proof of the charge of cheating as subsequent conduct, the accused was not prejudiced by the joinder of charges and as also the sentences were concurrent, the accused was not otherwise prejudiced and that, therefore, there was no ground for interference in revision. *Bechai v. Emperor.*

23 Cr. L. J. 671 : 69 I. C. 159 : 20 A. L. J. 224 : A. I. R. 1922 All. 244.

———Ss. 234, 235—*Misjoinder of charges—Offences committed by accused in distinct and separate transactions—Kidnapping and cheating—Joint trial.*

The operation of Ss. 234 and 235 of the Cr. P. C., cannot be combined. Where different offences have been committed by the same accused in two sets of separate and independent transactions, the offences cannot be tried together in one trial. Two girls were kidnapped by the accused on different dates and were falsely passed off as *Chhatris* girls on receipt of money from the complainant who wanted a wife for himself and a wife for his brother. The accused was charged with and tried for separate offences of kidnapping and cheating in respect of each girl in the same trial: *Held*, that the trial was bad on account of misjoinder of charges inasmuch as the case did not, in its entirety,

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come either under S. 234 or under S. 285 of the Cr. P. C. *Faujdar Mahto v. Emperor.*

27 Cr. L. J. 143 :
91 I. C. 815 : 24 A. L. J. 239 :
48 All. 236 : A. I. R. 1926 All. 261.

—Ss. 234, 235—*Misjoinder of charges—Trial, legality of—Offences of same kind—Forgery and giving false evidence—“Same transaction,” meaning of.*

Where an accused was charged at one trial with four offences, viz., of having abetted an unknown person to fix a false thumb impression purporting it to be of someone else on a summons issued by a Civil Court, and of swearing false affidavits in regard to such service on different dates: *Held*, that the offences being more than three and being neither of the same kind, nor committed in the course of the same transaction, there was a misjoinder of charges in contravention of the provisions of Ss. 234 and 235, Cr. P. C., and that consequently the proceedings were illegal and should be quashed. The expression “same transaction” in S. 235 of the Cr. P. C., is not applicable to cases in which the offences are separated by distinct intervals of time or place and which require to be proved by distinct evidence. *Gerimal v. Emperor.*

18 Cr. L. J. 664 :
40 I. C. 312 : 10 S. L. R. 192 :
A. I. R. 1917 Sind 40.

—Ss. 234, 235—*Misjoinder of charges—Trial whether void as a whole—Trial for more than three charges—Validity of trial.*

If there has been a misjoinder of charges, the trial is void as a whole and quashing of the charges against one accused alone would not validate the trial of the other. Ss. 234 and 235 of the Cr. P. C. must be construed apart and there is nothing in the Code, to validate the trial of any accused on more than three separate charges by allowing the two sections to be added together, though some of the charges may have formed one series of acts so connected together as to form the same transaction. *Emperor v. Dhaneshram.*

27 Cr. L. J. 1099 :
97 I. C. 363 : A. I. R. 1927 Nag. 22.

—Ss. 234, 235, 239, 537—*Misjoinder of charges—Falsification of accounts—Joinder of charges—Irregularity.*

Where the accused was charged with having wilfully altered and mutilated the accounts between 1907 and 1909, and it was found that he had made five series of alterations during that period: *Held*, that under S. 234 the charge was bad inasmuch as the accused could not have been tried at one trial for more than three offences committed within the space of twelve months from the first to the last: *Held*, further, that the joining of charges contrary to the provisions of Cr. P. C. was not merely an irregularity which could be remedied by S. 537. *Sallimullah Khan v. Emperor.*

11 Cr. L. J. 53 :
4 I. C. 808 : 6 A. L. J. 977 :
32 All. 57.

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—Ss. 234, 235, 537—*Misjoinder of charges.*

Where at the same trial an accused person is charged with two offences under S. 178, I. P. C., and two offences under S. 179, I. P. C.: *Held*, the case was not governed by S. 234, Cr. P. C., and there was no misjoinder. Moreover, the facts having all been admitted and the sentence passed being practically for only one of the offences, the accused was not prejudiced and the irregularity, if any, was cured by S. 537, Cr. P. C. *Bepin Chandra Pal v. Emperor.*

7 Cr. L. J. 95 :
7 C. L. J. 63 : 35 Cal. 161.

—Ss. 234 to 236—*Misjoinder of charges—Transaction, meaning of—Illegality—Revision—Objection.*

The accused were charged of having entered the house of the third prosecution witness with a view to coerce the deceased person and his brother to deliver certain promissory notes and receipts, and later in the evening, of having obstructed the complainant's party when they proceeded to prefer a complaint in regard to what the accused had done in the morning: *Held*, that the accused could not be charged together for their action in the morning and in the evening in one and the same trial, and the joinder amounted to an illegality which could not be cured by the application of S. 537, Cr. P. C. Whether a series of acts forms the same transaction or not depends upon community of purpose and the continuity of aim. The word ‘transaction’ means a completed act. An objection as to misjoinder of parties can be taken in the High Court, even if the same was not taken before the Sessions Judge. *Virupana Goud v. Emperor.*

16 Cr. L. J. 323 :
28 I. C. 659 : 17 M. L. T. 242 :
1915 M. W. N. 241 : 28 M. L. J. 397 :
A. I. R. 1916 Mad. 550.

—Ss. 234, 236, 238—*Misjoinder of charges—Penal Code, Ss. 411, 413—Charge under S. 413—Conviction for three offences under S. 411—Legality of conviction—Misjoinder of charges—Conviction for minor offence on charge for major offence.*

The accused was charged under S. 413 of the Penal Code of being a habitual receiver of stolen property. Some ten or eleven instances of receipt of stolen property were put forward by the prosecution. At the trial the Sessions Judge thought it proper to add charges of three separate offences under S. 411. The three incidents which formed the subject of these charges were three of the incidents relied on by the prosecution to establish the habit of receiving stolen property. The charges under S. 411, though proved, were found by the Judge not a sufficient basis for the finding of habit necessary to a conviction under S. 413, and the accused was convicted of the offences under S. 411: *Held*, that the convictions were not illegal inasmuch as the offences under S. 411 were merely minor offences forming ingredients of the main charge under S. 413 for which

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the accused could be convicted under S. 238, Cr. P. C., even if separate charges had not been framed, and that Ss. 234 and 236, Cr. P. C., had no application to the case. *Har Prasad v. Emperor*. 29 Cr. L. J. 232 : 107 I. C. 241 : A. I. R. 1928 All. 139.

———Ss. 234, 239—*Misjoinder of persons and charges—Joint trial—Illegality.*

A was charged of three offences of theft under S. 381 committed on the 21st September, 28th September and 16th October, 1924, respectively. B was also charged of having committed theft under S. 379 on the same dates. C was charged under S. 411, I. P. C., for having received property alleged to have been stolen on the 17th of November. D was charged under S. 414, I. P. C., for having voluntarily assisted in disposing of the property alleged to have been stolen on the 21st September. These persons were jointly tried and convicted: *Held*, that the joint trial and conviction were entirely illegal and that the whole proceeding should be set aside. *Emperor v. Fasih-ud-Din*.

28 Cr. L. J. 459 :
101 I. C. 491 : 9 L. L. J. 100.

———Ss. 234, 537—*Misjoinder, if curable under S. 537.*

Obiter.—It makes no difference whether the acts charged are forty-one, fourteen or four, provided they exceed the statutory number and are not covered by the provisions of S. 234, or the following provisions relating to the joinder of charges; the misjoinder of charges is a vital defect in the trial which cannot be cured by the provisions of S. 537, Cr. P. C. *Chuharmal Nirmaldas v. Emperor*.

39 Cr. L. J. 881 :
177 I. C. 280 : 11 R. S. 53 :
A. I. R. 1938 Sind 164.

———Ss. 234, 235, 476, 537 (b)—*Order directing prosecution, in respect of one offence—Joinder of charges—Jurisdiction of Magistrate—Objection not taken during trial—Sanction, want of, in respect of second charge—Irregularity.*

Accused instituted two suits against two different persons, one in the Court of the City Munsif and the other in the Court of the Subordinate Judge. Both suits were tried on the Small cause side and dismissed. The Sub-Judge directed under S. 476, Cr. P. C. the prosecution of the accused under S. 209, I. P. C. and of three other persons under S. 193. The Magistrate taking cognizance of the case framed charges against the accused in respect of both the suits, and the accused entered upon his defence. Evidence was recorded for both prosecution and defence without any objection to the jurisdiction of the Magistrate to take cognizance of the offences, or as to the validity of the procedure adopted in trying both charges at one and the same trial. After he was convicted, the accused appealed to the Sessions Judge protesting against the joinder of the two charges, and also against the action of the Magistrate in taking cognizance of the offence alleged to have been committed in respect of the suit filed in the Court of the City Munsif, urging that he had been taken by

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surprise at the course adopted by the Magistrate, as he believed he was on his trial for the offence in respect of the suit in the Court of the Sub-Judge, and was greatly prejudiced in his defence by this belief. The Sessions Judge declined to interfere and the accused moved the High Court in revision: *Held*, that the case was covered by S. 537 (b), Cr. P. C. as the accused had acquiesced in the view taken by the Magistrate and had never at any stage of the trial in that Court raised the question of the Court's jurisdiction in respect of the offence alleged to have been committed in the City Munsif's Court: that at most the Magistrate had committed an error but the error had not in any way prejudiced the accused by the procedure adopted. *Babu Ram v. Emperor*. 20 Cr. L. J. 642 :

52 I. C. 418 : 17 A. L. J. 883 : 42 All. 12 :
A. I. R. 1919 All. 26.

———S. 234—*Scope—Accused guilty of numerous offences—Procedure.*

The ordinary course for the prosecution in cases in which an accused has committed numerous offences of the same kind is to select a small number of typical cases, to frame their charges accordingly and to prosecute them before a Magistrate. If the result of these proceedings is to penalize the accused and the sentence inflicted is considered sufficient to meet the ends of justice, the remaining charges which might still be brought need not be proceeded with. If, on the other hand, through some unforeseen accident or miscarriage at the trial, the accused is acquitted of those charges, then it is open to the prosecution to proceed with the remaining charges. *Emperor v. Raghunath*. 19 Cr. L. J. 161 :

43 I. C. 577 : A. I. R. 1918 All. 351.

———S. 234—*Scope—Accused in fact charged and convicted of two offences—Omission of names of offences in charge—Trial, if vitiated.*

Obiter.—The provisions of S. 234 cannot be evaded by the omission to name the offences and sections in the charge, where in fact, the accused has been charged and convicted of two offences. *Mohanlal Bhanlal Goela v. Emperor*. 39 Cr. L. J. 123 :

172 I. C. 374 : 10 R. S. 149 : 32 S. L. R. 87 :
A. I. R. 1937 Sind 293.

———S. 234—*Scope—Joint trial—Joinder of charges.*

S. 234 does not permit of three offences being lumped together so as to be treated as one offence, but merely permits of the trial of the three entirely separate offences at the same trial. *Chetumal Rekumal v. Emperor*.

36 Cr. L. J. 608 :
154 I. C. 937 : 28 S. L. R. 336 : 7 R. S. 178 :
A. I. R. 1934 Sind 185.

———S. 234—*Scope—One trial of not more than three offences of same kind against same person—Great care and caution to be used with different complainants—Charges, when to be brought together.*

Per Fletcher, J.—S. 234 is not limited to cases where the offences have been committed against the same person. The power given by S. 234

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is one that requires to be used with great care and caution where there are different complainants. Per *Beachcroft, J.*—Where there is no fear of the accused being prejudiced, the charges are always tried together. *Subedar Ahir v. Emperor.*

16 Cr. L. J. 332 :
28 I. C. 668 : 19 C. W. N. 557 : 43 Cal. 13 :
A. I. R. 1915 Cal. 366.

———S. 234—Scope—Separate complainants—Joint charges—Charge of minor offence—Conviction for graver offence—Penal Code, Ss. 465, 468.

S. 234 is not limited to cases where the offences have been committed against the same person but also applies where the complainants are different persons. It is an accepted principle of law that a person cannot be convicted of a more serious offence than that with which he is charged whether on appeal or in the original Court. The reason being that he has not had an opportunity of meeting the charge in question, so far as the facts which render it more serious, or an aggravated offence, are concerned ; Therefore, a person who is charged under S. 465, Penal Code, cannot be convicted under S. 468. *Nga Po Kyin v. Emperor.*

23 Cr. L. J. 740 :
69 I. C. 628 : 11 L. B. R. 45.

———S. 234—Scope.

The provisions of Ss. 234, 235, 236 and 230, Cr. P. C., are mutually exclusive, and the scope of S. 230 cannot be extended by use of sections not referred to in S. 230. *Janeskar Das v. Emperor.*

30 Cr. L. J. 687 :
116 I. C. 794 : I. R. 1929 All. 618 :
1929 A. L. J. 329 : 51 All. 544 :
A. I. R. 1929 All. 202.

———S. 234—Scope.

There is nothing in the Cr. P. C., which directs that where an accused person is alleged to have done two or more acts, each of which may fall within the definition of an offence under one or another section of the Penal Code, the section or sections in either case being the same, the joinder of the charges under those sections is illegal. Substantially the acts amount in such a case to offences punishable under the same sections of the Penal Code and therefore they are offences of the same kind. S. 234, Cr. P. C., does not say that at the most a trial must be limited to three charges : it says it must be limited to three offences and that the offences must be of the same kind. The "offence," as defined by the Code itself, is the act or omission made punishable. Publication of two seditious articles on different dates amounts to two offences, and these are punishable under the same sections of the Penal Code, and are offences of the same kind. The word 'section' in the second clause of S. 234 is not invariably to be read as singular. It is not the intention of the Cr. P. C., either expressed or implied, to exclude from the operation of S. 234 an offence because it is made the subject of more than one charge. *Emperor v. Tribhuvandas.*

8 Cr. L. J. 272 :
1 I. C. 64 : 10 Bom. L. R. 801 :
33 Bom. 77.

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———S. 234—Scope of—Joinder of charges.

S. 234 is not limited to offences committed against the same person. *Babu Lal v. Emperor.*
18 Cr. L. J. 614 :
39 I. C. 982 : 2 P. L. J. 209 :
A. I. R. 1917 Pat. 656.

———Ss. 234, 239—S. 234, scope of—"Person" meaning of—Joint trial of two persons for passing counterfeit coins of three persons on three different occasions, legality of.

S. 234, Cr. P. C. is not restricted in its scope to offences committed against the same person, the word "person" in the section not being restricted to a single individual. The joint trial of two persons for offences under S. 241, I. P. C. for passing counterfeit coins on three different occasions on the same day to three different persons does not contravene the provisions of either S. 234 or S. 239, Cr. P. C. *In re : Kovaganti.*

23 Cr. L. J. 719 :
69 I. C. 447 : 16 L. W. 831 :
1922 M. W. N. 820 : 44 M. L. J. 130 :
A. I. R. 1923 Mad. 181.

———S. 235.

See also (i) Burma Gambling Act,
Ss. 11, 12.

(ii) Cr. P. C., S. 13 (3), 35, 222,
225, 233, 235, 403.

(iii) Joinder of charges.

(iv) Penal Code, Ss. 40, 124-A,
301-A.

———S. 235.

———Applicability.

———Application of.

———Charge.

———Distinct offences.

———Independence of charges.

———Joinder of charges.

———Joint trial.

———Misjoinder of charges.

———One offence.

———Same transaction.

———Scope.

———Separate charge.

———Separate conviction.

———S. 235—Applicability.

When a Magistrate has taken cognizance of an offence upon complaint, it is competent for him to take cognizance of any offence that is disclosed by evidence. *Abdul Rahman v. Emperor.*

27 Cr. L. J. 669 :
94 I. C. 717 : 4 Bur. L. J. 213 :
A. I. R. 1926 Rang. 53.

———S. 235—Applicability of S. 235—Test for.

The test for applying S. 235, is to see whether the acts alleged form a series that can be regarded as one transaction, and this question cannot be answered in the negative when the evidence to prove the one offence, is identical with that by which the other is to be established. *Emperor v. Mayadhar Polhal.*

40 Cr. L. J. 625 :
181 I. C. 1001 : 20 P. L. T. 420 :
5 B. R. 706 : 11 R. P. 653 :
18 Pat. 450 : A. I. R. 1939 Pat. 577.

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———S. 235 (1)—*Applicability.*

S. 235 (1) Cr. P. C. is inapplicable when it is sought to charge the accused with another offence on the identical acts on which he was charged before with one offence. *Ganapathi Bhatta v. Emperor.*

14 Cr. L. J. 214 :
19 I. C. 310 : 24 M. L. J. 463 :
13 M. L. T. 360 : 36 Mad. 308.

———S. 235—*Application of.*

The question of the applicability of S. 235 arises only where separate offences, that is, offences of a different nature, may form part of the same transaction and not where the question of different offences of the same nature is under consideration. *G. S. Rameshan v. Emperor.*

36 Cr. L. J. 1216 :
157 I. C. 595 : 31 N. L. R. 337 :
8 R. N. 57 : A. I. R. 1935 Nag. 178.

———Ss. 235, 236, application of.

If both Ss. 235 and 236, Cr. P. C., are in terms applicable to a case and if their application does not lead to any anomalous result, there is no reason why they should not be applied. *Kashi Nath v. Emperor.*

33 Cr. L. J. 122 :
135 I. C. 225 : 1932 A. L. J. 113 :
I. R. 1932 All. 49 : A. I. R. 1932 All. 25.

———Ss. 235, 421, 537—*Charge—Evidence on different charges recorded at one trial, illegality of—Defective trial.*

Where a Magistrate frames different charges but allows the evidence on each charge to be recorded at one trial, and does not discriminate between that which is relevant on each of the charges, it is not a mere irregularity cured by S. 537 but an illegality which vitiates the trial in its entirety. *Public Prosecutor v. Kottaparambath.*

16 Cr. L. J. 593 :
30 I. C. 145 : 29 M. L. J. 101 :
18 M. L. T. 95 : 1915 M. W. N. 504 :
A. I. R. 1916 Mad. 110.

———S. 235—*Distinct offences.*

Joinder of offences under Ss. 393 and 394, I. P. C., is illegal. *Ajaib Singh v. Emperor.*

34 Cr. L. J. 402 :
142 I. C. 820 : 34 P. L. R. 498 :
I. R. 1933 Lah. 275 : A. I. R. 1933 Lah. 512.

———S. 235—*Distinct offences—Joint trial.*

Where accused is tried for two distinct offences, one under S. 19 (d), Arms Act, and the other for being in possession of stolen property, he is entitled to a separate trial in respect of each offence. *Onkar Singh v. Emperor.*

35 Cr. L. J. 1417 :
151 I. C. 840 : 1934 O. L. R. 777 :
11 O. W. N. 1206 : 7 R. O. 146 (2) :
A. I. R. 1933 Oudh 457.

———S. 235—*Distinct offences.*

Person prosecuted and acquitted for theft of blank railway ticket—Subsequent trial for forgery thereon is not barred in view of S. 403 (2). *In re : Srirangachariar.*

35 Cr. L. J. 1503 :
152 I. C. 154 : 40 L. W. 586 :
67 M. L. J. 583 : 1934 M. W. N. 994 :
7 R. M. 191 : A. I. R. 1934 Mad. 673.

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———Ss. 235, 537—*Distinct offence—Misjoinder of charges is an illegality.*

Proximity of time between acts does not necessarily constitute such acts parts of the same transaction. A joinder of charges under Ss. 454 and 325 of the I. P. C. is not warranted by S. 235 of the Cr. P. C., especially where the offence of house trespass is clearly distinct from a subsequent attack on the complainant, while on his way to inform the Police. Misjoinder of charges is an illegality and not a mere irregularity which is covered by S. 537 of the Cr. P. C. *Nga Tha Gyi v. Emperor.*

13 Cr. L. J. 485 :
15 I. C. 485 : 5 Bur. L. T. 101.

———S. 235 (1)—*Distinct offences—Misjoinder of charges—Theft and assault committed on different occasions, whether can be tried together—Irregularity—Trial, whether vitiated.*

The accused carried by force on 13th August 1920, two buffaloes grazing in a field. On 12th September, he assaulted the owner, while the latter was returning to his village after having recovered one of the buffaloes from the possession of the accused. The accused was charged in one trial with offences under Ss. 392 and 323 of the Penal Code : *Held*, that this was a misjoinder of charges which vitiated the trial. *Ganga Singh v. Emperor.*

22 Cr. L. J. 505 :
62 I. C. 329 : A. I. R. 1922 Lah. 144.

———S. 235—*Distinct offence.*

Offences under S. 3 (1), Indian States (Protection against Disaffection) Act, cannot be consolidated. *Diwan Singh Maftoon v. Emperor.*

36 Cr. L. J. 744 :
155 I. C. 450 : 7 R. N. 176 :
A. I. R. 1935 Nag. 90.

———S. 235 (1), 403 (2), 528—*Distinct Offences—Penal Code, Ss. 147, 426—Unlawful assembly—Damage to lands of several owners—Acquittal in respect of some lands whether bar to trial in respect of others—Offences, whether distinct.*

Where the members of an unlawful assembly trespass upon the land of several persons and cause damage to their crops in the course of a riot, a separate offence of trespass and mischief can be charged against the members of the assembly in respect of each separate holding which is damaged, and acquittal or conviction in respect of damage caused to the holdings of some of the owners is no bar to their trial for offences in connection with the properties of the other owners. An offence against property is not an offence against the property in abstract : it is an offence against the property of a particular owner or possessor. *Ghana Mahapatra v. Emperor.*

31 Cr. L. J. 472 :
123 I. C. 78 : A. I. R. 1929 Pat. 710.

———S. 235—*Independence of charges—Striking off of the conviction for a component offence—Effect.*

In a trial for waging war, one of the counts was of dacoity. This count failed being too vague : *Held, Spencer, Off. C. J.*—That the validity of the conviction under S. 121, Penal

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Code, was not affected by the striking off of the conviction for other offences forming component parts of the offence of waging war, and the accused could not be said to be prejudiced in their defence, as the act of dacoity was merely series of incidents which made the continuing offence of waging war under S. 235, Cr. P. C. *In re : Gam Malla Dora*.

26 Cr. L. J. 1513 :
190 I. C. 297 : 48 M. L. J. 308 :
1925 M. W. N. 192 : 49 Mad. 74 :
A. I. R. 1925 Mad. 690.

S. 235—Joinder of charges—Alternative charges.

Several charges being rightly joined against the same accused under S. 235, there can be no objection to one of such charges being in the alternative as provided by S. 235 nor can there be any objection to another accused being joined under S. 235 as regards one of those charges. *Kashi Nath v. Emperor*.

33 Cr. L. J. 122 :
135 I. C. 225 : 1932 A. L. J. 113 :
I. R. 1932 All. 49 : A. I. R. 1932 All. 25.

S. 235—Joinder of charges—Breach of trust and falsification of accounts.

Joinder of breach of trust in respect of three items and falsification of those items is not illegal provided the charges of embezzlement are linked into one sum and that linking affects the charge of falsification. *Michael John v. Emperor*.

32 Cr. L. J. 1026 :
133 I. C. 450 : 10 Pat. 463 :
12 P. L. T. 696 : I. R. 1931 Pat. 370 :
A. I. R. 1931 Pat. 349.

S. 235—Joinder of charges—Cheating and forgery.

The joinder of charges for specific acts of cheating and forgery with the charge of conspiracy, at one trial is not illegal when they form part of the same transaction. *Kumear Sen v. Emperor*.

34 Cr. L. J. 124 :
141 I. C. 192 : 9 O. W. N. 1136 :
I. R. 1933 Oudh 33 :
A. I. R. 1933 Oudh 86.

S. 235—Joinder of charges—Criminal misappropriation.

Criminal breach of trust in respect of three items of collection taxes in their one year constitutes single item of municipal property and charge in respect of gross sum is sufficient and valid. *Ram Kishoon Pershad v. Emperor*.

35 Cr. L. J. 876 :
148 I. C. 990 : 15 P. L. T. 126 :
13 Pat. 170 : 6 R. P. 526 :
A. I. R. 1934 Pat. 232.

S. 235—Joinder of charges—Offences committed in the same transaction—Penal Code, Ss. 218, 403, 409, 477-A.

The accused, a Sub-Inspector of Police, took charge of certain property belonging to a deceased person. He subsequently returned the greater portion of it to his heir, but misappropriated certain items, and destroyed and altered certain portions of the diaries and lists in order to show that those items had never been received. He was charged with

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and tried at one trial for offences under Ss. 218, 403, 409 and 477-A of the Penal Code: *Held*, that all the charges related to acts which were so connected together as to form one transaction and the joinder of charges was, therefore, permissible under S. 235 of the Cr. P. C. *Bilash Chandra v. Emperor*.

25 Cr. L. J. 343 :
77 I. C. 231 : 27 C. W. N. 626 :
A. I. R. 1923 Cal. 647.

S. 235—Joinder of charges—"Same transaction", meaning of—Possession of cocaine and opium, whether same.

The real and substantial test for determining whether several offences are connected together so as to form the same transaction depends upon whether they are so related to one another in point of purpose or as cause and effect, or as principal and subsidiary act, as to constitute one continuous action. Where accused was found in illegal possession of opium and cocaine for the purpose of carrying on the business of a vendor of contraband: *Held*, that the possession of both the articles was part of the same transaction and that the accused could be tried jointly for both the offences. *Emperor v. Nga Lu Galge*.

19 Cr. L. J. 34 :
42 I. C. 994 : A. I. R. 1917 L. Bur. 5.

S. 235—Joinder of charges—Trial for eight distinct offences at one and the same time—Re-trial.

The accused were tried for eight distinct and separate offences under S. 161, I. P. C., at one and the same trial; *Held*, that the trial was illegal. *United Singh v. Emperor*.

11 Cr. L. J. 51 :
5 I. C. 178 : 7 A. L. J. 19.

Ss. 235, 226—Joinder of charges—Theft and taking gratification to restore stolen property—Cattle theft—Joinder of charges—Double conviction—Alternative charge.

The two accused stole a bullock and returned it to the owner two days later on payment of Rs. 20. They were tried at one trial both for theft under S. 380 of the I. P. C. and for offences under S. 215. The Magistrate found that the theft had been committed for the express purpose of obtaining money for the bullock's return. He convicted the accused of both the offences charged, and passed a separate sentence for each offence: *Held*, that in view of the short time that elapsed between the theft and the return of the bullock, the Magistrate's finding as to the purpose of the theft was justifiable, and the theft and the return might be considered to be a series of acts so connected as to form the same transaction. There was, therefore, no misjoinder of charges: *Held further*, that the actual thief is not liable to be convicted of an offence under S. 215 in respect of property which he himself stole. As the facts proved justified, the conclusion that the accused were themselves the thieves, the convictions under S. 380 were upheld and those under S. 215 set aside. Where the question is likely to arise whether a person

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who has accepted a gratification for the return of stolen property is the actual thief or not, alternative charges should be framed under S. 236, Cr. P. C. *Twet Pe alias Shan Gale v. Emperor.*

7 Cr. L. J. 464 :
14 Bur. L. R. 67 :
4 L. B. R. 199.

———Ss. 235, 239—*Joinder of charges—Inclusion in one charge of different offences—Validity of trial.*

The propriety of combining several charges in one trial may be questioned only if the accused is likely to be bewildered in his defence by having to meet many disconnected charges or the prospect of a fair trial is likely to be endangered by the production of a mass of evidence directed to many matters. The inclusion in one charge of different offences is only a formal defect which cannot vitiate the trial, unless it prejudices the accused or results in a failure of justice. In a trial for a charge under S. 147, Penal Code, it is not illegal to frame charges under Ss. 324 and 325 against particular accused persons, although these offences were committed by them outside the scope of the common object mentioned in the charge under S. 147, if all the acts with which the accused are charged form one transaction. *Rasul v. Emperor.*

29 Cr. L. J. 801 :
111 I. C. 305 : 5 O. W. N. 612 :
3 Luck 664 : A. I. R. 1928 Oudh 401.

———Ss. 235, 239—*Joinder of charges—Murder committed and hurt caused in prosecution of common intention—Joint trial, legality of.*

Two groups of persons who had separate grudges against the members of a family went out together with the common intention to kill as many members of the family of their opponents as could be found and killed two of them and assaulted two others who came to the rescue of one of the persons killed. The accused were all tried in one trial upon charges of murder, grievous hurt and in connection with the different assaults upon the members of the family of the deceased : *Held*, that the assaults were closely connected by continuity of purpose and progressive action towards a single object and formed one transaction within the meaning of Ss. 235 (1) and 239 (d), Cr. P. C., and the joint trial of the accused in respect of all the charges was, therefore, legal. *Bahadur Singh v. Emperor.*

27 Cr. L. J. 803 :
95 I. C. 467 : 8 L. L. J. 174 :
7 Lah. 264 : 27 P. L. R. 379 :
A. I. R. 1926 Lah. 367.

———Ss. 235, 239—*Joinder of charges—Offences committed on different dates—Same transaction.*

Where certain persons were wrongfully confined by the accused, who fined them and realized a certain portion of the fines and released them on their promising to pay the balance of the fine three days later, but on their failing to do so, they were again confined, maltreated and shoe-beaten and were turned out by the accused on being informed that the Police were coming : *Held*, that as they were all confined for one purpose, i. e., for the purpose of extorting money, the whole thing was one transaction and there was no misjoinder of charges if they were tried together. *Deputy*

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Superintendent & Remembrancer of Legal Affairs v. Kailash Chandra Ghose.

16 Cr. L. J. 120 :
28 I. C. 184 : 19 C. W. N. 181 :
42 Cal. 760 : A. I. R. 1915 Cal. 397.

———Ss. 235, 239—*Joinder of charges—Preparation of false balance-sheets on two different occasions, whether same transaction.*

Accused, who were the Agents, Secretaries and Treasurers of a Company, were convicted upon charges of (1) cheating and criminal misappropriation in relation to the balance-sheet of the company for 1912, inasmuch as in that sheet a profit was shown, which they had taken, whereas the Company had not earned a profit, and (2) wilfully making a false balance-sheet of the Company for 1913. The accused were tried jointly on five charges, four of which related to the balance-sheet of 1912 and one to the balance-sheet of 1913. In the trial Court it was objected on behalf of the accused that there could not be a joint trial of the charges relating to the two balance-sheets, but the objection was disallowed on the ground that the offences relating to these balance-sheets formed part of the same transaction. On appeal to the High Court : *Held*, that the trial was illegal and the convictions could not be maintained. The different acts attributed to the accused in respect of the two balance-sheets did not form part of the same transaction within the meaning of Ss. 235 and 239 of the Cr. P. C., and the joinder of the charges was contrary to the provisions of the Code. *Ramnarayan Amarchand v. Emperor.*

20 Cr. L. J. 657 :
52 I. C. 481 : 21 Bom. L. R. 732 :
A. I. R. 1919 Bom. 111.

———Ss. 235, 239—*Joinder of charges—Several persons defrauded by different accused on different occasions—Same transaction, what amounts to—Joint trial, legality of.*

Though community of purpose and design and continuity of action are essential elements in determining whether or not a number of acts were so connected together as to form part of the same transaction, yet to constitute community of purpose, the mere existence of some general purpose or design is not sufficient, the purpose in view must be something particular and definite. There can be no continuity of action where each act is a completed act in itself and the original design is accomplished so far as that act is concerned. The accused held out to various people at different times inducements of employment at handsome wages in a foreign country and defrauded them of large sums of money. They were jointly tried at one trial in respect of several of these frauds : *Held*, that each of the frauds was an offence complete in itself and they could not be said to form part of one transaction and the joint trial was, therefore, illegal. *Nanak Chand v. Emperor.*

25 Cr. L. J. 1020 :
81 I. C. 796 : A. I. R. 1924 Lah. 734.

———Ss. 235, 537—*Joinder of charges, when permissible—Misjoinder, effect of—Prejudice.*

Where two offences cannot be tried together,

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their joinder vitiates the whole trial; and the mere fact that the accused has not been prejudiced by this wrong procedure does not constitute a valid ground for condoning the defect. The disregard of an express provision of law as to the mode of trial is not a mere irregularity such as can be remedied by S. 537, Cr. P. C. A trial conducted in a manner prohibited by law must be regarded as altogether illegal. *Pahlad v. Emperor*.

21 Cr. L. J. 626 :

57 I. C. 450 : 7 P. L. R. 1926 :

2 U. P. L. R. Lah. 135 :

1 Lah. 562 : A. I. R. 1920 Lah. 265.

—Ss. 235, 537, 556—*Joinder of charges—Penal Code (Act XLV of 1860), Ss. 120-B, 121-A—Conspiracy to overawe Government—Some members guilty of offence under S. 120-B—Joint trial, legality of.*

Several accused persons were all charged under S. 121-A, I. P. C., with conspiring to deprive His Majesty the King of the Sovereignty of British India, of conspiring to wage war against the Government and of conspiring to overawe the Government by means of criminal force. Apart from the conspiracy to effect these objects, there was disclosed on the evidence a conspiracy to commit dacoities either accompanied by murder or not accompanied by murder, and consequently certain of the conspirators were liable to punishment under S. 120-B, I. P. C., for being party to a criminal conspiracy to commit offences punishable with death or transportation for life. The actual participants in these offences were separately charged and the accused were all jointly tried on these charges: *Held*, that the joinder of the charges was regular and legal as all the offences formed part of the same transaction. *Ram Prasad v. Emperor*.

59 Cr. L. J. 129 :

106 I. C. 721 :

2 Luck. 631 : A. I. R. 1927 Oudh 369.

—S. 235 (1)—*Joinder of charges.*

Misappropriation in respect of several items—Falsification, one of the series of acts constituting the transaction—Joinder is legal. *Kashi Ram v. Hurdut Rai*.

156 I. C. 192 : 39 C. W. N. 703 :

62 Cal. 808 : 7 R. C. 687 (2) :

A. I. R. 1935 Cal. 312.

—S. 235 (1)—*Joinder of charges.*

Where an accused person was charged under Ss. 366 and 420, Penal Code, for having kidnapped a minor girl with intent that she might be compelled to marry against her will and for having cheated somebody else by making false representations to him and thereby inducing him to part with a sum of money in consideration for the marriage of the girl: *Held*, that the two offences, though separate, were so connected together as to form one and the same transaction within the meaning of S. 235 (1), Cr. P. C., and the joinder of the two charges was, therefore, premissible in law. The real and substantial test in determining whether several offences are so connected together as to form one transaction depends upon whether they are related together in point of purpose

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and effect or as principal and subsidiary acts so as to constitute one continuous act. *Hussan-bibi v. Emperor*.

27 Cr. L. J. 456 :

93 I. C. 248 : 20 S. L. R. 74 :

A. I. R. 1926 Sind 151.

—Ss. 235 (1), 235, 222 (2)—*Joinder of charges—Misappropriation and falsification of accounts—Transaction, meaning of—Illicit misappropriations by cashier in one year, whether one transaction—Penal Code, Ss. 409, 477-A.*

It is clear from the terms of S. 235 (1), Cr. P. C., that a person may lawfully be tried for one offence of misappropriation joined with a charge of falsification which was carried out as one of the series of acts constituting the transaction by which the misappropriation was effected. The word transaction means a group of facts so connected together as to involve certain ideas, namely, unity, continuity and connection. In order to determine whether a group of facts constitutes one transaction, it is necessary to ascertain whether they are so connected together as to constitute a whole which can be properly described as a transaction. Where a clerk or cashier sets out to rob his employer, having regard to the fact that S. 222 (2) provides that he may be charged with having misappropriated the total of whatever sums he may have appropriated in course of any one year, it is not unreasonable to say that for the purposes of the section that the year's illicit operations can be regarded as one transaction. *Kashiram Jhunjhunwala v. (Firm) Hurdut Rai*.

Gopal Rai

156 I. C. 192 :

39 C. W. N. 703 : 7 R. C. 687 (2) :

62 Cal. 808 : A. I. R. 1935 Cal. 312.

—S. 235—*Joint trial—Charges against number of accused that they were members of unlawful assembly and they in pursuance of common object, had committed offence of rioting and that in prosecution of common object, certain accused committed certain individual acts and that all accused had under S. 149, Penal Code, committed offences under Ss. 148, 352, 323, 324 and 325, Penal Code—Joint trial of all accused—Common object not established and accused acquitted of offence under S. 148—Accused convicted under Ss. 352, 323, 324 and 325 for individual acts—Joint trial, not justified.*

The charges framed against eleven accused were as follows: that they were members of an unlawful assembly on a particular date at a particular place and did, in prosecution of the common object of such assembly, *viz.*, to assault and cause hurt to certain persons, commit the offence of rioting and that in prosecution of the common object, certain individual members of that assembly committed certain individual acts and finally that all the accused had thus under S. 149, Penal Code, committed offences punishable under Ss. 148, 352, 323, 324 and 325, Penal Code. The trial Court found that the common object had not been established and therefore acquitted the accused of the offence punishable under S. 148, Penal Code, and they had been convicted only in respect of individual acts under Ss. 352, 323, 324 and 325: *Held*, that once it was found that a common object had not been established, there was no justifi-

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cation for a joint trial. Apart from the improper character of the joint trial, the accused must have been prejudiced in their defence by the joint trial. The trial was not held in accordance with law and the convictions could not be sustained. *Avanashi Goundan v. Palani Madari*. 40 Cr. L. J. 855 :

184 I. C. 134 (2) : 49 L. W. 163 :
1939 M. W. N. 117 : 1939 M. L. J. 259 :
12 R. M. 413 : A. I. R. 1939 Mad. 406.

S. 235—Joint trial.

Conspiracy to commit breach of trust—Series of acts of misappropriation though subject of separate charges can be jointly tried with the main offence of conspiracy. *In re : Patri Venkata Hamumantha Rao*. 35 Cr. L. J. 631 :

148 I. C. 281 : 1933 M. W. N. 1409 :
39 L. W. 91 : 66 M. L. J. 193 :
57 Mad. 545 : 6 R. M. 456 :
A. I. R. 1934 Mad. 88.

S. 235—Joint trial—General Clauses Act (X of 1897), S. 26—Opium Act (I of 1878), S. 9 (c) (f)—Bihar and Orissa Act (II B. & O. of 1915), S. 47 (a)—Illegal possession and sale of opium—Joint trial under two Acts—Separate sentences.

Separate sentences were passed on the accused under S. 47 (a) of the Bihar and Orissa Excise Act and Ss. 9 (c) and 9 (f) of the Opium Act in the same trial in respect of two sales of opium to the same person and for possession of the residue of the opium left after the sales. *Held*, (1) that the whole series of acts for which the accused was punished made one transaction within S. 235 and the joint trial of the offences, was not illegal; (2) that the conviction for possession was not in respect of the same article as that sold but for the residue, and that, therefore, separate sentences for the possession and the sale did not contravene the provisions of S. 26 of the General Clauses Act. *Bali Sahu v. Emperor*. 19 Cr. L. J. 446 (b) :

42 I. C. 974 : 3 P. L. J. 433 :
A. I. R. 1918 Pat. 250.

S. 235—Joint trial—Joint trial for criminal breach of trust and falsification of accounts, when permissible.

Trial for Criminal breach of trust during period exceeding one year, legality of—Court, duty of—Procedure—Appeal from acquittal—Re-trial, whether can be ordered on technical ground. *Emperor v. Jagat Ram*. 19 Cr. L. J. 987 :

48 I. C. 167 : A. I. R. 1919 Lah. 440.

S. 235—Joint trial.

Joint trial of offences under S. 457, and S. 324—34, Penal Code, is illegal. *Bahali v. Emperor*. 37 Cr. L. J. 722 :

162 I. C. 926 : 38 P. L. R. 628 :
8 R. L. 973 : A. I. R. 1936 Lah. 507.

S. 235—Joint trial.

Joint trial—Offences under Ss. 447, 448, Penal Code, committed on consecutive nights—Offences committed in pursuance of asserting right to possession—Joint trial is valid though offence is committed on 2 nights. *Maung Kaung Kywe v. Emperor*. 37 Cr. L. J. 3 :

159 I. C. 57 : 8 R. Rang. 242 :
A. I. R. 1935 Rang. 357.

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S. 235—Joint trial—Kidnapping and abduction.

Accused separately charged with kidnapping and abduction can be tried for each of such offences in one trial. *Rajabuddin Mandal v. Emperor*. 34 Cr. L. J. 1219 :

146 I. C. 305 : 37 C. W. N. 1074 :
60 Cal. 1394 : 6 R. C. 196 :
A. I. R. 1933 Cal. 676.

S. 235—Joint trial.

Offences committed at different times under Ss. 380 and 457, I. P. C., cannot be charged and tried together—The illegality cannot be cured by S. 537. *Krishnaji v. Emperor*. 33 Cr. L. J. 619 :

138 I. C. 520 : 34 Bom. L. R. 590 :
I. R. 1932 Bom. 383 :
A. I. R. 1932 Bom. 277.

S. 235—Joint trial—Primary offence and offence of destroying evidence of such offence.

There cannot be a misjoinder of charges where a joint trial has taken place for the commission of a primary offence and for the offence of destroying evidence, where the incidents are so closely connected in point of time that the acts which resulted in the victim's death and those which resulted in the disposal of his body are parts of the same transaction. *Zahid Beg v. Emperor*. 39 Cr. L. J. 365 :

173 I. C. 838 : 1937 A. L. J. 1253 :
10 R. A. 508 : 1937 A. W. R. 1099 :
A. I. R. 1938 All. 91.

S. 235—Joint trial.

The accused can be tried for each of the two offences, one under S. 353, Penal Code, and the other under S. 295, U. P. Municipalities Act, at one and the same trial. *Chhotelal v. Emperor*. 37 Cr. L. J. 382 :

160 I. C. 1089 : 1936 A. L. J. 427 :
1935 A. W. R. 1318 : 8 R. A. 702 :
A. I. R. 1936 All. 74.

S. 235—Joint trial.

Three offences under Penal Code Ss. 409 and 477-A, cannot be tried together—Trial is illegal. *Rameshwar Brij Mohan v. Emperor*. 34 Cr. L. J. 673 :

144 I. C. 94 : I. R. 1933 Nag. 200 :
A. I. R. 1933 Nag. 327.

S. 235—Joint trial.

Where an accused charged with a number of offences is tried in the same trial for all of them, the trial is not vitiated unless he is prejudiced in defending himself as a consequence of one trial. *Narain v. Emperor*. 37 Cr. L. J. 372 :

160 I. C. 884 : 1936 A. L. J. 193 :
1936 A. W. R. 115 : 8 R. A. 670 (2) :
A. I. R. 1936 All. 129.

S. 235—Joint trial of complaints.

There is nothing illegal in the joint trial of any number of complaints; what is prohibited is the joint trial of different offences, and that only when the acts alleged are not so connected together as to form one single transaction. *Tukaram v. Ganpat*. 26 Cr. L. J. 327 :

84 I. C. 551 : A. I. R. 1923 Nag. 156.

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—Ss. 235, 222, 239—*Joint trial, advisability of.*

Joint trials, except where they are clearly authorized by the law, do not save time in the long run and further the ends of justice, and where the legality of a joinder of charges is doubtful, the correct course is to hold a trial clearly authorized by the law. *Abdur Rahim v. Emperor.* 32 Cr. L. J. 611 :

130 I. C. 796 : 12 P. L. T. 12 :

I. R. 1931 Pat. 204 : A. I. R. 1931 Pat. 102.

—Ss. 235, 222 (2), 239—*Joint trial.*

The accused told the villagers that the assessment had been increased, but that if they paid him the excess for one year, he would let the old rate stand and collected amounts. He was charged in respect of about 80 acts of cheating and convicted in one trial: *Held*, the joint trial was entirely illegal. *Abdur Rahim v. Emperor.* 32 Cr. L. J. 611 :

130 I. C. 796 : 12 P. L. T. 12 :

I. R. 1931 Pat. 204 : A. I. R. 1931 Pat. 102.

—Ss. 235, 236, 269 (3), 423 (2), 494, 526 (2)—*Joint trial for offences triable by Jury and offences triable with assessors—Acquittal as regards former and conviction as to latter—Re-trial.*

Where, in a joint trial under S. 235, Cr. P. C., the accused are charged with offences triable by a Jury as well as offences triable by a Sessions Judge with the aid of assessors, and the accused are acquitted of the former set of offences but convicted of the latter, and on appeal, the conviction is set aside and re-trial is ordered, the re-trial for the latter set of offences alone is not illegal where the accused do not object to the confining of the trial to such offences alone. In cases falling within S. 263, there is one set of facts which may be viewed in different ways and so, where a re-trial is ordered, the whole facts are necessarily re-opened and nothing can prevent the Jury from coming to any verdict that they consider right upon the facts proved before them. But, where there are two different sets of facts and a verdict has been given on one set which no one impugns, then, there is no reason why, when an appeal is brought on the other set of facts, the order for re-trial should re-open both. Where there has been a verdict of a Jury acquitting the prisoners of certain charges and that verdict has not been impugned by way of appeal by the Crown, the prisoners should not again be put in peril for the same offences. *Abdul Hamid v. Emperor.*

27 Cr. L. J. 1100 :

97 I. C. 364 : 8 P. L. R. 12 :

A. I. R. 1927 Pat. 13.

—Ss. 235, 239—*Joint trial—Abduction of married woman by several persons—Her subsequent concealment by them with another—Joint trial of all, whether legal.*

On the 25th June 1922, N., a married woman, was abducted by four persons and kept at several places. On the 7th July, they took her to the ghat of one K, and kept her in a boat. K was requested by the four abductors to make N. a prostitute. The boat was taken to the other side of the river when it was met by

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another man who took N. to his house. Subsequently she was rescued by her husband and filed a petition of complaint: *Held*, (1) that inasmuch as the offence of abduction was a continuing offence, the four abductors and K. could be tried together in respect of offences committed on the 7th July 1922, and on all subsequent dates thereafter; (2) that even in respect of the occurrences before the 7th July 1922, the joint trial of the accused was not illegal, having regard to illustration (b) to S. 239, Cr. P. C. *Kushai Malik v. Emperor.*

25 Cr. L. J. 1082 :

81 I. C. 906 : 50 Cal. 1004 :

A. I. R. 1924 Cal. 389.

—Ss. 235, 239—*Joint trial—Accused jointly tried under Ss. 342, 376 and 377, Penal Code—Vagueness and multiplicity of charges, absence of corroboration and misdirection to jury, effect of—Offences under Ss. 376 and 377, Penal Code, committed on different dates—Same transaction.*

The accused were tried jointly under Ss. 342, 376 and 377, Penal Code. Four of the charges were for wrongful confinement: some by all the accused and some by only some of them. The charges of rape were drawn in a peculiar manner, in view of the fact that rape is in law a single act of sexual intercourse. Each of them specified an offence of rape, committed either on an indefinite date, or between periods extending from six weeks to six months. The time covered was from September 1936 to June 1937. The charge under S. 377, Penal Code, specified an offence committed between the end of December 1936, and June, 1937. The charges actually framed were either so vague and general as to be bad in law, or were in the alternative, absurd. Neither of these offences was a continuing offence. The whole story was vague in details, and the corroboration which might have been expected had not been given. The Judge did not deal with this evidence in a satisfactory way. It was marked with suspicious features. Instead of putting it before the jury and leaving it to them to decide whether they were prepared to believe it, the Judge went out of his way by special pleading to ask the jury to believe the whole of it: *Held*, (i) that the multiplicity of the charges tried together in the present case must have operated to the prejudice of the accused: (ii) that corroboration of the complainant in respect of the offences alleged was a practical impossibility in the absence of any definite averments as to the time of its occurrence: (iii) that the verdict of the jury was vitiated by misdirection: (iv) that the case was not a fit one in which a re-trial should be ordered. *Ali Hyder v. Emperor.* 40 Cr. L. J. 280 :

179 I. C. 960 : 68 C. L. J. 238 :

11 R. C. 637 : A. I. R. 1938 Cal. 769.

—Ss. 235, 239—*Joint trial—False statements by different persons in same case with same object—"Same transaction"—Joint trial, legality of—Distinct statements in same deposition—Separate charges, legality of.*

A accused No. 1 brought a suit as a member of a firm in whose favour a promissory note had

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been passed to recover the amount due thereunder on the basis that full consideration for the promissory note had been paid. He gave false evidence that full consideration had been in fact been paid and denied the allegation of the executant of the instrument that a certain amount had been deducted. Accused No. 2 was a member of a firm which had a half interest in this loan. He also went to the witness-box and deposed similarly that full consideration was paid, in support of accused No. 1's case. The accused were charged and tried for offences under S. 193 of the Penal Code and convicted: *Held*, that the two acts of the accused of giving false evidence were committed in the course of the same transaction within S. 239, Cr. P. C., and that the joint trial was not, therefore, illegal: *Held*, further, that an accused can be separately tried and convicted for two false statements made on different subjects though in one and the same deposition. *Sejmal Punamchand v. Emperor*. 28 Cr. L. J. 373 : 100 I. C. 981 : 29 Bom. L. R. 170 : 51 Bom. 310 : A. I. R. 1927 Bom. 177.

———S. 235, 239—*Joint trial—Gang taking part in several dacoities—Same object—Joint trial of offences and persons.*

Where a gang of dacoits assemble on a public highway and commit several acts of dacoity, each act of crime is committed in pursuance of the same object, it being immaterial whether all the members of the gang took an active part in each dacoity, or whether as many as five of them took an active part in any one dacoity. *Ram Prasad v. Emperor*. 24 Cr. L. J. 153 : 71 I. C. 505 : 20 A. L. J. 926 : A. I. R. 1923 All. 137.

———Ss. 235, 239—*Joint trial—Joinder of charges, principles governing.*

In a joint trial of several persons, the propriety of committing charges is subject to certain general principles in pursuance of which charges should be so combined as to avoid either the likelihood of bewildering the accused in their defence by having to meet many disconnected charges, or of endangering the prospect of a fair trial by the production of a mass of evidence directed to many different matters and tending by its mere accumulation to induce an undue suspicion against the accused. *Sanuman v. Emperor*. 22 Cr. L. J. 641 : 63 I. C. 401 : 19 A. L. J. 392 : A. I. R. 1921 All. 19.

———Ss. 235, 239—*Joint trial—Offences committed in separate transaction—Joint trial, legality of.*

Certain accused were charged with an offence under S. 307, I. P. C. and one of them was also charged with an offence under S. 20 of the Arms Act. The offence under the Arms Act, was not committed in the course of the same transaction as that in which the alleged attempt to murder took place, but the accused were tried jointly in respect of both the

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offences: *Held*, that the joint trial was illegal. *Nur Khan v. Emperor*.

26 Cr. L. J. 1167 :
88 I. C. 527 : 7 L. L. J. 64 :
A. I. R. 1925 Lah. 326.

———Ss. 235 and 239—*Joint trial—Same transaction.*

A and B were charged with being in possession of counterfeiting implements under S. 235, I. P. C., and A was further charged separately for being in possession of counterfeit coins under S. 243, on a joint trial of the two accused on the different charges: *Held*, that the two alleged acts, namely, possessing implements and being in possession of coins being part of the same transaction, the joint trial was not illegal. *Shadakaiya v. Government Mysore*. 7 Cr. L. J. 171 : 12 M. C. C. R. 42.

———Ss. 235, 239—*Joint trial—Separate charges—Mysore Mines Regulation, No. IV of 1906, Ss. 7, 12—Possession of unwrought gold.*

The 1st accused, along with two others, was arrested while in the act of making some gold articles within the mining area. A piece of gold was also found in his possession. He was charged with working as a goldsmith without a license, under S. 12 of the Mines Regulation and also for a breach of S. 7, as he was in possession of unwrought gold. The Magistrate did not draw up separate charges, nor did he try the accused separately for the two offences: *Held*, that separate charges should have been framed and the accused tried separately since the offences could not be said to be of the same kind or to form part of the same transaction: *Held*, also, that the mere fact that a goldsmith has with him, while he is at work, pieces of gold cannot, in the absence of other evidence, constitute possession of unwrought gold within the meaning of S. 7 of Mysore Mines Regulation. *Munisamiachari v. Government of Mysore*.

9 Cr. L. J. 323 :
12 M. C. C. R. 75.

———Ss. 235, 239—*Joint trial.*

Where one person had committed alone certain offences on a certain date, and again in the company of another person he committed certain other offences on a subsequent date: *Held*, that the joint trial of both persons for all offences committed by them on different dates was illegal. *Hira Lal Thakur v. Emperor*. 1 Cr. L. J. 713 : 8 C. W. N. 715 : I. L. R. 31 Cal. 1053.

———Ss. 235, 239 (d) (e)—*Joint trial—Illegal trial—Prejudice, question of—Same transaction, meaning of—Theft and receiving of stolen property—Joint trial of offences under Ss. 436, 457, of Penal Code and those under Ss. 411, 414.*

If a trial is illegal, the question of prejudice or absence of prejudice does not arise. Ordinarily speaking theft and receiving of stolen property are not parts of the same transaction: Offences described in Ss. 457 and 436, Penal Code, with which a person is jointly charged cannot be tried along with offences under Ss. 411 and 414, Penal Code, of which other persons are charged, inasmuch as S. 436 does

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not include theft or extortion, though S. 457 does. *Sultan Ahmad v. Emperor*.

29 Cr. L. J. 1080 :

112 I. C. 584 : A. I. R. 1929 Lah. 142.

———Ss. 235, 239, 537—*Joint trial for separate offences, legality of*—*'Same transaction.'*

The joinder of two distinct offences in a single charge is an irregularity, but not an illegality. The accused were charged with being members of an unlawful assembly and of committing theft of certain trees in a forest on two different occasions. There was interval of 24 hours between the acts. The acts took place in different parts of the forest and related to different logs: *Held*, that the acts committed on the two occasions were separate and not parts of the same transaction and a joint trial for the four offences was, therefore, illegal. *Tamez Khan v. Rajjabali Mir*.

28 Cr. L. J. 347 :

100 I. C. 827 : 31 C. W. N. 337 :

54 C. L. J. 591 : A. I. R. 1927 Cal. 330.

———Ss. 235, 239, 537—*Joint trial—Penal Code, Ss. 90, 120-B, 378, 413—Charge of conspiracy to commit theft and receiving stolen property—Joint trial—Error of wording in charges, effect of.*

A charge under S. 120-B, Penal Code, of being a party to criminal conspiracy to commit theft can be jointly tried with a charge under S. 413, Penal Code, of being a habitual receiver of property stolen in pursuance of that conspiracy but cannot be jointly tried with a charge of being habitual dealer in property which is not stolen in pursuance of such conspiracy. A mere omission in the charge under S. 413, Cr. P. C., to state expressly that the accused is charged in respect of property stolen in pursuance of the conspiracy is, however, a mere error in the wording of the charge which can be cured by S. 235, Cr. P. C. where the accused has not been prejudiced by this error. *Maung Ba Chit v. Emperor*.

31 Cr. L. J. 387 :

122 I. C. 273 : 7 Rang. 821 :

A. I. R. 1930 Rang. 114.

———Ss. 235, 439—*Joint trial of offences under S. 457, and S. 324-34, Penal Code—Legality of.*

Two offences, one under S. 457, and the other under S. 324 read with S. 34, Penal Code, committed on different dates cannot possibly be considered to be part of one and the same transaction and their joint trial is not a mere irregularity but is an illegality and the conviction being void, can be set aside in revision. *Bahali v. Emperor*.

37 Cr. L. J. 722 :

162 I. C. 926 : 38 P. L. R. 628 :

8 R. L. 973 : A. I. R. 1936 Lah. 507.

———S. 235 (1)—*Joint trial for distinct offences*—*"Same transaction," meaning of.*

The trial of several accused in respect of several distinct offences committed at different times and at different places against different persons is illegal. The fact that the complaints were lodged on the same day or that the motive for the commission of the offences was

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the same in all the occurrences does not at all go to show that the offences were committed in the course of the same transaction. *Ghasi Ram v. Sukra Uraon*.

18 Cr. L. J. 739 :

40 I. C. 739 : A. I. R. 1917 Pat. 287.

———Ss. 235 (1), 236, 237, 403—*Joint trial—Previous acquittal on a charge of abetment of forgery—Subsequent trial under S. 471—Autrefois acquit.*

Where in a trial for an offence under S. 471, I. P. C. for using a promissory note as genuine knowing or having reason to believe that it was a forged document, it appeared that the accused had previously been tried for abetting the forgery of the same document under Ss. 467 and 109, I. P. C. but had been acquitted: *Held*, (1) that inasmuch as no doubt could have arisen in the first trial as to the offence constituted by the facts proved, the case did not fall within the scope of S. 236, Cr. P. C. and, therefore, was not governed by Sub-s. (1) of S. 403: (2) that the series of acts beginning with the forgery and ending with the user of the forged document in a Civil Court to support a civil claim must be regarded as to connected together as to form the same transaction or carrying through of a single pre-determined plan, so that under S. 235 (1), Cr. P. C., it would have been competent to try the accused for both offences at the same trial and the case, therefore, fell under Sub-s. (2) of S. 403: (3) that the plea of *autrefois acquit* was bad also for the reason that the case fell under Sub-s. (4) of S. 403 of the Code, since the Court which acquitted the accused on the charge of abetment of forgery was not competent to try the offence under S. 471, I. P. C. inasmuch as at the time of the earlier trial, no sanction for prosecution under S. 471 had been given under S. 195, Cr. P. C. *Jivram Dankarji v. Emperor*. 16 Cr. L. J. 761 :

31 I. C. 361 : 17 Bom. L. R. 881 :

40 Bom. 97 : A. I. R. 1915 Bom. 203.

———S. 235—*Misjoinder of charges—Attempting to take bribe of Rs. 2 for Registration of each of seven documents presented together.*

A Sub-Registrar was charged in one Court with having attempted to receive a bribe of Rs. 2 for each of seven documents presented together for registration: *Held*, that whether the allegation in the charge amounted to seven separate offences, is a question of fact. If the accused attempted to obtain Rs. 2 separately from each of the seven persons who presented the documents and was willing to register the document of any one of them if he paid the accused Rs. 2, then there would be seven offences and separate charges would be necessary. But if the accused was not willing to register any of the documents until Rs. 2 for each of them were paid, then that would be one offence and no question of misjoinder would arise. *Girwadhari Lal v. Emperor*.

10 Cr. L. J. 463 :

4 I. C. 13 : 13 C. W. N. 1062.

———S. 235—*Misjoinder of charges—Criminal breach of trust and attempt to murder—Penal Code (Act XLV of 1860), Ss. 307, 406—Joinder of charges—Same transaction.*

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The charge under S. 406 of the Penal Code, ought not to be joined with a charge under S. 307. The taking of ornaments can hardly be said to form one transaction with an attempt to murder within S. 235. *Nithuri v. Emperor*.

10 Cr. L. J. 291 :

3 I. C. 466 : 6 A. L. J. 697.

———S. 235—*Misjoinder of charges—Falsification of accounts.*

A number of distinct charges of falsification of accounts cannot be tried together with the charge of embezzlement comprising the items to which the falsification relate at one trial. *G. S. Ramsheshan v. Emperor*.

36 Cr. L. J. 1216 :

157 I. C. 595 : 31 N. L. R. 337 :

8 R. N. 57 : A. I. R. 1935 Nag. 178.

———S. 235—*Misjoinder of charges—Falsification of accounts.*

The trial of three charges of embezzlement and of corresponding charges of falsification of accounts together is illegal. *G. S. Ramsheshan v. Emperor*.

36 Cr. L. J. 1216 :

157 I. C. 595 : 31 N. L. R. 337 :

8 R. N. 57 : A. I. R. 1935 Nag. 178.

———Ss. 235, 236, 239—*Misjoinder of charges—Two separate charges—One trial—Burden of proof.*

Where an accused person is charged of having deceived a canal officer in obtaining certain papers from him and also of having misappropriated a certain sum of money, the prosecution is entitled to ask the Court to go into both the charges at a single trial provided it takes upon itself the burden of proving that the facts alleged against the accused are in fact so connected together as to form parts of the same transaction, or to be otherwise triable at a single trial under the provisions of Ss. 235 and 236. *Sohan Lal v. Emperor*.

16 Cr. L. J. 795 :

31 I. C. 651 : 13 A. L. J. 1131 :

A. I. R. 1915 All. 380.

———Ss. 235, 239—*Misjoinder of charges—Penal Code, S. 147—Madras Forest Act, 21 (a)—Permitting cattle to trespass in reserved forest—Rioting and rescuing cattle after they were impounded—Same transaction—Joint trial.*

Accused Nos. 1 to 12 were charged with permitting cattle to graze in a reserved forest. They and accused Nos. 13 to 16 were also charged with and tried at the same trial for rioting and having rescued the cattle after they were impounded : *Held*, that the acts with which the accused were charged were not so connected together as to form the same transaction, that different offences were not committed in the same transaction and that the trial was bad for misjoinder of parties and of charges. *Mussalappa v. Emperor*.

11 Cr. L. J. 293 (b) :

6 I. C. 242.

———Ss. 235 to 239—*Misjoinder of charges and accused.*

There is neither misjoinder of charges nor of accused where the offences charged form parts of one transaction and are committed by

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several persons acting together. *Ishar Das v. Emperor*.

8 Cr. L. J. 75 :

3 P. W. R. Cr. 37.

———S. 235 (1)—*One offence—Prosecution under S. 283, Penal Code (Act XLV of 1860), for creating obstruction in river bed by making banks—Acquittal—Subsequent prosecution under S. 76 (b), Bengal Embankment Act (II of 1882), for meddling with embankment: Held, autrefois acquit applied and second prosecution was barred.*

The accused was prosecuted under S. 283, Penal Code, for creating obstruction in the bed of a river by extending a tank and making bank. After he was acquitted, he was prosecuted under S. 76 (b), Bengal Embankment, for meddling with the embankment : *Held*, that meddling with an embankment was not a distinct offence as compared with the offence under S. 283 of which he was acquitted and the principle of *autrefois acquit* operated in his favour. The second prosecution was, therefore, barred. *Shib Chandra Roy v. Emperor*.

38 Cr. L. J. 1 :

165 I. C. 847 : 9 R. C. 461 :

A. I. R. 1936 Cal. 686.

———S. 235—*Same transaction.*

A charge of criminal breach of trust of a sum of money can be tried under S. 235 (1), Cr. P. C., at the same time with one of falsification of accounts made to conceal the act of misappropriation as part of the same transaction, but a charge of criminal breach of trust cannot be legally tried together with one of falsification relating to a distinct act of misappropriation committed in a separate transaction. *Emperor v. Jagat Ram*.

19 Cr. L. J. 987 :

48 I. C. 167 : A. I. R. 1919 Lah. 440.

———S. 235—*Same transaction.*

Conspiracy and several offences in furtherance of conspiracy form one transaction and can be tried jointly. *Emperor v. Ramrao*.

33 Cr. L. J. 666 :

138 I. C. 708 : 34 Bom. L. R. 598 :

56 Bom. 304 : I. R. 1932 Bom. 423 :

A. I. R. 1932 Bom. 406.

———S. 235—*Same transaction—Conspiracy having one or more objects in view—Offence of conspiracy and acts in pursuance of it, whether come under one transaction—Transaction, how long continues.*

Where there is a conspiracy having one or more objects in view and certain offences are committed in pursuance of such conspiracy, the several offences generally form part of the same transaction within the meaning of that expression as used in S. 235. The principle will also apply where the several offences are by different persons. The offence of conspiracy and acts done in pursuance of the conspiracy can rightly be said to come under one transaction, and the transaction continues so long as the conspiracy continues. Where, therefore, there is a conspiracy and specific offences are committed in pursuance of such conspiracy, persons who are parties to

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that conspiracy and concerned in the specific offences, can lawfully be tried in one and the same trial. *Rash Behari Shaw (Handa) v. Emperor*.

38 Cr. L. J. 545 :
168 I. C. 657 : 41 C. W. N. 225 :
9 R. C. 853 :
A. I. R. 1936 Cal. 753.

—S. 235—Same transaction.

Each act of embezzlement and the steps taken to conceal it form one transaction, and the fact that the offence was repeated on several occasions in pursuance of a studied policy of fraud cannot make all the acts parts of the same transaction. *G. S. Ramsheshan v. Emperor*.

36 Cr. L. J. 1216 :
157 I. C. 595 : 31 N. L. R. 337 :
8 R. N. 57 : A. I. R. 1935 Nag. 178.

—S. 235—Same transaction.

Illicit misappropriations by cashier in one year can be regarded as one transaction. *Kashi Ram v. Hurdal Rai*.

156 I. C. 192 : 39 C. W. N. 703 :
62 Cal. 808 : 7 R. C. 687 (2) :
A. I. R. 1935 Cal. 312.

—S. 235—Same transaction, meaning of.

Common sense and ordinary use of language must decide whether on the facts of a particular case there is one transaction or several transactions. In order that a series of acts be regarded as the same transaction, they must be connected together in some way. Test to see whether they form same transaction stated. *Shapurji Sorabji v. Emperor*.

37 Cr. L. J. 688 :
162 I. C. 399 : 38 Bom. L. R. 106 :
60 Bom. 198 : 8 R. B. 415 :
A. I. R. 1936 Bom. 154.

—S. 235—‘Same transaction’, meaning of.

The expression “same transaction” in S. 235 is used in the same sense in which it is used in S. 230, Cr. P. C. *Abdur Rahim v. Emperor*.

32 Cr. L. J. 611 :
130 I. C. 796 : 12 P. L. T. 12 :
I. R. 1931 Pat. 204 :
A. I. R. 1931 Pat. 102.

—S. 235—‘Same transaction,’ meaning of.

The expression ‘same transaction’ in S. 235, Cr. P. C., suggests not necessarily proximity in time so much as continuity of action and purpose. *Ganesh Prasad v. Emperor*.

32 Cr. L. J. 478 :
130 I. C. 269 : I. R. 1931 Pat. 173 :
A. I. R. 1931 Pat. 52.

—S. 235—Same transaction, meaning of.

The mere fact that two offences are committed at the same time or place is neither necessary nor decisive as an indication of their being so connected as to form the same transaction. Nor are offences so regarded merely because they may be inspired by one and the same general object such as that of deceiving the public or plunder. *Abdur Rahim v. Emperor*.

32 Cr. L. J. 611 :
130 I. C. 796 : 12 P. L. T. 12 :
I. R. 1931 Pat. 204 :
A. I. R. 1931 Pat. 102.

Cr. P. CODE (1898), S. 235**—S. 235—Same transaction, meaning of.**

The test to be applied is not so much proximity in time as continuity of action and purpose. Where, however, criminal acts are separated by an interval of time, the length of the interval may be an important indication that such continuity is wanting. *R. S. Ruikar v. Emperor*.

36 Cr. L. J. 1153 :
157 I. C. 618 : 31 N. L. R. 318 :
A. I. R. 1935 Nag. 149.

—S. 235—‘Same transaction’, meaning of.

There is a distinction between acts committed in pursuance of a conspiracy and acts committed merely in pursuance of a general policy of deception, plunder and the like; the former may form one transaction, but not the latter. *Abdur Rahim v. Emperor*.

32 Cr. L. J. 611 :
130 I. C. 796 : 12 P. L. T. 12 :
I. R. 1931 Pat. 204 :
A. I. R. 1931 Pat. 102.

—S. 235—“Same transaction”, meaning of.

Where the accused cut a large number of trees on eight or nine separate occasions, each felling and misappropriation amounts to a distinct offence and it is illegal to charge and try accused for all these offences at one trial. The various fellings are not so connected together as to form one transaction under S. 235, Cr. P. C. *Raghavendra Row v. Emperor*.

12 Cr. L. J. 567 :
12 I. C. 655 : 1911 2 M.W. N. 467.

—S. 235.

Same transaction. Offences of breach of trust and falsification of accounts in respect of three items should be linked together. *Ramkishoon Pershad v. Emperor*.

35 Cr. L. J. 876 :
148 I. C. 990 : 15 P. L. T. 126 :
13 Pat. 170 : 6 R. P. 526 :
A. I. R. 1934 Pat. 232.

—S. 235—Same transaction—Offences of theft, intimidation and being members of unlawful assembly.

Where the accused committed theft of sheep, and on being remonstrated by the owner, threatened him with force, drove him into his house and confined him there till late at night, and on the next morning went again to to his house and renewed the threat and intimidation : *Held*, that the above acts formed part of the same transaction within the meaning of S. 235, Cr. P. C., and need not be tried separately. *Pedda Vencata Reddy v. Emperor*.

9 Cr. L. J. 367 :
1 I. C. 682.

—S. 235—Same transaction.

Per Spencer, Offg. C. J.—When a series of acts are so connected by community of purpose and continuity of action, as to form not only one transaction but a single offence, proximity of time between the performance of the various acts composing that offence not being the sole test of the unity of the transaction. S. 235 authorises persons accused of doing

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these acts to be charged and tried at one trial for them all. *In re : Gam Malla Dora.*

26 Cr. L. J. 1513 :
190 I. C. 297 : 48 M. L. J. 308 :
1925 M. W. N. 192 : 49 Mad. 74 :
A. I. R. 1925 Mad. 690.

———S. 235—*Same transaction—Receiving stolen property and cheating, joinder of charges of.*

A charge of receiving stolen property may be joined with a charge for cheating, when the facts constituting the offences form part of the same transaction. The true test of acts forming part of the same transaction is that there should be a continuous operation of acts leading to the same end and a common purpose should run through all the acts. *Lockely v. Emperor.*

21 Cr. L. J. 297 :
55 I. C. 345 : 11 L. W. 130 :
1920 M. W. N. 137 : 38 M. L. J. 209 :
43 Mad. 411 : 27 M. L. T. 289 :
A. I. R. 1920 Mad. 201.

———S. 235—“*Same transaction*”—*Several persons conspiring to commit offences and commit overt acts in pursuance of conspiracy—Acts committed in course of same transaction.*

The observation of the Judicial Committee in *Babulal v. Emperor* (39 Cr. L. J. 452) to the effect that if several persons conspire to commit offences, and commit overt acts in pursuance of the conspiracy, these acts are committed in the course of the same transaction, which embraces the conspiracy and the acts done under it, and that the common concert and agreement which constitute the conspiracy serve to unify the acts done in pursuance of it, apply only to cases where a charge of conspiracy has been formulated, so that the alleged common concert serve to unify the acts done in pursuance of the conspiracy. It is entirely different where the charge is restricted in its scope to abetment by conspiracy to do a specific act. The scope of the enquiry is thereby restricted and not enlarged, so as to embrace all acts and sundry done in pursuance of a general conspiracy to do similar acts extending over not only the period involved in the charge of abetment, but over a much larger period, anterior and subsequent. Having regard to the language of S. 109, Penal Code, it cannot be said that abetment by conspiracy involves a general agreement to do a series of acts of which the act abetted is one. Even assuming that it could be so, if at the end of a long spell, new circumstances arose and the parties again agreed to make a fraudulent adjustment of their account with a view to prolong the refund of the money misappropriated, that would strictly be a second conspiracy independent of the first. Consequently, the result of the acts committed under the later conspiracy could not be tacked on to a charge on the former. *Ramchandra Rango Sowkar v. Emperor.*

40 Cr. L. J. 579 :
181 I. C. 870 : 41 Bom. L. R. 98 :
11 R. B. 356 : A. I. R. 1939 Bom. 129.

———S. 235—*Same transaction.*

Single trial for charges under criminal breach

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of trust, and falsification of accounts in respect of three items on different dates within space of one year is not legal. *Emperor v. Attursing.*

33 Cr. L. J. 650 :
138 I. C. 618 : 26 S. L. R. 191 :
I. R. 1932 Sind 87 (2) : A. I. R. 1932 Sind 64.

———S. 235 — ‘*Same transaction*’—*Possession of stolen property.*

The simultaneous possession of a number of bullocks at a *mela* and the offer of them for sale is one “transaction” and any number of separately stolen bullocks may be the subject of a single trial. *Ramnath Rai v. Emperor.*

36 Cr. L. J. 342 :
153 I. C. 423 : 13 Pat. 151 : 7 R. P. 339 :
A. I. R. 1934 Pat. 483.

———S. 235—*Same transaction.*

Sub-Inspector confining persons to extort confession—Subsequent altering of diary to save himself—Acts form one transaction. *Sanjiv Ratnappa v. Emperor.*

34 Cr. L. J. 357 :
142 I. C. 386 (2) : 34 Bom. L. R. 1090 :
56 Bom. 488 : I. R. 1933 Bom. 237 :
A. I. R. 1932 Bom. 545.

———S. 235—‘*Same transaction*’.

The word “transaction” in its context in S. 235, has a wider significance for which a synonym may be found in, the word “affair.” *Ramnath Rai v. Emperor.*

36 Cr. L. J. 342 :
153 I. C. 423 : 13 Pat. 161 : 7 R. P. 339 :
A. I. R. 1934 Pat. 483.

———S. 235—“*Same transaction*,” meaning of—*Test.*

The word “transaction” is usually used to include the steps leading to a conclusion or resulting in action, though often transaction emphasizes the fact of something done or brought to a conclusion. In that sense every embezzlement constituted by the unauthorized advance would be a transaction in itself. To ascertain whether a series of acts are parts of the same transaction, it would be essential to see whether they are linked together to present a continuous whole. The expression “same transaction” as judicially interpreted signifies “related to one another in point of purpose, or as cause and effect or as principal and subsidiary acts as to denote one continuous and completed action.” The idea of completion cannot be divorced from the interpretation of the expression. The question is at what stage the act alleged has been done or completed. The mere community of purpose coupled with concert and design implied in abetment by conspiracy do not make the different acts alleged, parts of the same transaction. A mere common purpose does not constitute a transaction. As also the mere existence of some general purpose or design, such as making money at the expense of the public is not sufficient to make all acts done with that object in view part of the same transaction. One of the tests to ascertain whether the acts are part of the same transaction is to see whether there was continuity of action. The continuity of action

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means the following up of some initial act through all its consequences and incidents until the series of acts or groups of connected acts come to an end, either by attainment of the object or by being put an end to or abandoned. If any of those things happens and the whole process is begun over again, it is not the same transaction but a new one, in spite of the fact that the same general purpose may continue. *Ramchandra Rango Soekar v. Emperor*.

40 Cr. L. J. 579 :
181 I. C. 870 : 41 Bom. L. R. 98 : 11 R. B. 356 :
A. I. R. 1939 Bom. 129.

—S. 235—Same transaction—Test of.

The word 'transaction' suggests not necessarily proximity in time so much as continuity of action and purpose, that is to say, it is not necessary that the acts constituting the crimes should have been committed all on the same occasion, but it is sufficient that, though separated by a distinct interval of time, they are closely connected by continuity of purpose and progressive action towards a single object. *Pahlad v. Emperor*.

21 Cr. L. J. 626 :
57 I. C. 450 : 2 U. P. L. R. Lah. 135 :
I. L. 562 : 7 P. L. R. 1921 :
A. I. R. 1920 Lah. 265.

—S. 235—Same transaction, what amounts to—Conspiracy and acts done in furtherance of common object—Same transaction.

What amounts to the "same transaction" within S. 235, Cr. P. C., is a question of fact which has to be decided in the circumstances of each case. A conspiracy and acts done in furtherance of its common object have no community with separate acts which may be committed by a conspirator for individual gain and consequently cannot form part of the same transaction. *Emperor v. Bishan Sahai Vidyarthi*.

39 Cr. L. J. 38 :
171 I. C. 994 : 1937 A. L. J. 1073 :
I. L. R. 1937 All. 779 : 10 R. A. 350 :
1937 A. W. R. 748 : A. I. R. 1937 All. 714.

—S. 235—Same transaction—What constitutes.

What constitutes the same transaction for the application of S. 235 (1) is a question of fact to be determined by the circumstances of each case. *Ghosi Ram v. Emperor*.

38 Cr. L. J. 542 :
168 I. C. 450 : 9 R. N. 255 :
A. I. R. 1937 Nag. 188.

—S. 235—Same transaction, what is.

In considering whether several acts are so connected as to form the same transaction, the Court has to deal with every case that arises on its own facts. *Dubri Misir v. Emperor*.

32 Cr. L. J. 540 :
130 I. C. 350 : 8 O. W. N. 92 :
I. R. 1931 Oudh 158 : A. I. R. 1931 Oudh 86.

—S. 235—Same transaction, what is.

The word transaction means a group of facts so connected together as to involve certain ideas, namely, unity, continuity and connection. *Kashi Ram v. Hardat Rai*.

156 I. C. 192 : 39 C. W. N. 703 : 62 Cal. 808 :
7 R. C. 687 (2) : A. I. R. 1935 Cal. 312.

Cr. P. CODE (1898), S. 235**—Ss. 235, 239—Same transaction.**

C who held a licence for sale of opium allowed C. B. not holding a licence for sale of opium to sell it. C. B. sold some opium. Both C and C. B. were tried jointly and convicted under S. 9 of Act I of 1878 : *Held*, the transaction was the same and there was no misjoinder of accused persons. *Chhail Bihari v. Emperor*.

4 Cr. L. J. 178 :
1 P. W. R. Cr. 3 : 7 P. L. R. 364.

—Ss. 235, 239—'Same transaction', meaning of.

Acts done by different persons on different dates but in continuity and with common purpose—Joint trial, legality of. *Ganesh Prasad v. Emperor*.

32 Cr. L. J. 478 :
130 I. C. 269 : I. R. 1931 Pat. 173 :
A. I. R. 1931 Pat. 52.

—Ss. 235, 239—"Same transaction", meaning of—Trespass committed on two consecutive days in pursuance of same object, whether same transaction—Joint trial.

In order to form part of the same transaction within the meaning of Ss. 235 and 239, Cr. P. C., it is not necessary that all the acts should have been committed on the same occasion; it is sufficient that though separated by a distinct interval of time they are closely connected by continuity of purpose or progressive acts towards a single object. Whether a transaction is the same or not is a question of fact depending on the facts and circumstances of each case. Under a decree, certain lands had been given to the complainant. These lands consisted of various plots separated from others by lands belonging to other persons. On a certain day, accused went on these lands and cut and took away paddy from some of the plots. On the following day they went on other plots and cut and took away other paddy : *Held*, that the events of both days really formed one transaction and that, they could be jointly tried for offences committed by them on both days. *Patil Paban Ray v. Emperor*.

26 Cr. L. J. 369 :
84 I. C. 849 : A. I. R. 1925 Cal. 580.

—S. 235—Same transaction—Misjoinder of charges—Charge for personating a police officer and extortion.

The accused was charged under 'S. 170, Penal Code, with personating a Police Officer and thereby, in such assumed character, doing, or attempting to do, an act under colour of such office; he was further charged on three charges of extortion in respect of three sums, and in the alternative, on three charges of cheating in respect of the three sums, and finally of an attempt at extortion in respect of a certain sum, under S. 384, read with S. 511 : *Held*, that there was no misjoinder of charges, the offences charged having been committed in the same transaction. *Jagdish Kumar v. Atma Ram*.

12 Cr. L. J. 346 :
10 I. C. 946 : 15 C. W. N. 732.

—Ss. 235, 239—Same transaction—

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Offences in excess of three, whether can be combined.

There is nothing in S. 235 or S. 239, Cr. P. C. to warrant the rule that in no circumstances can more than three offences be combined even if more than three offences have been committed in the same transaction. *Sanuman v. Emperor*.

22 Cr. L. J. 641 :
63 I. C. 401 : 19 A. L. J. 392 :
A. I. R. 1921 All. 19.

———Ss. 235, 239—*Same transaction, what is.*

Certain Excise Officers, having made a seizure of articles which were being used for the purpose of illicit distillation and apprehended certain persons as being in possession of those articles, were taking the articles and escorting the persons to the headquarters of the Excise Department, when a large number of persons collected and the following events followed:—(a) A cow-shed was set on fire; (b) the Excise Officers were beaten and otherwise maltreated; (c) the articles seized were recovered; (d) the prisoners were rescued; (e) some of the Excise Officers were wrongly confined. One event followed directly after another, and the period from the first event to the last was less than five hours, and there was a common purpose running through all : *Held*, that all these events formed one transaction within the meaning of S. 235 of the Cr. P. C. *Sanuman v. Emperor*.

22 Cr. L. J. 641 :
63 I. C. 401 : 19 A. L. J. 392 :
A. I. R. 1921 All. 19.

———Ss. 235, 403, 494 (b)—“*Same transaction*”—*Withdrawal of prosecution—Subsequent charge on same series of acts—Plea of previous acquittal—“Distinct offences”, meanings of.*

On August 13, 1925, the accused in a petition to a District Magistrate made certain allegations for ill-treatment by the Police. When she was examined, she said she could not give the names of the officers who ill-treated her, for certain reasons. Subsequently on September 5, 1925, she made a statement to a Sub-Divisional Magistrate in which she specified the names of the persons who had ill-treated her. A complaint was preferred against her under S. 193, I. P. C., at the instance of the Sub-Divisional Magistrate and a charge was framed against her but the charge was permitted to be withdrawn on July 29, 1927, and the accused was acquitted under S. 494 (b), Cr. P. C.,. Meanwhile on July 25, 1927, a complaint was made by the District Magistrate against the accused charging her with having given false information to a public servant. Objection was raised before the trying Magistrate that the prosecution was barred under S. 403, Cr. P. C., because of the previous acquittal under S. 494 (b) : *Held*, that the prosecution was not barred under S. 403, Cr. P. C., inasmuch as the case fell under Sub-s. 1 of S. 235, Cr. P. C. and consequently within the scope of Sub-s. (4) of S. 403, of the Code. The limitation of the exception in Sub-s. (1) of S. 403 to Sub-s (1) of S. 235 necessarily involves the exclusion of cases falling under

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the other sub-sections of S. 235. S. 235, Cr. P. C., contemplates a totality of acts, some of which bring the case under one definition of an offence and some under another. *Dagdi Dagdya Bhil v. Emperor*.

29 Cr. L. J. 522 :
109 I. C. 346 : 30 Bom. L. R. 342 :
A. I. R. 1928 Bom. 177.

———Ss. 235, 537—*Same transaction—Test—Misjoinder, effect of.*

The real and substantial test for determining whether several offences are connected together so as to come under S. 235, depends upon whether they are so related to one another in point of purpose, or as cause and effect or as principal and subsidiary acts as to constitute one continuous action. Where there is a misjoinder it has effect of vitiating the whole trial, and the defect will not be cured by the application of S. 537, Cr. P. C. *Ganda Singh v. Emperor*.

22 Cr. L. J. 505 :
62 I. C. 329 : A. I. R. 1922 Lah. 144.

———S. 235 (1)—*Same transaction—Joinder of charges—Criminal breach of trust—Falsification of accounts.*

A. was tried at one trial on two charges; the first charge was under S. 408, Penal Code for having committed criminal breach of trust as a servant; the second charge was under S. 465 for making false documents for the purpose of committing the offence of criminal breach of trust as a servant. There was only one act of criminal breach of trust charged against A. It was contended for A. that the whole trial was illegal and void as he was tried at one trial for two distinct offences : *Held*, that the case fell under S. 235 (1) as there was only one act of criminal breach of trust charged against A., and the falsification of accounts charged was an offence which formed part of the transaction as to the criminal breach of trust, because the accounts alleged to have been falsified related to the act charged under S. 408, Penal Code. *Emperor v. Lalji*. 13 Cr. L. J. 501 : 15 I. C. 645 : 14 Bom. L. R. 306.

———S. 235 (1)—*Same transaction.*

In order that two or more offences committed by one person may form part of the same transaction so that the offender may be charged with and tried at one trial for all the offences, the acts done must be so related to each other in point of purpose, or as cause and effect, or as principal and subsidiary acts, as to constitute one continuous action. The test to be applied is not so much proximity in times as continuity of action and purpose. Where, however, criminal acts are separated by an interval of time, the length of the interval may be an important indication that such continuity is wanting. *Emperor v. Hari Raot*.

4 Cr. L. J. 470 :
2 N. L. R. 147.

———S. 235 (1)—*Same transaction—Series of falsification of accounts—Criminal breach of trust—Joint trial, legality of.*

A series of falsification of accounts made to

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cover a single act of defalcation may be laid in one charge under S. 477-A, Penal Code. A charge of criminal breach of trust of a sum of money can be tried at the same time with one of falsification of accounts made to conceal the act of misappropriation as part of the same transaction. *Mangal Sen v. Emperor*.

30 Cr. L. J. 958 :
118 I. C. 654 : I. R. 1929 Lah. 814 :
A. I. R. 1929 Lah. 843.

———S. 235, Illus. (F)—*Same transaction—Joinder of charges—Causing grievous hurt for extorting information—Making false entries to attribute another cause for death of injured person.*

The accused was charged with voluntarily causing grievous hurt to a person with a view of extorting information from him and he was also charged with making a series of false entries so as to attribute another cause for the death of that person who died from the effects of the injuries inflicted by the accused. The accused was tried at one trial for offences under Ss. 114, 193, 218, 330 and 331 of the Penal Code. He was convicted of offences punishable under Ss. 193, 218 and 331: *Held*, that the trial was not bad on the ground of misjoinder of charges. There was no misjoinder as the case fell under S. 235, illustration (f), Cr. P. C. The act of making a series of false entries so as to attribute another cause for death was in continuation and pursuance of the transaction of causing voluntarily grievous hurt and the two acts formed part of the same transaction. *Emperor v. Balwant Kondo Patole*.

13 Cr. L. J. 137 :
13 I. C. 825 : 14 Bom. L. R. 41.

———S. 235—Scope.

The provisions of Ss. 234, 235, 236 and 239 are mutually exclusive, and scope of S. 239 cannot be extended by use of sections not referred to in S. 239. *Janeshar Das v. Emperor*.

30 Cr. L. J. 687 :
116 I. C. 794 : I. R. 1929 All. 618 :
1929 A. L. J. 329 : 51 All. 544 :
A. I. R. 1929 All. 202.

———S. 235—Scope of—"Any number of them" meaning of.

The words 'any number of them' must not be construed literally. Accused should not be prejudiced in eyes of jury by having a multitude of accusations hurled against them at one and the same time. *Din Mahamed v. Emperor*.

35 Cr. L. J. 1337 :
151 I. C. 494 : 28 S. L. R. 119 :
7 R. S. 55 : A. I. R. 1934 Sind 59.

———S. 235—Scope of.

Ss. 234 and 235 can be regarded as cumulative in their effect in a proper case. *Ramkishoon Pershad v. Emperor*.

35 Cr. L. J. 876 :
148 I. C. 990 : 15 P. L. T. 126 :
13 Pat. 170 : 6 R. P. 526 :
A. I. R. 1934 Pat. 232.

———S. 235—Scope of.

S. 235, Cr. P. C., is an enabling section and does not necessitate the inclusion of all charges

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triable under that section in one trial. *Abdul Hamid v. Emperor*.

27 Cr. L. J. 1100 :
97 I. C. 364 : 8 P. L. T. 12 :
A. I. R. 1927 Pat. 13.

———S. 235—Scope of.

Ss. 235 and 236 are not mutually exclusive. *Shid Charan v. Emperor*.

32 Cr. L. J. 1007 :
133 I. C. 140 : 53 All. 223 :
1931 A. L. J. 1015 : I. R. 1931 All. 588 :
A. I. R. 1931 All. 49.

———S. 235—Scope of.

Ss. 235 (1) and 236 are mutually exclusive and if a case is governed by one of them, it cannot be governed by the other; and S. 237 applies only to cases governed by S. 236. *In re : K. Srirangachariar*. 35 Cr. L. J. 1503 :
152 I. C. 154 : 40 L. W. 586 :
67 M. L. J. 583 : 1934 M. W. N. 994 :
58 Mad. 178 : 7 R. M. 191 :
A. I. R. 1934 Mad. 673.

———Ss. 235 and 403—Scope—Previous conviction for offence under S. 365, I. P. C.—Subsequent trial for abduction, not barred.

Where under a charge under S. 365, Penal Code, a conviction is bad, a subsequent trial for abduction is not barred by S. 403, Cr. P. C. the case falling under S. 235 (1). *Baldeo Prasad v. Emperor*. 3 Cr. L. J. 93 :
3 A. L. J. 2 : 26 A. W. N. 32.

———S. 235, 239—Separate charge—Necessary.

Even where Ss. 235 and 239 of the Code justify a joinder, it should not be resorted to if there is risk of embarrassment to the defence. *Rash Behari Shaw (Handa) v. Emperor*.

38 Cr. L. J. 545 :
168 I. C. 657 : 41 C. W. N. 225 :
9 R. C. 853 : A. I. R. 1936 Cal. 753.

———S. 235 (1)—Separate conviction—Separate convictions for distilling and possessing spirits.

Although under S. 235 (1) separate convictions for two offences of distilling spirit and possessing spirit obtained by such distillation are legal, yet it is neither necessary nor desirable to convict for the latter offence when the first is proved. *Emperor v. Nga San Dun*.

1 Cr. L. J. 552 :
4 B. R. 1904 : 1st. Qr. P. C. 1.

———S. 236.

See also (i) Charges, misjoinder of.
(ii) Cr. P. C., 1898, S. 225.
(iii) Criminal trial.
(iv) Jury trial.
(v) Penal Code, 1860, S. 149.
(vi) Post Office Act, 1898, S. 3.

———S. 236.

———Abetment.
———Alternative charge.
———Applicability.
———Application.

———Autrefois acquit.

———Doubt.

———Perjury.

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- Procedure.
- Scope.
- Same transaction.
- Subsequent trial.

———Ss. 236, 237, 238—*Abetment—Accused charged with substantive offence—Conviction for abetment.*

A person may be convicted of abetment of an offence even if he is charged only with the substantive offence if, on the facts stated in the charge, the accused could have been charged with abetment. *Punamchand Amarchand v. Emperor.* 30 Cr. L. J. 224 : 113 I. C. 881 : I. R. 1929 Nag. 33.

———Ss. 236, 237, 238—*Abetment—Charge for substantive offence—Conviction for abetment, legality of.*

It cannot be laid down as a universal rule that in no circumstances whatsoever, where there is a charge of a substantive offence and there is no charge of abetment of that substantive offence, can the person so charged with the substantive offence be convicted of abetment of that offence. The true rule is that the answer to the question really depends on the facts of each case and it must be seen in each case whether or not prejudice has been caused to the accused by reason of the conviction for abetment of the substantive offence in the absence of a charge therefor. *Kadira v. Emperor.* 29 Cr. L. J. 1093 : 112 I. C. 677 : A. I. R. 1928 Cal. 166.

———S. 236—*Alternative charge—Alternative charge in respect of offence under Penal Code and Special Law—Framing of law.*

Per Pratt, J. C. (*Crouch, A. J. C.* dissenting) —An alternative charge under S. 236, Criminal Procedure Code, cannot be framed in respect of distinct offences, nor even in respect of cognate offences when the difference is one of degree, *i. e.*, as to the intention imputed to the accused or as to some circumstance of aggravation, S. 236, Criminal Procedure Code, applies to those cases only in which the prosecution cannot establish exclusively any one offence but is able, on the facts which can be proved, to exclude the innocence of the accused and to show that he must have committed one of two or more offences. Offences charged in the alternative arise out of the same *delictum* and are, therefore, necessary cognate offences. The doubt, referred to in S. 236, Criminal Procedure Code, can only arise when the legal character of the acts of the accused might be considered ambiguous, and the section authorizes a charge in the alternative when it is doubtful which of several offences the facts which can be proved will constitute and not in a case where there may be doubt as to the fact which constitutes one of the elements of the offence, that is, the *corpus delicti*. The criminal intention imputed to the accused must be specifically determined and not allowed to remain a subject of doubt in an alternative charge. S. 236, Criminal Procedure Code, contemplates a state of facts constituting a single offence but it is doubtful whether the act or acts involved may amount to one or other of several cognate offences. Per *Crouch, A. J. C.*—The essential

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difference between (1) cumulative charges, (2) alternative charges, and (3) charges in the alternative is, that under the *first*, the Court is asked to convict of two or more offences, under the *second*, of any one specified offence, and under the *third* of one or other two offences, without specifying which. The alternative offences need not necessarily be offences dealt with under the same Chapter of the Penal Code or “cognate” in any other technical sense, but they must, from the nature of the case, be such that the commission of each can reasonably be inferred from the same facts. *Ganesh Krishna v. Emperor.* 12 Cr. L. J. 224 : 10 I. C. 168 : 5 S. L. R. 16.

———S. 236—*Alternative charges, and charges in the alternative, difference between—Nature of offences for which alternative charges are permissible.*

The accused, a postal peon, was entrusted with certain bearing letters which it was his duty to deliver and recover the amount of the postage due. He returned bringing neither letters nor money and gave no explanation. At his trial he was charged in the alternative under S. 409, Indian Penal Code, or S. 52 of the Post Office Act, in that he either dishonestly converted to his own use the amount recovered on account of the bearing letters entrusted to him or that he threw the letters away : *Held*, that the charge in the alternative was bad in law. S. 367 (3) of the Criminal Procedure Code and Ss. 40 and 72 of the Penal Code refer only to offence under the Penal Code. Consequently, an alternative charge cannot be framed in respect of an offence under the Penal Code and an offence under a Special Law; nor can a Court inflict any sentence on a person found guilty in the alternative of an offence under the Penal Code and another under a Special Act. *Ganesh Krishna v. Emperor.* 12 Cr. L. J. 224 : 10 I. C. 168 : 5 S. L. R. 16.

———S. 236—*Alternative charge—Charge of murder and causing disappearance of evidence of murder—Conviction on both or either of charge.*

A person may be charged with the offence of murder, under S. 302, Penal Code, and in the alternative, with the offence of causing disappearance of the evidence of murder under S. 201, Penal Code. However strong the suspicion may be that a person has committed murder, yet if it is not established on evidence that he is the murderer, his conviction under S. 201, Penal Code, is not illegal. A murderer cannot be charged under S. 201, inasmuch as a person cannot be convicted both as a principal and as an accessory after the fact. *Andal Shah v. Emperor.* 26 Cr. L. J. 909 : 88 I. C. 973 : 18 S. L. R. 185 : A. I. R. 1925 Sind 306.

———S. 236—*Alternative charge—Contradictory statements before Police and Magistrate—Series of acts—Prosecution for perjury—Alternative charge.*

When a person makes a contradictory statement at the Police investigation and before

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a competent Magistrate, the two statements constitute a series of acts within the meaning of S. 236 on which an alternative charge against the person for perjury can be framed. *Patraji v. Emperor*.

26 Cr. L. J. 1457 :
89 I. C. 1025 : 2 O. W. N. 637 :
12 O. L. J. 644 : A. I. R. 1926 Oudh 660.

—S. 236—*Alternative charge—Statement recorded under S. 164 and statement in judicial proceeding, whether can be made basis of alternative charge for perjury.*

Per Curiam (Shah, J., contra.)—A statement recorded under S. 164, Cr. P. C. can be linked with a statement which is evidence in a stage of the judicial proceeding following on the investigation so that the two can be treated as a series of acts on which an alternative charge can be framed under S. 236 of intentionally giving false evidence. *Purshottam Ishwar Amin v. Emperor*.

22 Cr. L. J. 241 :
60 I. C. 593 : 23 Bom. L. R. 1 :
45 Bom. 834 : A. I. R. 1921 Bom. 3.

—S. 236—*Alternative charges under two sections under one head of charge, legality of—Alternative conviction, when legal—Duty of Judge to find facts.*

Alternative charges under two sections cannot be combined together in one head of charge. S. 236, Cr. P. C. does not apply where there is any doubt as to the facts, but applies where there is a doubt as to the law applicable to a certain set of facts which have been proved. When the facts are in doubt, there is no objection to the Magistrate framing alternative charges, but at the conclusion of the case he is not entitled to compromise his doubts as to true facts of the case by convicting in the alternative. He is bound to come to a distinct finding as to the facts, and then only if the law applicable to the facts which he considers to have been proved is doubtful, he may convict in the alternative. *Po Thin Gyi v. Emperor*.

30 Cr. L. J. 750 :
117 I. C. 244 : 7 Rang. 96 :
I. R. 1929 Rang. 180 : A. I. R. 1929 Rang. 209.

—Ss. 236, 237—*Alternative charges for offences under Ss. 302, 201, Penal Code, legality of.*

As it is now settled law that a person may be convicted under S. 201, Penal Code, even though he has been charged only for an offence under S. 302, Penal Code, there cannot be any illegality in charging an accused under both these sections alternatively. *Umed Sheikh v. Emperor*.

27 Cr. L. J. 1011 :
96 I. C. 867 : 30 C. W. N. 816.

—Ss. 236, 237—*Alternative charge—Penal Code, Ss. 182, 211—Distinction between the two offences—Acquittal under S. 182 does not bar trial under S. 211.*

An offence under S. 182 of the Penal Code is essentially distinct from an offence under S. 211. A person cannot be charged in the alternative with having committed an

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offence under S. 182 or one under S. 211 of the Penal Code. An acquittal on the charge under S. 182 is no bar to a subsequent trial of the same accused for an offence under S. 211. *Thakur Singh v. Chattar Pal*.

11 Cr. L. J. 420 :
6 I. C. 944 : 20 P. R. 1910 Cr.

—S. 236, 237, 238—*Alteration of charge—Irregularity—Penal Code, Ss. 366, 376.*

It is not competent to a Judge in appeal to alter a charge under S. 376, Penal Code, to one under S. 366 of the Code, because a charge under the latter section involves different elements and different questions of fact from a charge under S. 376. *Emperor v. Sakharan Ganu*.

3 Cr. L. J. 240 :
8 Bom. L. R. 120.

—Ss. 236, 237, 238—*Alteration of charge—Joinder of charges—Charge of robbery—Conviction of house-breaking at night without altering charge—Penal Code, Ss. 392, 458.*

The accused was sent up for trial under S. 395, Penal Code. He was charged with an offence under S. 392 but was convicted under S. 458 without the charge being altered. The defence of the accused was an *alibi*, and the Magistrate, therefore, considered that the accused was not prejudiced by the change of the section under which he was convicted: *Held*, that the conviction under S. 458 could not be upheld as the change in the offence did not come within the purview of Ss. 236 and 238, Cr. P. C. A charge under robbery cannot include the offence of house-breaking by night. An offence under S. 458 is a graver offence than one under S. 392, Penal Code. *Nga Kaung Nyein v. Emperor*.

13 Cr. L. J. 429 :
14 I. C. 973 : U. B. R. 1911 I, 98.

—Ss. 236, 237, 238—*Alteration of charge—Penal Code, Ss. 34, 325—Conviction under S. 325 set aside—Re-trial for offence under Ss. 34, 325.*

Where an accused person has been tried for and convicted of an offence under S. 325, Penal Code, on the charge that he himself struck blows to another person which resulted in the latter's death, but the witnesses against him are disbelieved by the Court of Appeal and, therefore, his conviction cannot be upheld on that charge, the Court cannot alter the charge and maintain his conviction by reading S. 34, Penal Code, with S. 325, on the ground that some member of the party of the accused, though not the accused himself, had struck blows to the deceased in pursuance of the common intention of the party, even if there is evidence to this effect on the record, nor can the case be sent back for re-trial under S. 325 read with S. 34, as such a course would mean inviting the Court below to believe on the amended charge, the very witnesses who are held by the Appellate Court to have committed deliberate perjury against the accused in stating that he had struck blows to the deceased. *Chidda Singh v. Emperor*.

25 Cr. L. J. 1292 :
82 I. C. 364 : A. I. R. 1924 AII. 766.

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———S. 236, 239—*Alternative charge—Penal Code Ss. 147, 155, 304—Several accused—Joinder of alternative charge against one, legality of—Joint trial for offences under Ss. 304 and 147, legality of.*

Where several accused persons are tried together for rioting, it is not illegal to have an alternative charge against one of those accused persons under S. 155, Penal Code. Where it is doubtful whether an offence under S. 304, Penal Code, was committed during a riot or afterwards, the charges under Ss. 304 and 147, Penal Code, should go to the Jury in the same trial as it is entirely for the Jury to say whether the offence under S. 304 was committed during the riot or afterwards. *Tota Meah Chowdhury v. Emperor.*

30 Cr. L. J. 1015 :
119 I. C. 139 : I. R. 1929 Cal. 747 :
56 Cal. 1106 : A. I. R. 1929 Cal. 298.

———Ss. 236, 255, 271—*Alternative charges—Charge, explanation of—Duty of Judge.*

Where a charge is at all complicated, it is the duty of the Judge, even though Counsel may be engaged, to clear the ground and to be quite sure that each accused or his Counsel clearly understands what case he has to meet. Alternative charges may be properly run against an accused person on the same set of facts, but alternative charges which include offences which do not arise out of the same set of facts as those with which they are linked, even though tried in the same proceedings, ought to be made clear to the accused before the trial and clearly dealt with in the Judge's final decision. *Jodha Singh v. Emperor.*

25 Cr. L. J. 592 :
81 I. C. 80 : A. I. R. 1923 All. 285.

———Ss. 236 and 403—*Alternative charge—Joinder of charges of murder and causing disappearance of evidence of murder—Acquittal on charge of murder—Second trial for causing disappearance of evidence of the murder.*

The joinder of charges of murder and of causing disappearance of evidence of the murder in the alternative is legal under S. 236, Cr. P. C. An acquittal on a charge of murder is a bar to a second trial on a charge of causing disappearance of evidence of murder by reason of S. 403, Cr. P. C. *Emperor v. Bawa Manghnidas.*

11 Cr. L. J. 731 :
8 I. C. 936 : 4 S. L. R. 174.

———Ss. 236, 403—*Alternative charge—Penal Code, S. 160—Bombay District Police Act, S. 61 (o)—Fighting in public place—Acquittal under S. 160, Penal Code—Subsequent trial for offence under S. 61 (o), Police Act, legality of—Autrefois acquit—Alternative charges, framing of.*

The accused who fought with another in a public place was tried for an offence under S. 160 of the Penal Code and acquitted as it was found that the public peace was not disturbed. He was again charged under S. 61 (o) of the Bombay District Police Act, 1890, on the same facts and same evidence : *Held*, that the acquittal in the previous case

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operated as a bar to the subsequent prosecution inasmuch as an alternative charge for the latter offence could have been framed in the previous case under S. 236 of the Code. *Kallasani v. Emperor.*

28 Cr. L. J. 1032 :
106 I. C. 216 : 29 Bom. L. R. 1478 :
I. L. T. 40 Bom. 3 .
A. I. R. 1927 Bom. 629.

———S. 236, *applicability—Alternative conviction—Sentence.*

Where a Court is satisfied that the accused has committed one of two offences, either that of counterfeiting a currency note under S. 489-A, Penal Code, or that of attempting to cheat under S. 420 read with S. 511, a conviction should be recorded in the alternative under those sections, and the question of sentence should be considered from the point of view of the maximum sentence provided for the lesser of the two alternative offences. *Hira Nand v. Emperor.*

18 Cr. L. J. 790 :
41 I. C. 310 : 15 A. L. J. 587 :
A. I. R. 1917 All. 29.

———S. 236, *applicability—Conviction for offence not charged with.*

Charge under S. 302, I. P. C.—Acquittal under S. 302 but conviction under S. 194, I. P. C.—Conviction held illegal. *Qabul v. Emperor.*

34 Cr. L. J. 445 :
142 I. C. 803 : 1932 A. L. J. 1079 :
I. R. 1933 All. 154 :
A. I. R. 1933 All. 30.

———S. 236—*Applicability—Conviction for offence not charged with.*

Where it is doubtful which of several offences a person has committed, he may be charged with all of them or with a number of them in the alternative. In such a case he may be convicted if the facts proved show that he is guilty of an offence with which he might have been charged under S. 236, though in fact he was not specifically charged with that particular offence. *Emperor v. Malhuri.*

37 Cr. L. J. 794 :
163 I. C. 253 : 1936 A. L. J. 518 :
8 R. A. 928 (2) : 58 All. 695 ;
A. I. R. 1936 All. 337.

———S. 236—*Applicability—Inference of knowledge of, accused from circumstances.*

Where the accused was found driving a cart along the road containing injured persons, and these persons were persons who had in fact recently taken part in a dacoity and the accused failed to disclose what he knew about the circumstances in which he was found : *Held*, that the Court might infer that the accused had knowledge that these persons had taken part in a dacoity. *Emperor v. Kanhaiya.*

31 Cr. L. J. 716 :
124 I. C. 553 : A. I. R. 1930 All. 481.

———S. 236—*Applicability.*

Married woman seized, taken away and raped—Charge under S. 366, I. P. C., for kidnapp-

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ing or abduction—S. 236 has no application. *Rajabuddin Mandal v. Emperor.*

34 Cr. L. J. 1219 :
146 I. C. 305 : 37 C. W. N. 1074 :
60 Cal. 1394 : 6 R. C. 196 :
A. I. R. 1933 All. 676.

———S. 236—*Applicability.*

S. 236, Cr. P. C. applies to a case where on the same facts it is doubtful whether the accused has committed one offence only or both that offence and another. *Gannapathi Bhatta v. Emperor.*

14 Cr. C. J. 214 :
19 I. C. 310 : 24 M. L. J. 463 :
13 M. L. T. 360 : 36 Mad. 308.

———S. 236—*Applicability.*

S. 236 deals with cases where it is doubtful which of several offences the facts which can be proved will constitute, and the doubt has to be a doubt as to the law applicable to a certain set of facts which have been proved. *Abdul Hamid v. Emperor.*

36 Cr. L. J. 492 :
161 I. C. 363 : 14 Rang. 24 :
8 R. Rang. 509 : A. I. R. 1936 Rang. 174.

———S. 236—*Applicability.*

S. 236 is generally regarded as limited in its application : it is not intended to be applied to a case where the facts are left in doubt or to enable the Judge to leave the facts in doubt and thus escape that responsibility and duty of making up his mind which the law places on him : it applies to a case where the facts are not in doubt, but it is doubtful which provision of the law applies to these facts. *Ghulam Hyder Imam Bakhsh v. Emperor.*

39 Cr. L. J. 460 :
173 I. C. 734 : 1937 A. L. J. 1334 :
10 R. A. 501 : 1938 A. W. R. 17 :
A. I. R. 1938 All. 120.

———S. 236—*Applicability.*

S. 236 is only applicable where there is a doubt as to which offence has been committed. *Emperor v. Kanhaiya.*

31 Cr. L. J. 716 :
124 I. C. 553 : A. I. R. 1930 All. 481.

———S. 236—*Applicability.*

Ss. 236 and 237 would not apply to a case where the accused have been charged with an offence of murder only. *Daulat Ram v. Emperor.*

35 Cr. L. J. 10 :
146 I. C. 465 : 10 O. W. N. 466 :
8 Luck. 518 : 6 R. O. 129 :
A. I. R. 1933 Oudh 315.

———S. 236—*Applicability.*

S. 236 only applies where a single act or series of acts is of such a nature that it is doubtful which of the several offences the facts which can be proved will constitute. *Mahomed Rafiq v. Emperor.*

33 Cr. L. J. 41 :
134 I. C. 1004 : 25 S. L. R. 9 :
I. R. 1931 Sind 156 : A. I. R. 1931 Sind 106.

———S. 236—*Applicability.*

Ss. 233, 236 and 537—Two distinct offences included in charge in alternative—Case cannot come under S. 236—Defect is mere irregularity.

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and not illegality. *Rajabuddin Mandal v. Emperor.*

34 Cr. L. J. 1219 :
146 I. C. 305 : 37 C. W. N. 1074 :
60 Cal. 1394 : 6 R. C. 196 :
A. I. R. 1933 Cal. 676.

———S. 236—*Applicability.*

There is nothing in Ss. 236 and 237 to warrant the contention that the provisions only apply in cases where the law applicable is doubtful and do not apply in cases where the facts are doubtful. *Nga Po Kuan v. Emperor.*

35 Cr. L. J. 41 :
146 I. C. 392 : 11 Rang. 354 :
6 R. Rang. 93 : A. I. R. 1933 Rang. 236.

———S. 236—*Applicability.*

When facts are in doubt or are consistent with innocence, S. 236 does not apply. *Paul De Flander v. Emperor.*

32 Cr. L. J. 1167 :
134 I. C. 433 : 35 C. W. N. 809 :
59 Cal. 92 : I. R. 1931 Cal. 817 :
A. I. R. 1931 Cal. 528.

Ss. 236, 237—*Applicability—Accused not charged under S. 121, Penal Code—Conviction under that section wrong.*

Where the complainant who had put forward a very clear and definite case of cheating under S. 418, Penal Code, never alleged that the accused had either concealed or removed the property within the meaning of S. 424, Penal Code, and no evidence was produced on behalf of the prosecution to show that the property had been concealed or removed by the accused, Ss. 236 and 237, Cr. P. C. did not apply and the conviction of the accused by the Appellate Court under S. 424, Penal Code, was wholly wrong in law. *Nand Kishore v. Emperor.*

41 Cr. L. J. 111 :
185 I. C. 151 : 1939 A. L. J. 941 :
12 R. A. 304 : 1939 A. W. R. 661 :
A. I. R. 1939 All. 710.

S. 236, 237—*Applicability—Charge, framing of.*

S. 237 would apply in cases where S. 236 applies. S. 437 is an enabling section which empowers the Court to convict the accused of offences for which no charge has been framed but for which a charge could have been framed under S. 236. S. 236 applies only when there is no doubt as to the facts of the case, but only under which section of the law upon the facts found the accused would be guilty. The doubt referred to in S. 236 is a doubt of law and not of facts. *Bhovanath Singh v. Emperor.*

19 Cr. L. J. 202 :
43 I. C. 618 : 4 P. L. W. 40 :
A. I. R. 1918 Pat. 628.

Ss. 236, 237—*Applicability.*

S. 236, which must control S. 237, only applies when from the evidence led by the prosecution it is doubtful which of the offences has been committed by the accused. But if the evidence which has been led by the prosecution leads to one result and one result only, it cannot possibly be said that it is doubtful which of the offences has been committed by the accused. *Sheoraini v. Emperor.*

21 Cr. L. J. 44 :
54 I. C. 252 : A. I. R. 1920 Pat. 512.

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———Ss. 236, 237 — *Applicability—Offence doubtful—Evidence.*

S. 236 which must control S. 237, applies only when from the evidence led by the prosecution it is doubtful which of the offences has been committed by the accused. Where, therefore, the evidence which has been led by the prosecution leads to one result and one result only, it cannot be said that it is doubtful which of the offences has been committed by the accused. *Govind Mato v. Emperor.* 23 Cr. L. J. 30 : 64 I. C. 540 : 1921 Pat. 96.

———Ss. 236, 237—*Applicability—Where no doubt as to offence, whether Ss. 236, 237, apply.*

S. 236 applies only to a case in which there is a single act or a series of acts of such a nature that it is doubtful which of several offences is constituted by the Criminal act or acts. The application of S. 237 is, by its express terms, restricted to the case mentioned in S. 236. Therefore, where there is no doubt as to the offence, if any committed, provided the facts alleged are established, neither S. 236 nor S. 237 can have any possible application. *Akram Ali v. Emperor.* 15 Cr. L. J. 41 : 22 I. C. 184 : 18 C. L. J. 574 : A. I. R. 1914 Cal. 309.

———Ss. 236, 367 (3)—*Applicability—Penal Code, Ss. 72, 201, 302—Alternative conviction under Ss. 302, 201, Penal Code—Evidence to support charge of murder, insufficient.*

The provisions of S. 72, Penal Code, and of Ss. 236 and 367 (3), Cr. P. C., apply only to cases where the *actual facts* are established but there is a doubt as to the application of the *law* to the proved facts. Thus where the doubt entertained by the Sessions Judge is whether there was sufficient proof that the accused had *in fact* committed murder or had merely been guilty of causing evidence of the murder to disappear, in such a case, an alternative conviction on both offences is not contemplated by law, and the Judge is bound to acquit the accused of the more serious offence once he finds the evidence insufficient to support that charge. *Partapa v. Emperor.* 14 Cr. L. J. 664 : 21 I. C. 904 : 11 Pr. 1913 Cr.

———Ss. 236, 562—*Applicability—Penal Code Ss. 215, 457—Conviction in the alternative under S. 215 or S. 457.*

S. 236 does not apply where there is any doubt as to the facts, but applies where there is a doubt as to the law applicable to a certain set of facts which have been proved. The Magistrate is not entitled to compromise his doubts as to the true facts of the case by convicting in the alternative. He is bound to come to a distinct finding as to the facts. A Magistrate cannot, therefore, convict a person in the alternative of an offence either under S. 457 or S. 215, Penal Code. *Emperor v. Nga Po Wun.* 28 Cr. L. J. 759 : 103 I. C. 839 : 6 Bur. L. J. 83 : A. I. R. 1927 Rang. 254.

———S. 236 Illus. (b)—*Applicability.*

Illustration (b) to S. 236, must be strictly

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confined to the case of two contradictory statements of the *same* kind and cannot be applied to two statements falling under the two different parts of S. 193, I. P. C. *In re : Rabari Bhura Dewait.* 2 Cr. L. J. 590 : 15 K. L. R. 148.

———S. 236 — *Applicability — Application when offences fall under different chapters of Penal Code.*

For the application of S. 236, it is not essential that the offences should fall under the same chapter and there may be border line cases where the two offences concerned do fall under different chapters. Wrongful restraint is probably such a border-line case, because, although it is under the chapter dealing with offences to the body, it is not necessary that anything be done directly to the body at all; it may be locking a door or by building a wall, or something of that kind. There is, therefore, no necessary obstacle to the application of S. 236, that the two sections involved fall under different chapters of the Code. *Rati Ram v. Emperor.* 38 Cr. L. J. 989 : 170 I. C. 909 : 10 R. Rang. 115 : A. I. R. 1937 Rang. 250.

———Ss. 236, 237, 403—*Autrefois acquit—Penal Code, S. 457—Rangoon Police Act S. 31—Second trial for a graver offence when conviction on the same facts for lesser offence subsisting, whether legal.*

When a man has been convicted of committing an act constituting an offence, and further evidence subsequently comes to light which shows that his act constituted a graver offence than that of which he was convicted, he cannot merely on that ground alone be put upon his trial for the graver offence. Therefore, a person who is convicted under S. 31 of the Rangoon Police Act for being in possession of an article supposed to be stolen cannot be again tried and convicted later on for the offence under S. 457, Penal Code, simply on the ground that the owner of the article is traced and some further evidence is available to constitute an offence under S. 457, Penal Code. *Nga Shwe Yi v. Emperor.* 16 Cr. L. J. 267 : 28 I. C. 155 : 8 Bur. L. T. 129 : A. I. R. 1915 L. Bur. 60.

———S. 236—*Doubt—What is.*

The doubt referred to in S. 236 must be a doubt as to the application of the law to prove facts. The section has no application where there may be a doubt as to facts which constitute one of the elements of the offence. *Nayan Ullah v. Emperor.* 26 Cr. L. J. 594 (b) : 85 I. C. 818 : A. I. R. 1925 Cal. 903.

———S. 236—*Doubt—What is.*

Where the evidence is circumstantial, and the decision depends upon the question whether the Court will draw a possible inference, or which of several possible inferences,

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evidence of the crime by assisting in removing the body of the deceased after the murder was committed: *Held*, that having regard to the provisions of Ss. 236 and 237, Cr. P. C., the conviction was perfectly legal. *Begu v. Emperor*.

- 26 Cr. L. J. 1059 :
88 I. C. 3 : 48 M. L. J. 643 :
2 O. W. N. 447 : 41 C. L. J. 437 :
27 Bom. L. R. 707 :
3 Pat. L. R. 95 Cr. :
6 Lah. 226 : 23 A. L. J. 636 :
1925 M. W. N. 418 :
7 L. L. J. 324 : 52 I. A. 191 :
30 C. W. N. 581 P. C. :
A. I. R. 1925 P. C. 130.

———Ss. 236, 237—Scope.

The distinction between an abettor who is deemed to be a principal offender under S. 114, Penal Code, and the principal offender is one of such a shadowy character that the conversion of his conviction from one to the other cannot be said to offend against any reasonable construction of the powers given to the Court under Ss. 236 and 237. *Sambasiva Mudali v. Emperor*.

- 32 Cr. L. J. 753 :
131 I. C. 458 : 1930 M. W. N. 1041 :
3 Mad. Cr. Cas. 390 :
I. R. 1931 Mad. 522 :
A. I. R. 1931 Mad. 225.

———S. 236—Same transaction—Misjoinder of charges and persons—Theft and receiving stolen property.

Four accused were tried together, the first under S. 380, the second under Ss. 380 and 411, the third and the fourth under Ss. 411 and 414, I. P. C. All the stolen property, for receiving or disposing of which the four accused were charged, was traced to possession of the first accused: *Held*, that the disposal of the property was one and the same transaction and that there was no misjoinder of the charges or the persons in the case. *Nga Po Shat v. Emperor*.

- 13 Cr. L. J. 59 :
13 I. C. 395 : 4 Bur. L. T. 263.

———Ss. 236, 237—Subsequent trial—Test.

Per *Patkar, J.*—The test is whether the evidence in both cases is the same, and the subsequent trial is on the same basis of facts falling within Ss. 236 and 237, Cr. P. C. *Kal-lasani v. Emperor*.

- 28 Cr. L. J. 1032 :
106 I. C. 216 : 29 Bom. L. R. 1478 :
I. L. T. 40 Bom. 3 :
A. I. R. 1927 Bom. 629.

———S. 237.

See also (i) Appellate Court.

- (ii) Cr. P. C., 1898, Ss. 195, 196,
225, 227, 236, 239, Cls. (a),
(c), 307, 537.

(iii) Criminal Trial.

(iv) Jury Trial.

- (v) Penal Code, 1860, Ss. 120-B,
149, 297, 326, 395.

———S. 237.

———Abetment.

———Alteration of charge.

———Amendment of charge.

———Appellate Court.

———Applicability.

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———Confession.

———High Court powers of.

———Illegality.

———Joint trial.

———Procedure.

———Scope.

———S. 237—Abetment—Charge of murder—Abetment, conviction for.

K. and N. were charged with the murder of one W. It was found that while N. committed the actual murder, he did so at the bidding of K. whose actual presence at the scene of the murder was not established. The Sessions Judge convicted N. under S. 302, Penal Code, and K. of abetment of murder: *Held*, that on the facts found K. could have been charged not only with the commission of the principal offence of murder, but also with the abetment thereof and, therefore, by virtue of S. 237, Cr. P. C. he could be convicted of the offence of abetment though he was not charged separately with it. *Kehr Singh v. Emperor*.

- 22 Cr. L. J. 161 (a) :
59 I. C. 913 : 11 P. W. R. 1921 Cr. :
A. I. R. 1921 Mad. 597.

———S. 237—Abetment, conviction for, without charge.

Charge only under S. 379, Penal Code—Conviction for abetment is lawful. *Debi Prashad Kakkar v. Emperor*.

- 33 Cr. L. J. 720 :
139 I. C. 242 : 36 C. W. N. 595 :
59 Cal. 1192 : I. R. 1932 Cal. 584 :
A. I. R. 1932 Cal. 455.

———S. 237—Abetment—Conviction for without charge.

Per *Jack, J.*—Whether a man can be convicted without a separate charge on a charge of abetment of the principal offence depends upon the circumstances of the case. But it can only be done when the circumstances bring the case under S. 237, Cr. P. C. *Jnanda Charan Ghatak v. Emperor*.

- 31 Cr. L. J. 570 :
123 I. C. 748 : 50 C. L. J. 472 :
34 C. W. N. 198 : 57 Cal. 807 :
A. I. R. 1929 Cal. 807.

———S. 237—Abetment, conviction for without charge.

Where the charge is of rape and the conviction is of abetment of rape without amending the original charge, the conviction is not rendered invalid. *Samuel John v. Emperor*.

- 37 Cr. L. J. 247 :
160 I. C. 162 : 1935 A. L. J. 1079 :
8 R. A. 510 : 1935 A. W. R. 1071 :
A. I. R. 1935 All. 935.

———Ss. 237, 238, 423—Abetment—Acquittal on main charge—Conviction for abetment, whether legal—Appellate Court, power to base conviction on abetment.

It is not open to a Court to find an accused guilty of abetment of an offence on a charge of the offence itself. The only section of the Cr. P. C., under which an Appellate Court, while acquitting a person of the offence charged, can base a conviction for abetment of the offence is S. 423, and this section has to be read with Ss. 237 and 238, Cr. P. C. Abetment

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not being a minor offence, does not fall within S. 238 and it can come under S. 237 only if there is no element in the abetment which is not included in the charge as laid. *Mahabir Prasad v. Emperor*.

27 Cr. L. J. 1118 :
97 I. C. 430 : 24 A. L. J. 998 :
49 All. 120 : A. I. R. 1927 All. 35.

———S. 237—*Alteration of charge—Conviction for offence not charged.*

At a trial six persons were charged with, and acquitted of murder, but two of them were convicted of the offence under S. 201, Penal Code. The evidence recorded in the case was found sufficient to establish that murder had been committed. It was contended that inasmuch as the accused were charged with being principals in the murder, they could not be convicted, at any rate under that charge, of an offence under S. 201 : *Held*, that the contention had no force. In the absence of proof of prejudice, the conviction was not illegal, the case being covered by S. 237. *Bucha v. Emperor*.

1 Cr. L. J. 113 :
5 P. L. R. 95 : 1 P. R. Cr. of 1904.

———S. 237—*Alteration of charge—Charge of criminal breach of trust—Conviction for cheating.*

The accused was charged with criminal breach of trust under S. 406, I. P. C., in respect of an amount deposited with him by complainant as security for the due discharge of his duties as accused's travelling agent. The Magistrate found that accused misappropriated the security money and convicted him both under S. 406 and 430, Penal Code : *Held*, that the conviction for the offence of cheating, to which the accused was not called on to plead and for which the defence evidence would have been different, was illegal. *In re : T. S. Subramanya Aiyar*.

9 Cr. L. J. 406 :
1 I. C. 867.

———S. 237—*Alteration of charge—Charge for dacoity, conviction for abetment of robbery.*

The fact that an accused has been charged with dacoity, does not necessarily invalidate a verdict of guilty of abetment of robbery. *Nga Pu v. Emperor*.

27 Cr. L. J. 1285 :
98 I. C. 181 : 5 Bur. L. J. 103 :
A. I. R. 1926 Rang. 207.

———S. 237—*Alteration of charge—Charge of hurt and rioting—Convicting for affray, whether justified.*

A charge under Ss. 147 and 323, Penal Code, cannot be altered into one under S. 160, Penal Code, without a proper charge being framed and the accused tried again on the later charge. *In re : Mahankalu Sreeramulu*.

25 Cr. L. J. 554 :
81 I. C. 42 : 1923 M. W. N. 814 :
18 L. W. 741 : 46 M. L. J. 120 :
47 Mad. 61 : A. I. R. 1924 Mad. 375.

———S. 237—*Alteration of charge—Conviction for minor offence.*

When a person is charged with an offence and the facts are proved which reduce it to a minor offence, he may be convicted of the

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minor offence though he is not charged with it. *Samuel John v. Emperor*.

37 Cr. L. J. 247 :
160 I. C. 162 : 1935 A. L. J. 1979 :
1935 A. W. R. 1071 : 8 R. A. 510 :
A. I. R. 1935 All. 935.

———Ss. 237, 236—*Alteration of charge—Charge under S. 380, Penal Code—Conviction under S. 51-A, Calcutta Police Act, legality of.*

An accused person can be tried under S. 236, Cr. P. C. on charges of offences punishable under S. 380 of the Penal Code and S. 54-A, Calcutta Police Act, and under S. 237, Cr. P. C. he can be convicted of the offence punishable under the latter section, although no charge under that section was framed against him. *Tulsi Tolini v. Emperor*.

24 Cr. L. J. 372 :
72 I. C. 372 : 51 Cal. 564 :
A. I. R. 1923 Cal. 596.

———Ss. 237, 238—*Alteration of charge—Conviction for trial, not charge.*

Ordinarily a person cannot be convicted at a Sessions trial of an offence with which he has not been charged. The exceptions to this rule are to be found in Ss. 237 and 238, Cr. P. C. *Nayan Ullah v. Emperor*.

26 Cr. L. J. 594 (b) :
85 I. C. 818 : A. I. R. 1925 Cal. 903.

———Ss. 237, 238—*Alteration of charge—Penal Code Ss. 34, 120-B, 147, 302, 364—Charge not framed but established at trial, conviction for legality of—Conspiracy to murder—Murder—Abduction for murder—Common object—Sentence.*

The accused were all originally charged with offences under Ss. 120-B, 147, 302 and 364/34, Penal Code, and the Jury unanimously found them not guilty under Ss. 120-B/302 and Ss. 302/149, Penal Code, and further found accused No. 1 not guilty under S. 309/34 and accused Nos. 2 and 3 not guilty under S. 364/34, but they found all the accused guilty under S. 120-B/364 although they were not charged with these particular offences and also guilty under S. 147, and the Sessions Judge sentenced the first accused to ten years' and the other two to seven years' rigorous imprisonment under S. 120-B/364 of the Penal Code : *Held*, (1) that as the facts found by the Jury amounted to an offence of abduction, the conviction under S. 364 read with S. 120-B of the Penal Code, was correct even though the accused were not actually charged with offences under these sections ; (2) that on the evidence before the Jury, the case against all the accused being identical ; the sentence should be the same in the case of each of them ; (3) that the Jury having found that the common object of the accused was to murder the deceased, the mere fact that the Jury acquitted accused of the actual charge of murder did not necessarily mean that the common object of murder failed. *Abdul v. Emperor*.

26 Cr. L. J. 356 :
84 I. C. 708 : A. I. R. 1925 Cal. 581.

———S. 237—*Amendment of charge—Recalling of witnesses.*

When a charge is amended under S. 227,

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Cr. P. C., then under S. 231, there is the right of recalling witnesses. *Samuel John v. Emperor*.

37 Cr. L. J. 247 :
160 I. C. 162 : 1935 A. L. J. 1079 : 8 R. A. 510 :
[1935 A. W. R. 1071 : A. I. R. 1935 All. 935.

———S. 237—*Appellate Court—Alteration of conviction under Penal Code to one under Special Law, legality of—Opportunity to meet charge, accused's right to.*

Where an accused has been convicted under S. 452, Penal Code, the Appellate Court cannot, while setting aside the conviction, substitute therefor a conviction for an offence under a special Act, e. g., S. 19 (c), Arms Act, with which the accused was not charged and which he had no opportunity to meet. *Emperor v. Nga Shwe Zon*.

27 Cr. L. J. 1360 :
98 I. C. 480 : 4 Rang. 355 :
A. I. R. 1927 Rang. 32.

———S. 237—*Appellate Court, powers—Appeal against acquittal—Conviction for offence, not charged with.*

In an appeal against an acquittal on a charge under S. 302, Penal Code, it is open to the Court while upholding the order of acquittal to convict the accused of an offence under S. 193, Penal Code, even though the accused was not charged with that offence in the trial in the Sessions Court and the opinion of the assessors was not taken as to it. *Emperor v. Ismail Khadirsab*.

29 Cr. L. J. 403 :
108 I. C. 501 : 30 Bom. L. R. 330 :
52 Bom. 385 : A. I. R. 1928 Bom. 130.

———Ss. 237, 238, 423—*Appellate Court—Conviction of murder—Appellate Court, whether can alter conviction to offence against property.*

Where a person has been charged with and convicted of the offence of murder, it is not open to the High Court, on appeal, to alter the conviction under S. 302, Penal Code, to a conviction under one of the sections dealing with offences against property. *Wallu v. Emperor*.

25 Cr. L. J. 385 :
77 I. C. 433 : 4 Lah. 373 : 6 L. L. J. 59 :
A. I. R. 1924 Lah. 109.

———Ss. 237, 238, 423, 439, 537—*Appellate Court, powers of, to alter finding—Omission to frame charge, on which altered finding to be given, effect of—Revision.*

An Appellate Court has unqualified power to alter the finding of the Trial Court on appeal while maintaining the conviction, and its omission to frame a charge on which it gave its altered finding and call on the accused to meet it will not render its proceedings illegal unless the accused was prejudiced by the omission. An omission to frame a charge is not a ground for revision unless there has been consequent miscarriage of justice. *In re : Mannar Krishna Chetty*.

17 Cr. L. J. 384 :
35 I. C. 816 : 1916 2 M. W. N. 267 :
4 L. W. 373 : A. I. R. 1917 Mad. 687.

———S. 237—*Applicability.*

If S. 237 is to be applied, there must be no

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doubt about the facts but only about the law applicable to the facts. *In re : Baluchami*.

35 Cr. L. J. 76 :
146 I. C. 475 : 1933 M. W. N. 718 :
38 L. W. 760 : 65 M. L. J. 723 : 6 R. M. 266 :
A. I. R. 1933 Mad. 843.

———S. 237—*Applicability.*

S. 237, Cr. P. C. applies only to cases mentioned in S. 236, which deals with cases in which an act is of such a nature that it is doubtful which of several offences the facts will constitute. *Raghunath Kandu v. Emperor*.

27 Cr. L. J. 152 :
91 I. C. 888 : 24 A. L. J. 168 :
A. I. R. 1926 All. 227.

———S. 237—*Applicability.*

S. 237 applies to cases falling within S. 236—S. 236 applies where there is doubt in law as to which offence is committed—When facts are in doubt, neither section applies. *Mehar Sheikh v. Emperor*.

32 Cr. L. J. 892 :
132 I. C. 254 : 35 C. W. N. 945 :
I. R. 1931 Cal. 574 : A. I. R. 1931 Cal. 414.

———S. 237—*Applicability.*

The provisions of S. 237 which are controlled by S. 236, only apply when, from the evidence led by the prosecution, it is doubtful which of several offences has been committed by the accused. If that evidence leads to one conclusion only, the provisions of that section would not apply. *Govind Mahton v. Emperor*.

23 Cr. L. J. 270 :
66 I. C. 334 : 3 P. L. T. 127.

———S. 237, illust.—*Applicability.*

Per Jack, J.—In interpreting the illustration of S. 237, it must be remembered that, it only applies to the class of cases referred to in S. 236. *Istahar Khondkar v. Emperor*.

37 Cr. L. J. 701 :
162 I. C. 927 : 62 Cal. 956 : 39 C. W. N. 620 :
8 R. C. 665 : A. I. R. 1936 Cal. 796.

———Ss. 237, 238 — *Applicability — Riot — Person charged with actual culpable homicide whether can be convicted of constructive culpable homicide—Minor offence.*

S. 238, Cr. P. C. has no application to a case where a man who is charged with actual culpable homicide is convicted of constructive culpable homicide, inasmuch as constructive culpable semi-cide cannot be said to be a minor offence compared with actual culpable homicide. *Nayan Ullah v. Emperor*.

26 Cr. L. J. 594 (b) :
85 I. C. 818 : A. I. R. 1925 Cal. 903.

———S. 237—*Confession of co-accused, value of.*

The confession of a co-prisoner cannot *per se* sustain a conviction, and in order to achieve that object, it must be corroborated *aliunde* by independent evidence in some material circumstance. *Kehr Singh v. Emperor*.

22 Cr. L. J. 161 (a) :
59 I. C. 913 : 11 P. W. R. 1921 Cr. :
A. I. R. 1921 Mad. 497.

———S. 237—*High Court, power of.*

Charge for offence under S. 19 (b), Arms Act

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—Jury's verdict of not guilty—On reference High Court finding him guilty under S. 19 (b) read with S. 20—High Court can convert him under S. 19 (b) read with S. 20. *Yashpal v. Emperor*.

35 Cr. L. J. 573 :
147 I. C. 1193 : 55 All. 681 :
6 R. A. 629 : A. I. R. 1933 All. 627.

—Ss. 237, 238—*Illegality—Joinder of charges—Separate and distinct acts committed by two sets of persons.*

The trial of two separate and distinct offences committed by separate sets of persons at different times at one and the same trial is illegal. *Emperor v. Esua Sheikh*.

2 Cr. L. J. 393 :
1 C. L. J. 475.

—Ss. 237, 238—*Joinder of charges—Joint trial for theft and receiving stolen property.*

It may be that several persons accused under S. 411, I. P. C. of receiving stolen property at different places and times cannot be tried together, but where all the accused are charged with having committed theft jointly and in alternative with the offence of receiving stolen property, and are tried together, the trial cannot be said to be illegal, having regard to S. 237, Cr. P. C. *In re: Kuppan Ambalam*.

5 Cr. L. J. 479 :
17 M. L. J. 219.

—S. 237—*Procedure—Charge for substantive offence—Conviction for abetment—Procedure, legality of.*

It cannot be definitely laid down that a person having been charged with a substantive offence cannot be convicted for abetment thereof. Every case depends upon its own facts and if the facts justify the conviction for abetment, though the person was charged with the commission of the offence itself, there is no bar in law to such conviction. *Jnananda Charan Ghatak v. Emperor*.

31 Cr. L. J. 570 :
123 I. C. 748 : 50 C. L. J. 472 :
34 C. W. N. 198 : 57 Cal. 807 :
A. I. R. 1929 Cal. 807.

—S. 237—*Procedure—Conviction for offence not charged—Duty of Court.*

When a Court finds it necessary to make use of S. 237 in order to convict an accused person of an offence with which he has not been charged, the Court should be particularly careful to formulate to its own mind the charge upon which, had it been duly framed, it would be prepared to convict. *Abdul Rab v. Emperor*.

17 Cr. L. J. 64 :
32 I. C. 656 : A. I. R. 1916 All. 294.

—S. 237—*Scope.*

A person charged under S. 366, Penal Code, may be convicted under S. 376 though no specific charge of this offence was made. *Abdul v. Emperor*.

34 Cr. L. J. 100 :
141 I. C. 127 : 1932 A. L. J. 776 :
I. R. 1933 All. 59 :
A. I. R. 1932 All. 580.

—S. 237—*Scope.*

A person charged with an offence under S. 392, Penal Code, can be convicted for an

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offence under S. 379. *Emperor v. Narinjan Singh*.

36 Cr. L. J. 219 :
152 I. C. 1036 (b) :
37 P. L. R. 61 : 7 R. L. 357 :
A. I. R. 1934 Lah. 619.

—S. 237—*Scope—Accused charged with dacoity—Conviction for voluntarily causing grievous hurt—Legality of conviction.*

Dacoity is an offence against property, whereas voluntarily causing grievous hurt is an offence affecting human body and it is not, therefore, open to a Court to charge the accused under S. 392-397, Penal Code, and to convict them of an offence under S. 325, Penal Code. *Rameshwar v. Emperor*.

29 Cr. L. J. 763 :
110 I. C. 795 : 5 O. W. N. 601 :
A. I. R. 1928 Oudh 373.

—S. 237—*Scope—Accused charged with murder—Conviction for doing away with evidence of murder, legality of.*

A person charged under S. 302, Penal Code, for murder may be convicted under S. 201 of that Code for concealing the evidence of murder although no charge under the latter section has been framed against him. *Dal Singh v. Emperor*.

29 Cr. L. J. 457 :
108 I. C. 905.

—S. 237—*Scope.*

Charge for dacoity—Evidence showing offence of simple hurt only—Alteration of conviction to one under S. 323 is legal. *Basdeo Prasad v. Emperor*.

34 Cr. L. J. 385 :
142 I. C. 702 : 10 O. W. N. 134 :
I. R. 1934 Oudh 120 :
A. I. R. 1933 Oudh 162.

—S. 237—*Scope—Charge under S. 302, Penal Code—Conviction under S. 201, Penal Code.*

A person charged with an offence of murder can be convicted under S. 201, Penal Code, without a further charge being made against him under that section. Such a conviction is warranted by S. 237, Cr. P. C. *Rannun v. Emperor*.

27 Cr. L. J. 709 :
94 I. C. 901 : 7 Lah. 84 :
27 P. L. R. 583 :
A. I. R. 1926 Lah. 88.

—S. 237—*Scope.*

Charge under Ss. 302-149, I. P. C.—Conviction under S. 323, I. P. C., is legal even in the absence of formal charge. *Joginder Singh v. Emperor*.

33 Cr. L. J. 315 :
136 I. C. 721 : I. R. 1932 Lah. 257 :
A. I. R. 1931 Lah. 566.

—S. 237—*Scope of—Offences, whether should be cognate—Penal Code Ss. 147, 160—Conviction under S. 160—Charge for offence.*

S. 237 must necessarily be limited in its operation to cognate offences. Offences under Ss. 147 and 160, Penal Code are *ejusdem generis* and the conviction of an accused for an offence under S. 160, even though he was charged with an offence under S. 147, Penal Code, is not illegal. *Gulab Chand v. Emperor*.

28 Cr. L. J. 189 :
99 I. C. 861 : A. I. R. 1927 Nag. 163.

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———S. 237—*Scope—Summons served for offences under S. 278, Penal Code—Conviction under S. 290, Penal Code, whether legal.*

Under S. 237 it is open to a Magistrate to convict an accused of a lesser offence than that with which he is charged. Where, therefore, the summons served upon an accused only mentions an offence of making atmosphere noxious to health, an offence under S. 278, Penal Code, which is punishable with a fine which may extend to Rs. 500, he may be convicted of the offence of committing a public nuisance, which is punishable under S. 290, Penal Code, with a fine of Rs. 200. *Emperor v. Shiva Dat.*

29 Cr. L. J. 893 :
111 I. C. 573 : 4 O. W. N. 65 :
3 Luck. 680 : A. I. R. 1928 Oudh 402.

———S. 237 (1)—*Scope.*

Accused and others charged with offence under S. 395, Penal Code—Accused proved to have committed offence under S. 458, Penal Code—Other persons not found to have accompanied him—Conviction under S. 458, Penal Code, without altering charge, is legal. *Gulab Singh v. Emperor.*

36 Cr. L. J. 1294 :
158 I. C. 38 : 1935 A. L. J. 843 :
1935 A. W. R. 508 : 8 R. A. 266 :
A. I. R. 1935 All. 458 (2).

———S. 238.

See also (i) Appellate Court.
(ii) Cr. P. C., 1898, Ss. 227, 233, 237.
(iii) Jury trial.
(iv) Penal Code, 1860, S. 147, 326.

———S. 238.

———Abetment.
———Alteration of charge.
———Applicability.
———Charge.
———Minor offence.
———Power of.
———Procedure.
———Same transaction.
———Scope.

———S. 238—*Abetment, conviction for, when not charged.*

Where a man is charged with an offence and is convicted of abetment thereof, without being charged with abetment, the conviction and sentence must be annulled and a re-trial ordered. *Emperor v. Raghya Nagya.*

25 Cr. L. J. 1135 :
81 I. C. 959 : 26 Bom. L. R. 323 :
A. I. R. 1924 Bom. 432.

———S. 238—*Abetment—Conviction for abetment, when justified.*

Where an accused is actually charged with being principal in the manufacture of counterfeit coin, the Magistrate is not justified in convicting him of being abettor, when the facts which would constitute the offence of abetment are quite different from the facts which would constitute the offence of manufacturing counterfeit coin. *Dhanpat Rai v. Emperor.*

41 Cr. L. J. 540 :
138 I. C. 64 : 42 P. L. R. 12 :
12 R. L. 505 : A. I. R. 1940 Lah. 112.

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———S. 238 (3)—*Alteration of charge—Conviction for offence, not charged.*

Where the accused is charged under S. 366, Penal Code, and the prosecution fails to prove either kidnapping or abduction, he cannot be convicted of an offence under S. 498. *Bangaru Asari v. Emperor.*

1 Cr. L. J. 281 :
I. L. R. 27 : Mad. 61 : 12 Weir 236.

———Ss. 238, 269—*Applicability.*

S. 269, Cr. P. C., which enables the members of the Jury to act as assessors in the same trial, does not apply to a case where a person is not in the first instance charged with the commission of offences triable with the aid of assessors and the conviction comes to be made under S. 238, without a charge. *Arumuga Kone v. Emperor.*

29 Cr. L. J. 351 :
108 I. C. 214 : 1927 M. W. N. 299 :
A. I. R. 1928 Mad. 275.

———Ss. 238, 299, 537, 423, 438, 439—*Charge—Irregularities in charge—Trial, when vitiated.*

Irregularities in a charge have no effect unless they have prejudiced the accused in their defence. Where, therefore, the accused charged with murder and under S. 396, Penal Code, is convicted under S. 304 (2) and S. 379, the conviction is not illegal even though the charge may be in the alternative. *Bawar Shah v. Emperor.*

37 Cr. L. J. 1039 :
164 I. C. 899 : 9 R. Pesh. 31 :
A. I. R. 1936 Pesh. 172.

———S. 238—*Minor offence—Conviction for minor offence without alteration of charge.*

It is open to the Court while acquitting the accused person of an offence under S. 304, Penal Code, to convict him of an offence under S. 325 without altering the original charge under S. 304, and without adding a specific charge under S. 325. *Mohammad Nabi v. Emperor.*

35 Cr. L. J. 943 :
149 I. C. 343 : 11 O. W. N. 698 :
6 R. O. 551 : A. I. R. 1934 Oudh 251.

———S. 238—*Minor offence—Conviction.*

Where a person is charged under S. 454, Penal Code, for committing trespass with the intention of committing theft, he can be convicted under S. 441, for trespass committed with the object of committing an offence. *Nihara Kahar v. Emperor.*

36 Cr. L. J. 829 :
155 I. C. 629 : 7 R. P. 606 :
A. I. R. 1935 Pat. 429.

———S. 238—*Minor offence—Tests.*

There is no definition of the expression 'minor offence' in S. 238, and the test by which an offence is deemed in S. 238 (1) to be major or minor is not the gravity of the punishment incurred. The Sub-section does not refer to the gravity of punishment at all; it merely refers to the number of particulars constituting the offence; if a number of particulars is needed to constitute the offence, then for the purposes of S. 238 (1) it may be called the major offence, if a combination of some only of such particulars constitutes a complete offence, then that offence is referred to in S. 238 (1), as the

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minor offence. It should not, however, be overlooked that S. 238, Sub-s. (2), speaks of the proof of additional facts reducing an offence to a minor offence, and this does not accord with the view that the minor offence must always consist of fewer particulars than the major offence. *Emperor v. Abdul Rahman Akramdin*.

37 Cr. L. J. 753 :
162 I. C. 950 : 38 Bom. L. R. 153 :
8 R. B. 437 : 60 Bom. 485 :
A. I. R. 1936 Bom. 193.

———S. 238—Minor offence—Trial for offence with aid of assessors—Conviction for minor offence triable by jury, legality of.

S. 238, Cr. P. C. empowers a Court trying an accused person for an offence with the aid of assessors to convict him for a minor offence triable by jury. *Changouda Pirgouda v. Emperor*.

22 Cr. L. J. 51 :
59 I. C. 195 : 22 Bom. L. R. 1241 :
45 Bom. 619 : A. I. R. 1921 Bom. 59.

———Ss. 238, 269 (3), 412—Minor offence, Penal Code, Ss. 411, 412—Trial by Jury—Conviction for minor offence triable with Assessors, legality of—Appeal on facts, whether lies.

Accused were charged with an offence under S. 412, Penal Code, which was an offence triable by a Jury, and were tried by a Jury. The Jury brought in a verdict of guilty under S. 411 of the Code, which was an offence triable with the aid of Assessors: *Held*, (1) that having regard to the provisions of S. 238, Cr. P. C. the accused could be convicted of offence under S. 411 of the Penal Code: (2) that the provisions of S. 418, Cr. P. C. were applicable to the case and that the accused were not entitled to appeal against their conviction on the facts. *Gulabchand Dosaji v. Emperor*.

27 Cr. L. J. 650 :
94 I. C. 602 : 27 Bom. L. R. 1416 :
A. I. R. 1926 Bom. 134.

———S. 238 (1)—Minor offence—Fracas—Charge for assaulting public servant—Magistrate finding ordinary person assaulted—Conviction.

Where a fracas is the basis of Police charge-sheet by assaulting a public servant, which comes properly before a Magistrate, and after he has taken cognizance of the case, he finds that in the transaction which was reported to him, an assault was committed on some other person not mentioned in the original complaint or that the person assaulted was not a public servant but an ordinary villager, the Magistrate can deal with that assault and convict the person guilty of it. *Maung Ba v. The King*.

39 Cr. L. J. 761 :
176 I. C. 670 : 1938 Rang. 139 :
11 R. Rang. 69 : A. I. R. 1938 Rang. 281.

———Ss. 238 (1), 298, 299, 418, 423 (v) —Minor offence—Jury trial—Charge for major offence—Conviction for minor offence—Appellate Court, whether entitled to go into facts—Penal Code (Act XLV of 1860), Ss. 147, 149, 325.

An accused person was charged with offences under Ss. 147 and 325 read with S. 149, Penal Code. The Jury, however, convicted the appellant of an offence under S. 147 and

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further held that he was specifically guilty of an offence under S. 325 and the Sessions Judge accepted the verdict and convicted the accused accordingly. It was contended in appeal that, in accepting the verdict of the Jury for the offence under S. 325, with which the appellant was not specifically charged, the learned Additional Sessions Judge in reality used the Jury as assessors and that, therefore, this Court is competent to go into the facts of the case precisely as if the verdict of the Jury amounted merely to an opinion as from assessors: *Held*, that the effect of S. 238, Cr. P. C., was to invest a Jury trying a major offence with authority to find that the facts proved only constitute a minor offence and to return a verdict of guilty of such offence and that the High Court could not go into the facts on which the Jury delivered the verdict. *Narayan Singh v. Emperor*.

31 Cr. L. J. 557 :
123 I. C. 477 : A. I. R. 1929 Nag. 295.

———S. 238 (2)—“Minor” offence, meaning of—Charge of conspiracy with two objects—Conspiracy with only one of them if necessarily minor offence.

The words “minor offence” have not been defined in Cr. P. C. Where a conspiracy with two different objects is alleged, it is by no means certain that a conspiracy with only one of these objects will be a “minor offence”; each would be a distinct conspiracy by itself involving a distinct agreement as the gist of the offence and not related to the other as principal or subsidiary to it. Nor can it be said that where an offence is alleged to constitute the object of a conspiracy as charged, a conspiracy to commit a minor offence will be a minor offence within the meaning of S. 238 (2), Cr. P. C. Much less can it be contended that an offence (or an offence minor to it) alleged to constitute the object of a conspiracy is a minor offence to offence of conspiracy. *Goloke Behari Takal v. Emperor*.

39 Cr. L. J. 161 :
173 I. C. 65 : 66 C. L. J. 25 :
42 C. W. N. 129 : 10 R. C. 441 :
I. L. R. 1938 1 Cal. 290 :
A. I. R. 1938 Cal. 51.

———S. 238 (2)—Minor offence—Penal Code, Ss. 147, 447—Criminal trespass—Criminal intention.

If the common object constituting the unlawful assembly had been to commit criminal trespass, a conviction under S. 447, I. P. C. without a charge under that section might be legally valid under S. 238 (2) of the Cr. P. C., for, in that case, the offence of trespass would have been considered as a minor offence in comparison with that of rioting. *Ariff Munshi v. Emperor*.

15 Cr. L. J. 188 :
22 I. C. 764 : 18 C. W. N. 992 :
A. I. R. 1914 Mad. 149.

———Ss. 238, 423—Power of Appellate Court—Penal Code (Act XLV of 1860), Ss. 147, 323—Conviction under S. 147, whether can be altered to one under S. 323.

Where more than five persons are charged under S. 147, Penal Code, and on appeal only

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four are found guilty and the rest are acquitted, the Appellate Court has power to alter the conviction from one under S. 147, Penal Code, to one under S. 323, Penal Code. *Hanuman v. Emperor*.

23 Cr. L. J. 198 :
65 I. C. 854 : 20 A. L. J. 213 :
A. I. R. 1922 All. 114 & 143.

S. 238—Procedure.

Intention, whether should be specified in charge under S. 456, Penal Code. *Karali Prasad Guru v. Emperor*. 17 Cr. L. J. 424 :
35 I. C. 984 : 20 C. W. N. 1075.

S. 238 (2)—Procedure—Witnesses should be examined in the order of events—Practice.

The witnesses for the prosecution ought, as far as possible, to be called, in the order of events which they are called to prove, and in chronological order. The trying Judge may suggest to those who are responsible for the conduct of the prosecution that the proper method and order of calling witnesses should be observed. *Emperor v. Ahirannessa Bibi*.

84 I. C. 446 : A. I. R. 1925 Cal. 579.

S. 238—Same transaction — Offences triable jointly.

The charges against one accused under Ss. 366 and 344-109, Penal Code, and the charges against the other accused under Ss. 368 and 344, Penal Code, can legally be tried together where there is a community of interest or purpose between these two accused and the acts are so closely connected as to form one and the same transaction. *Bhavani Pathak v. Emperor*.

37 Cr. L. J. 496 :
161 I. C. 869 : 8 R. A. 295 :
1935 A. W. R. 1308 : A. I. R. 1936 All. 253.

S. 238 (a)—Scope.

Charges of kidnapping and wrongful confinement—Joint trial at first and subsequent separate trial—Defect in original charge is cured and trial is not illegal. *Pritam Singh v. Emperor*.

33 Cr. L. J. 190 :
135 I. C. 677 : 33 P. L. R. 483 :
I. R. 1932 Lah. 149 : A. I. R. 1932 Lah. 203.

S. 238, Sub-s. 2—Scope—Alteration of charge—Accused charged under one section and convicted under another—Procedure, whether legal.

Whether a person is originally charged with an offence under S. 452 of the Penal Code but the facts proved establish a case under S. 426 of the Code, a conviction under the latter section is justified by the provisions of S. 238 (2). *Munnay Mirza v. Emperor*.

25 Cr. L. J. 1087 :
81 I. C. 911 : A. I. R. 1925 Oudh 89.

S. 239.

See also (i) Cr. P. C. 1898, Ss. 177, 196-A, 223, 233, 234, 235, 236, 237, 239.

(ii) See Epidemic Diseases Act, 1897, S. 3.

(iii) Penal Code, 1860, S. 120-A.

(iv) Public Gambling Act, 1867, Ss. 2, 4, 5.

(v) Punjab Act, 1903, S. 27.

Cr. P. CODE (1898), S. 239**S. 239.**

Abetment.
Defective charge.
Discretion.
Former part.
Joinder of charges.
Joint trial.
Meaning of words.
Non-compliance.
Possession.
Procedure.
Same transaction.
Scope.
Separate transaction.
Test.
Transaction.

S. 239—Abetment—Joint trial—Offence of attempting to use forged document and abetment of same.

Where two persons are jointly concerned in the production in evidence of a forged document, and are tried, the one as the principal and the other for abetment, the trials should be separate. The Court ought not, in such a case, to assume that the evidence against the two accused is the same and that it must necessarily come to the same finding in the two cases. *Kadhe Mal v. Emperor*.

20 Cr. L. J. 634 :
52 I. C. 394 : 17 A. L. J. 893 :
42 All. 24 : A. I. R. 1920 All. 358.

S. 239—Defective charge—Effect.

Where a charge does not specify the particular articles for the possession of which the accused is prosecuted, the charge is defective, but the defect is curable under S. 537. *Emperor v. Shakur*.

36 Cr. L. J. 1206 :
157 I. C. 562 : 1935 O. W. N. 911 :
1935 O. L. R. 483 : 8 R. O. 23 :
A. I. R. 1935 Oudh 475.

S. 239—Discretion—Joint trial—Principal offender and abettor.

Under S. 239, judicial discretion has been given to the Court to try the principal offender and the abettor either jointly or separately ; and the manner in which this discretion should be exercised, must depend on the facts of each case. *Dwarka Singh v. Emperor*.

16 Cr. L. J. 348 :
28 I. C. 732 : 19 C. W. N. 121 :
A. I. R. 1915 Cal. 743.

S. 239—Discretion—Joint trial.

S. 239 confers a discretion upon a Magistrate to try persons accused of an offence before him either jointly or separately. But where he has not exercised a wise discretion, the High Court will interfere. *Dholiomal Karumal v. Emperor*.

37 Cr. L. J. 716 :
162 I. C. 863 : 8 R. S. 175 :
A. I. R. 1936 Sind 47.

Ss. 239, 439—Discretion—Discretion of Magistrate to try persons accused of one offence, jointly or separately—High Court, when shall interfere.

S. 239, Cr. P. C. confers a discretion upon a Magistrate to try persons accused of an offence before him either jointly or separately.

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That is clear from the expression 'may' which appears in S. 239. But the discretion vested in the trying Magistrate is to be exercised by him judicially, and according to certain well-established principles. Where the trial Court has judicially exercised the discretion vested in it, the High Court will not interfere. But where it has not exercised a wise discretion in directing the splitting of a case against several accused, the High Court will interfere. *Dholimal Karoomal v. Emperor*. 37 Cr. L. J. 716 : 162 I. C. 863 : 8 R. S. 175 : A. I. R. 1936 Sind 47.

———S. 239—"Former part" in S. 239, meaning of.

The expression "former part" in the direction at the end of S. 239, Cr. P. C., that "the provisions contained in the former part of this chapter shall, so far as may be, apply to all such charges" means the part under the heading "form of charge" prior to the part headed "joinder of charges." S. 234, therefore, will not control the provisions of S. 239 of the Cr. P. C. *Bishambhar Nath Tandon v. Emperor*. 26 Cr. L. J. 1602 : 90 I. C. 706 : 2 O. W. N. 760 : A. I. R. 1926 Oudh 161.

———S. 239—Joinder of charges—Same transaction—Misjoinder—Illegality.

Four persons were discovered committing theft. They ran away and lay in wait, at a short distance, for the persons who had surprised them. When the latter passed near the spot, they were attacked by the thieves, and one of them was killed by two of the latter. Subsequently three more persons came up and joined two of the thieves in beating the companions of the deceased and thereby committed riot: *Held*, (1) that the riot did not form part of the same transaction with the theft and the murder, and could not be tried jointly with those two offences; (2) that the four persons who had gone to commit theft were prepared to use force in the event of any interference with them, and that the fatal assault on the deceased was made simply because he and his companions had prevented the thieves from taking away their booty; (3) that the two acts were connected together by proximity of time, community of criminal intent and the relation of cause and effect, and they constituted the same transaction; (4) that, therefore, they could be tried jointly at one trial. *Mohammad Shah v. Emperor*. 23 Cr. L. J. 268 : 66 I. C. 332.

———S. 239—Joint trial.

A joint trial of different sets of persons under Ss. 401 and 413, Penal Code, is illegal. *Arjan Das v. Emperor*. 33 Cr. L. J. 584 :

138 I. C. 424 : 33 P. L. R. 736 : I. R. 1932 Lah. 488 : A. I. R. 1932 Lah. 486.

———S. 239—Joint trial.

A joint trial of six persons, for offences

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under Ss. 395 and 412, Penal Code, can be justified. *Emperor v. Terhi*.

36 Cr. L. J. 1467 :
158 I. C. 913 : 1935 O. W. N. 1153 :
1935 O. L. R. 624 : 8 R. O. 135 :
A. I. R. 1936 Oudh 108.

———S. 239—Joint trial.

A joint trial of the accused where some are being tried for an offence under S. 4 and others under S. 5 of the Bombay Prevention of Gambling Act, is not bad in law. *Emperor v. Abasbhai Abdulhussein*.

27 Cr. L. J. 503 :
93 I. C. 967 : 28 Bom. L. R. 272 :
50 Bom. 344 : A. I. R. 1926 Bom. 195.

———S. 239—Joint trial.

Absence of consultation or community of purpose amongst accused—Joint trial, is not justifiable. *In re : Amolak Mulchand*.

34 Cr. L. J. 1175 (1) :
146 I. C. 116 (1) : 16 N. L. J. 196 :
6 R. N. 74 : A. I. R. 1933 Nag. 368.

———S. 239—Joint trial—Allegations against two accused mutually exclusive.

Where the allegations against two accused persons are mutually exclusive, i. e., where the allegation is that either one or the other committed the offence, they cannot be tried together. *Kyaw Dwe v. Emperor*.

24 Cr. L. J. 750 :
74 I. C. 78 : A. I. R. 1923 Rang. 67.

———S. 239—Joint trial—Alternative charge for offence or abetment, whether charge for single offence or two offences—Joint trial of two persons on three alternative charges of embezzlement or abetment thereof—Legality of trial—Ss. 236, 239—Scope of.

A charge in the alternative for an offence or abetment thereof is not a charge for a single offence but one for two different offences. Where two persons who were charged with three alternative charges of embezzlement or abetment thereof were tried together: *Held*, that the trial was really for six offences and entirely illegal. *Janeshar Das v. Emperor*.

30 Cr. L. J. 687 :
116 I. C. 794 : I. R. 1929 All. 618 :
1929 A. L. J. 329 : 51 All. 544 :
A. I. R. 1929 All. 202.

———S. 239—Joint trial—Breaches of notices by different persons.

Where notices are issued to several prostitutes residing in separate but adjoining houses preventing disorderly persons from frequenting their houses, a joint trial of them for the breaches of those notices is illegal. *Aisho v. Emperor*.

27 Cr. L. J. 465 :
93 I. C. 689 : 8 L. L. J. 80 :
7 Lah. 168 : 27 P. L. R. 188 :
A. I. R. 1926 Lah. 248.

———S. 239—Joint trial—Burma Anti-Boycott Act (V of 1922), Ss. 4 (a), (c)—Boycott and promotion of boycott—Joinder of charges—Same transaction.

Under S. 239, two or more persons can be tried together for offences committed in the course

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of the same transaction, and it is not necessary that the offences should have been committed simultaneously or within a short interval of each other, but there must be a continuity of purpose of action running through all of them. The determining factor as to the legality of a joint trial is not its result. When a proposal for a boycott is made by the President of an Association, and, shortly afterwards, the Secretary and a member take joint action to boycott the person against whom the resolution is directed, the inference is that they are acting in furtherance of a common purpose, or, in other words, that they are taking part in a conspiracy. Acts done in pursuance of such a conspiracy must be deemed to be part of the same transaction within the meaning of S. 239, and the joint trial of persons responsible for such acts is, therefore, permissible for offences under S. 4 (a) and 4 (c) of the Burma Anti-Boycott Act. Where several persons are tried together for proposing and promoting a boycott under the Burma Anti-Boycott Act, the mere acquittal of the proposer does not render the joint trial illegal, nor does it involve the acquittal of the persons charged with promoting the boycott. *Emperor v. Nga Aung Myaw*.

25 Cr. L. J. 270 :

76 I. C. 830 : 2 Bur. L. J. 224 :

1 Rang. 604 : A. I. R. 1924 Rang. 38.

———S. 239—Joint trial.

Criminal misappropriation—Misappropriation of three items by one accused and of two by the other—Independent transaction—Joint trial is illegal. *Ganesh Prasad v. Emperor*.

34 Cr. L. J. 215 :

141 I. C. 338 (2) : 11 Pat. 779 :

I. R. 1933 Pat. 72 : A. I. R. 1933 Pat. 91.

———S. 239—Joint trial—Dacoity with murder.

Where the allegation of the complainant against the two sets of accused persons is that they committed dacoity with murder, the Magistrate has power to try them together under S. 239. *U. Po Yone v. Emperor*.

34 Cr. L. J. 1185 :

146 I. C. 196 :

6 R. Rang. 78 : A. I. R. 1933 Rang. 271.

———S. 239—Joint trial—Excise Act (XII of 1896), Ss. 48, 53—Joint trial of persons separately accused of offences under the two sections—Conviction to be set aside—Accused raising no objection to joint trial—Possession by mistress in house furnished by her protector—Presumption—Possession on account of protector.

Where the illicit possession of cocaine by A is unconnected with its illicit sale by B, the joint trial of A and B under Ss. 48 and 53 of Act XII of 1896 is illegal and a conviction based upon such trial will be set aside notwithstanding that the accused raised no objection to the joint trial. When a man furnishes a house for his mistress' occupation, he may reasonably be presumed to be in possession of all articles therein which can reasonably be inferred to belong to him or to be in the possession of his mistress on his behalf. But the inference must be inapplicable to articles of which the

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mistress is in possession illegally or contrary to the provisions of law, especially when the article in question is such that he might well remain in ignorance that it was in his mistress's possession. *Banwari Lal v. Emperor*.

15 Cr. L. J. 172 :

22 I. C. 748 : 97 P. L. R. 1914 :

25 P. W. R. 1914 Cr. : 20 P. R. 1914 Cr. :

A. I. R. 1914 Lah. 455.

———S. 239—Joint trial.

In answer to a charge of rioting and other offences alleged to have been committed during the course of the riot, the accused set up a defence which accepted the position that whatever took place was part of one transaction: *Held*, that the Court was entitled to act upon the admission of the accused and a joint trial of the accused in respect of all the offences was justified. *Gayan Singh v. Emperor*.

26 Cr. L. J. 29 :

83 I. C. 509 : A. I. R. 1923 All. 277.

———S. 239—Joint trial—Kidnapping and wrongful confinement.

Quaere.—Whether the offence of kidnapping and wrongful concealment by different persons could be tried together. *Prilam Singh v. Emperor*.

33 Cr. L. J. 190 :

135 I. C. 677 : 33 P. L. R. 485 :

I. R. 1932 Lah. 149 :

A. I. R. 1932 Lah. 203.

———S. 239—Joint trial.

Legality of joint trial depends on the accusation and not on the result of the trial. *Ram Das v. Emperor*.

35 Cr. L. J. 1349 :

151 I. C. 442 : 1934 A. L. J. 852 :

7 R. A. 163 : A. I. R. 1934 All. 61.

———S. 239—Joint trial—Objection when to be taken.

Objections to joint trial or any other kind of procedure, which is alleged to prejudice the accused, should be taken when the charge is made, before the Judge goes into the merits. *Emperor v. Balgobind*.

17 Cr. L. J. 477 :

36 I. C. 157 : A. I. R. 1916 All. 102.

———S. 239—Joint trial—Offences of rape and attempt to commit rape.

The offences of rape and an attempt to commit rape can be tried together jointly when they are committed in the same transaction. *Akbar v. Emperor*.

21 Cr. L. J. 306 :

30 P. R. 1919 Cr. : 55 I. C. 466 :

A. I. R. 1920 Lah. 364.

———S. 239—Joint trial.

Offences under different sections of Dangerous Drugs Act committed on different occasions—Joint trial is illegal and defect cannot be cured by S. 537. *Tankin Hin v. Emperor*.

35 Cr. L. J. 1234 :

151 I. C. 99 : 36 Bom. L. R. 495 :

7 R. B. 40 : A. I. R. 1934 Bom. 255.

———S. 239—Joint trial—Offences under Factories Act.

Offences under Ss. 41 (h) and 41 (j) of the Factories Act are offences of the same kind

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within the meaning of S. 239 (c). *J. Agarwala v. Emperor*. 33 Cr. L. J. 274 (2) :

136 I. C. 289 : 13 P. L. T. 252 :

I. R. 1932 Pat. 65.

A. I. R. 1932 Pat. 188.

———S. 239—*Joint trial—Offences under S. 406 and 174, Penal Code.*

The joint trial of the accused under Ss. 406 and 174, Penal Code, the offences not being committed in the course of the same transaction, is illegal. The mere fact that the accused has been acquitted of the charge under S. 406 does not make his trial under S. 174 illegal. *Dhan Singh v. Emperor*. 36 Cr. L. J. 676 :

155 I. C. 163 : 35 P. L. R. 653 :

7 R. L. 646 : A. I. R. 1934 Lah. 630.

———S. 239—*Joint trial.*

Penal Code (Act XLV of 1860); Ss. 215, 411—Joint trial of person charged under Ss. 215 and 411 with person charged under S. 411 alone—No evidence to show any connection between the two accused—Joint trial held illegal. *Pirano Lakho v. Emperor*. 35 Cr. L. J. 153 :

146 I. C. 649 : 6 R. S. 70 :

A. I. R. 1933 Sind 352.

———S. 239—*Joint trial—Persons accused of same offence committed in same transaction—Commission of another offence of same kind jointly within 12 months—Charges for same offence against all—Conviction of one under different offence—Joint trial, held not illegal.*

Certain persons were accused of the same offence committed by them in the course of the same transaction. They were also accused of having committed another offence of the same kind committed by them jointly within a period of 12 months from the previous offence, each of the two offences being committed by them jointly. Charges were framed in case of all the accused in respect of the same offence but one of them was convicted for a different offence than one in charge: *Held*, that the joint trial of all the accused jointly was not illegal. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Raghu Lal*.

37 Cr. L. J. 728 :

162 I. C. 943 : 39 C. W. N. 741 :

62 Cal. 946 : 8 R. C. 975.

———S. 239—*Joint trial—Prosecution, duty of—Dacoity and possession of property stolen—Joint trial, whether permissible.*

A separate trial being the rule and a joint trial the exception, it is always for the prosecution to justify a joint trial. Where the evidence establishes an offence of dacoity and two offences of dishonest possession of stolen property knowing it to have been stolen in the commission of dacoity, all the offences must be held to have been committed in the same transaction, and a joint trial of the several persons participating in such offences is permissible under the provisions of S. 239. *Durga Prasad v. Emperor*. 24 Cr. L. J. 149 :

71 I. C. 501 : 20 A. L. J. 981 :

45 All. 223 : A. I. R. 1923 All. 126.

———S. 239—*Joint trial—Public Gambling Act (Act III of 1867), Ss. 3, 4—Offences under—Joint trial, legality of.*

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When a gambling den is raided and some persons are found gambling therein in the presence of the owner or occupier of the house in which gaming is going on, the offence of the keeper is so intimately connected with that of the players that the two must be regarded as part and parcel of the same transaction. Such cases are within the purview of S. 239 and all the offenders, whether keepers or gamblers can be proceeded against in the same trial. *Bhana Mal v. Emperor*. 20 Cr. L. J. 219 :

49 I. C. 79 : 6 P. R. 1919 Cr.

49 P. L. R. 1919 : 9 P. W. R. 819 Cr.

A. I. R. 1919 Lah. 204.

———S. 239—*Joint trial—Receiving property obtained by dacoity.*

A joint trial of persons accused of offences under S. 412, Penal Code, is illegal. *Behari v. Emperor*. 26 Cr. L. J. 1291 :

89 I. C. 155 : 2 O. W. N. 330 :

12 O. L. J. 339 : A. I. R. 1925 Oudh 452.

———S. 239—*Joint trial—Receiving stolen property.*

Receiver from receiver of stolen property—Joint trial with receiver and actual thieves—Accused is likely to be prejudiced by joint trial—Separate trial is proper. *Keshowdas Utamchand Shadija v. Emperor*. 35 Cr. L. J. 205 (2) :

146 I. C. 936 : 27 S. L. R. 461 :

6 R. S. 102 (1) : A. I. R. 1933 Sind 390.

———S. 239—*Joint trial—Receiving stolen property.*

Where several articles stolen at one theft are received by different persons, all or any of the receivers are triable jointly for the offence of receiving stolen property. *Emperor v. Shakur*. 36 Cr. L. J. 1206 :

157 I. C. 562 : 1935 O. W. N. 911 :

1935 O. L. R. 483 : 8 R. O. 23 :

A. I. R. 1935 Oudh 475.

———S. 239—*Joint trial—Receiving stolen property—Transactions different—Procedure.*

Unless the receiving of stolen goods is joint, persons cannot be tried jointly for receiving them under S. 239 merely because the goods were stolen in one theft, inasmuch as the acts of receiving in such a case by different persons on different occasions at different places are not only different offences but different transactions in themselves. *Emperor v. Balgobind*. 17 Cr. L. J. 477 :

36 I. C. 157 : A. I. R. 1916 All. 102.

———S. 239—*Joint trial—Rioting—Trial of opposite parties in one trial, legality of.*

Where the common object of two opposing parties charged with rioting is the same, i. e., to take possession by force of the same property, the trial is not illegal. *Emperor v. Mangal*. 21 Cr. L. J. 562 :

57 I. C. 82 : 18 A. L. J. 744 :

2 U. P. L. R. All. 315 :

A. I. R. 1920 All. 135.

———S. 239—*Joint trial of different persons under Ss. 368 and 366, Penal Code, is bad in law.*

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S. 368 only applies where abduction or kidnapping has been completed and the wrongful concealment follows upon such completed abduction. Joint trial, therefore, of different persons under Ss. 368 and 366, I. P. C. is bad, the two acts not forming part of the same transaction: A. I. R. 1928 Lah. 751 and A. I. R. 1924 Cal. 389, Expl. and Dist. *Nawab Khan v. Emperor*.

A. I. R. 1929 Lah. 496.

———S. 239—*Joint trial—Joint trial of persons in possession of portions of stolen property—Accused acting in concert and in joint control of property.*

Where part of a stolen property was found in the possession of one person and another part in the possession of another, and it was proved that both had been acting in concert and had joint control over the property: *Held*, that their joint trial was not illegal. *Jadunandan Prasad v. Emperor*.

17 Cr. L. J. 234 :

34 I. C. 650 : 1 P. L. J. 64 :

A. I. R. 1916 Pat. 250.

———S. 239—*Joint trial of primary offender and abettor—Discharge of abettor—Order set aside in revision—Trial against other accused proceeding—Procedure—Abettor, joint trial of, whether proper.*

Accused Nos. 2 to 5 were tried for the offence of grievous hurt and accused No. 1 of abetment. Accused No. 1 was discharged and a charge was framed against the others. The order of discharge was set aside in revision. Meanwhile the trial of the other accused had further proceeded after charge: *Held*, that the joint trial of all the accused could not be resumed but the trial of the first accused must be conducted separately. *Subbayya Pillai v. Sesha Iyer*.

31 Cr. L. J. 457 :

122 I. C. 786 : 1929 M. W. N. 796 :

57 M. L. J. 754 : 30 L. W. 736 :

A. I. R. 1930 Mad. 102.

———S. 239—*Joint trial of principal offender and abettor.*

Obiter.—Ordinarily, the correct course is to try an abettor with the primary offender or offenders and where no reason to the contrary appears, the enabling provisions of S. 239 should be availed of. *Subbayya Pillai v. Sesha Iyer*.

31 Cr. L. J. 457 :

122 I. C. 786 : 1929 M. W. N. 796 :

57 M. L. J. 754 : 30 L. W. 736 :

A. I. R. 1930 Mad. 102.

———S. 239—*Joint trial of several accused for offences not arising out of same transaction, legality of.*

If accused persons have been wrongly tried together in respect of offences which cannot be jointly tried together legally in point of law, the conviction so obtained against them is illegal and void and cannot stand. It is not a mere irregularity; it is a question of substance, and not of form. If several accused start together for the same goal, this suffices to justify their joint trial under S. 239, even if incidentally one of those jointly tried has

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done an act for which the others may not be responsible. *Tepanidhi Gobinda Chandra v. Emperor*.

21 Cr. L. J. 161 (b) :

54 I. C. 769 : 5 P. L. J. 11 :

1 P. L. T. 180 : A. I. R. 1920 Pat. 230.

———S. 239—*Joint trial of several offenders.*

The joint trial of several offenders, except in cases strictly covered by S. 239, Cr. P. C., is fatal to the validity of the trial. S. 239 discussed and explained. *Emperor v. Bakwant Singh*.

8 Cr. L. J. 11 :

4 N. L. R. 71.

———S. 239—*Joint trial of thief and receiver of stolen property.*

Where the offence of receiving stolen property is not committed simultaneously with the offence of theft, the joinder of charges is illegal. *Emperor v. Sunder Singh*.

2 Cr. L. J. 37 :

3 P. R. Cr. 1905 : 6 P. L. R. 102.

———S. 239—*Joint trial of two accused for cheating—Conspiracy—One transaction.*

Where it was alleged that the accused, the Kulkarni and the Patil of a village, conspired together and cheated certain persons on the same day, by asking them to pay certain sums in excess of what was properly payable by them as assessment: *Held*, that there being clear proximity of time and space, clear continuity of action and sufficiently specific community of purpose, the offences committed by the accused must be held to be committed in the same transaction and the joint trial of the accused was not illegal. *Emperor v. Madhav Lawman*.

20 Cr. L. J. 71 (b) :

20 Bom. L. R. 607 : 43 Bom. 147 :

A. I. R. 1918 Bom. 117.

———S. 239—*Joint trial or separate trial—Discretion of Court—High Court's power to set aside conviction.*

Under S. 239 (d), discretion is given to a Court to try certain persons either jointly or separately. The manner in which this discretion should be exercised, must depend on the facts of each case, and the High Court on a consideration of the circumstances of the case has power to hold that the accused should not have been tried jointly, and can set aside the convictions and sentences with or without directing a re-trial should it think fit. Even where Ss. 235 and 239 of the Code justify a joinder, it should not be resorted to if there is risk of embarrassment to the defence. *Rash Behari Shaw (Handa) v. Emperor*.

38 Cr. L. J. 545 :

168 I. C. 657 : 41 C. W. N. 225 :

9 R. C. 853 : A. I. R. 1936 Cal. 753.

———S. 239—*Joint trial—Same transaction—Accused conspiring to procure conviction of innocent persons—Several acts linked together by one design though done at intervals.*

Five accused persons, A., B., C., D. and E., finding that a robbery was committed and that cash and ornaments worth a very large sum were stolen, aided and abetted each other inducing a young man, F., whom they knew to be entirely innocent of the offence, for the consideration of a bribe of Rs. 100, falsely to

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confess to complicity in the crime, and to acquiesce in being prosecuted for it, the object being to share the loot with the real thieves. To this end, the accused wrongfully confined F., fabricated false evidence in order to procure his conviction, knowingly instituted a false prosecution against him and in that prosecution gave false evidence in order to secure his conviction. All the five accused were jointly tried. A. was convicted of fabricating and giving false evidence to procure conviction of an offence, of wrongful confinement and of causing criminal proceedings to be instituted against a person without just or lawful ground. E. was convicted of giving false evidence with intent to procure conviction of the same offence as A. intended. It was urged that the joint trial of A. and E. was illegal: *Held*, that the joint trial of A. and E. was not illegal inasmuch as (a) S. 239, Cr. P. C., was distinctly applicable and, in the circumstances of the case, the joint trial was not only legal but was demanded in the interest of public time and public convenience; (b) there was one sustained and continuous plot for screening the real offenders in the robbery and of exposing an innocent man to a false charge with a view that accused or some of them might participate in the stolen property; to secure this end various means had to be adopted, one of the means, a mere incident in the whole transaction, being the giving of false evidence in the prosecution of F.; (c) accusation against all the accused was that they carried out a single scheme by successive acts done at intervals, but there was complete unity of project and the whole series of acts were so linked together by one motive and design as to constitute one transaction within the meaning of S. 239. *Emperor v. Ganesh Narayan Dikshit*. 13 Cr. L. J. 833 : 17 I. C. 705 : 14 Bom. L. R. 972.

————— **S. 239—Joint trial—Same transaction—Identity of purpose.**

Where certain persons are witnesses on the same side in a criminal case and all give evidence on the same point and to the same effect, to prove the same fact, the evidence in the case of all the witnesses is given in the same transaction within S. 239, Cr. P. C., so as to make a joint trial of such persons for perjury legal. There is the most obvious *identity of purpose* in such a case. For a joint trial under S. 239, identity of purpose is sufficient. Community of purpose in the sense of *conspiracy* is not in any way necessary, though if it is present, its presence will be a further element supporting a finding that offences were committed in the same transaction. There are only two methods provided by law for conducting a trial or trials of several accused. Either the trials must be separate if the law requires them to be separate or they may be and ordinarily will be joint, if the law permits them to be joint, unless for some particular reason the Judge considers that the trials should be held separately. It is very dangerous and not in accordance with law for a Judge, with the very best intentions, to follow some procedure which is really neither one nor

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the other of the two procedures provided by law. *Rafi-uz-zaman v. Chhotey Lal*.

27 Cr. L. J. 445 :
93 I. C. 237 : 24 A. L. J. 472 : 48 All. 325 :
A. I. R. 1926 All. 334.

————— **S. 239—Joint trial—Same transaction.**

It suffices for the purpose of justifying a joint trial that the accusation alleges offences committed by each accused to have been committed in the same transaction, within the meaning of S. 239. It is not necessary that the charge should contain the statement as to the transaction being one and the same. It is the tenour of the accusation and not the wording of the charge that must be considered as the test. In S. 239 a series of acts separated by intervals of time are not excluded, provided that the object of those jointly tried has throughout been directed to one and the same objective. If the accused started together for the same goal, this suffices to justify the joint trial, even if incidentally, one of those jointly tried has done an act for which the other may not be responsible. The foundation for the procedure in the section is the association of persons concurring from start to finish to attain the same end. *Emperor v. Dalto Hanmant*.

2 Cr. L. J. 578 :
7 Bom. L. R. 633 :
I. L. R. 30 Bom. 49.

————— **S. 239—Joint trial—Same transaction.**

Where stolen property is criminally disposed of by one person and at the same time and place dishonestly received by another, the offences of criminal disposal (S. 414, Penal Code), and dishonest receiving (S. 411, Penal Code) form part of the same transaction and the two persons can be tried jointly at one trial. *Emperor v. Keshav Krishna*.

1 Cr. L. J. 330 :
6 Bom. L. R. 361.

————— **S. 239—Joint trial—Sedition—Joint trial of printer and publisher, legality of.**

The printer and the publisher of a pamphlet alleged to be seditious can be tried jointly for an offence under S. 124-A of the Penal Code. *Emperor v. Shantaram Mirajker*.

29 Cr. L. J. 683 :
110 I. C. 235 : 30 Bom. L. R. 320 :
A. I. R. 1928 Bom. 139.

————— **S. 239—Joint trial—Several tenants holding separate lands charged with mischief, joint trial of.**

Where five tenants who act in concert are charged with the offence of mischief, committed in respect of different plots in their respective possessions, they can be jointly tried under S. 239, Cr. P. C. *Emperor v. Lalli Gope*.

18 Cr. L. J. 687 :
30 I. C. 335 : 1 P. L. W. 691 :
A. I. R. 1917 Pat. 522.

————— **S. 239—Joint trial.**

Six persons were tried together and convicted under S. 500, Penal Code, in respect of two petitions filed by them in criminal case containing objectionable remarks against the character of the complainant. One of the

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petitions was filed by four of the accused and the other petition was filed by the remaining two. The wording of the petitions was different but the substance of the allegation against the complainant was the same, the petitions were signed by the same Pleader, and they were presented on the same day, in the same case, and apparently at the same time: *Held*, that the joint trial was not bad in law. *Banga Chandra De v. Annoda Charan Chowdhury*.

23 Cr. L. J. 685 :
69 I. C. 269 : 35 C. L. J. 527 :
A. I. R. 1922 Cal. 76.

—S. 239—Joint trial.

The section lays down the cases where there may be a joint charge for which certain persons may be tried together. *Niranjan v. Emperor*.

35 Cr. L. J. 1224 :
150 I. C. 1140 : 1934 A. L. J. 658 :
4 A. W. R. 294 : 7 R. A. 86 :
A. I. R. 1934 All. 811.

—S. 239—Joint trial—Theft—Discovery of stolen property—Joint trial, legality of.

Where practical, the thief and the person who receives stolen property should be tried together and such trial is not in contravention of the provisions of S. 239. If the evidence shows that the act of guilty receipt is separated by a clean cut from the act of theft, exception as to the legality of a joint trial may be taken with success. But where a thief has taken the property stolen to a receiver, the difference affects only the mode of proof and the act of receipt has, unless shown otherwise, a necessary connection with the theft. *Emperor v. Bhima*.

17 Cr. L. J. 159 :
33 I. C. 639 : 14 A. L. J. 344 :
38 All. 311 : A. I. R. 1916 All. 321.

—S. 239—Joint trial.

Three persons charged under S. 411, I. P. C., for same offence—One of them charged for two more offences also under S. 411—Joint trial of all three held not illegal. *Niranjan v. Emperor*.

35 Cr. L. J. 1224 :
150 I. C. 1140 : 1934 A. L. J. 658 :
4 A. W. R. 294 : 7 R. A. 86 :
A. I. R. 1934 All. 811.

—S. 239—Joint trial.

Trial of accused charged under S. 211, Penal Code, along with persons charged with attempting to bribe doctor. Procedure is illegal. But if no prejudice is caused High Court, will not interfere. *Faiz Alam v. Emperor*.

35 Cr. L. J. 1410 :
151 I. C. 816 : 7 R. Pesh. 37 :
A. I. R. 1934 Pesh. 112.

—S. 239—Joint trial.

Two persons accused of an offence ought not to be tried together if the prosecution cases against them are mutually exclusive. *Intaj Khan v. Emperor*.

35 Cr. L. J. 1312 :
151 I. C. 406 : 7 R. Rang. 71 :
A. I. R. 1934 Rang. 193.

—S. 239—Joint trial—Unity of criminal behaviour actuated by common intention on part of all accused to extort—Accused, whether triable jointly.

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Where what was alleged by the prosecution was that there was unity of criminal behaviour actuated by a common intention to extort confession, all the accused persons would be jointly triable under S. 239. The unity of criminal behaviour and the common intention prompting it would render all that was done in furtherance of an object as a part of one transaction. If there is the additional element in this case of proximity in time as well, the necessity of a joint trial is strengthened. *Provincial Government, Central Provinces and Berar v. Dina Nath*.

41 Cr. L. J. 27 :
184 I. C. 412 : 1939 N. L. J. 373 :
I. L. R. 1939 Nag. 644 : 12 R. N. 111 :
A. I. R. 1939 Nag. 263.

—S. 239—Joint trial—Validity, test of.

The test to be applied for judging of the validity of a trial which purports to have taken place under the provisions of S. 239, is the accusation made and not the result of the trial. In order to decide, therefore, whether several persons can be lawfully tried jointly with having committed offences forming parts of the same transaction, the Court has to look to the accusation, that is to say, the prosecution case as set forth in the charges, and if according to that case, the offences are such as could be regarded as parts of the same transaction, it will be justified in holding a joint trial. The matter must be looked at as it appeared to the Magistrate at the time when he framed the charges and not to the state of affairs long after the trial had proceeded on its way leading to the convictions of the accused. Where, therefore, having regard to all the facts before the Magistrate at the time when he was framing the charges against the accused as directed by S. 254, Cr. P. C., he was acting judicially and properly exercising the discretion given him by S. 239, it cannot be held that there was illegality in the joint trial as to warrant quashing of proceedings, especially when no prejudice was caused to the accused on account of the alleged irregularity. *Rash Behari Shaw (Handa) v. Emperor*.

38 Cr. L. J. 545 :
168 I. C. 657 : 41 C. W. N. 225 :
9 R. C. 853 : A. I. R. 1936 Cal. 753.

—S. 239—Joint trial.

Whenever the applicability of S. 239 is doubtful it is better that the accused should be tried separately. *In re : Samiullah Sahib*.

27 Cr. L. J. 1381 :
98 I. C. 597 : 51 M. L. J. 692 :
24 L. W. 848 : 38 M. L. T. 37 :
A. I. R. 1927 Mad. 177.

—S. 239—Joint trial.

Where accused 1 to 3 were charged under S. 302, I. P. C., for murder and accused 3 was further charged in the alternative under S. 201, I. P. C., for helping accused 1 and 2 in disposing of the corpses with the intention of screening the offenders: *Held*, that the trial was not illegal for misjoinder of charges and persons. *Emperor v. Ghulam*.

8 Cr. L. J. 191 :
1 S. L. R. 73.

—Ss. 239, 423—Joint trial—Perjury com-

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mitted in course of same transaction—Persons verifying false statement and witness perjury in pursuance of same design—Joint trial is legal.

There may be cases of perjury which are committed in the course of the same transaction and which, therefore, may be jointly tried. Where the offence of verifying a false statement is done jointly by two persons in pursuance of a common object, the offences are committed in the course of the same transaction. When perjury is committed by witnesses in the course of the same trial and obviously in pursuance of the design and defence set out in the written statement, these actions form part of one conspiracy and hence one transaction. The joint trial of these persons is, therefore, legal especially as there is identity of purpose and pre-arrangement. *Nathusingh v. Emperor.*

38 Cr. L. J. 455 :

167 I. C. 845 : I. L. R. 1937 Nag. 102 :

9 R. N. 222 : A. I. R. 1936 Nag. 263.

———Ss. 239, 537—*Joint trial—Misjoinder of charges—Thief and receiver of stolen property, whether can be jointly tried—Same transaction.*

The joint trial of thieves and receivers of stolen properties is illegal unless the offences charged were committed in the course of the same transaction within the meaning of S. 239. Where property is stolen and the proceeds of the theft are separately received at different times by different persons, these persons cannot be tried together. *Ohi Bhusan Adhikari v. Emperor.*

20 Cr. L. J. 394 :

50 I. C. 1002 : 29 C. L. J. 212 :

23 C. W. N. 463 : 46 Cal. 741 :

A. I. R. 1919 Cal. 249.

———S. 239 (a) (e)—*Joint trial—Persons charged with offence under S. 457 or S. 460, Penal Code, if can be tried with person accused of receiving stolen property—Joinder proper—Other charges, if can be added.*

S. 239 (a) only permits persons to be charged and tried together when one set are charged with an offence which includes theft, whilst the others are charged with receiving or retaining or assisting in the disposal or concealment of property, possession of which is alleged to have been transferred by the offence with which the first set are charged. As persons charged under Ss. 457 and 460, Penal Code, are not persons charged with offences which include theft, they cannot properly be tried with persons charged with receiving stolen property which was stolen in a theft which was committed as part of the transaction involving the other offences. If persons can properly be charged and tried together under S. 239, there is nothing to prevent other charges being added against one or more of such persons if the addition of such charges is permissible by the Code. *Emperor v. Mathuri.*

37 Cr. L. J. 794 :

163 I. C. 253 : 1936 A. L. J. 518 :

8 R. A. 928 (2) : 58 All. 695 :

A. I. R. 1936 All. 337.

———S. 239, Cl. (b)—*Joint trial—Charge of murder and theft—Principal and accomplices.*

It is an improper procedure for a Court to

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follow, to allow the principal accused to remain untried while a charge of murder is proceeded with against certain other persons who are supposed to have played a minor part in the crime. In such a case, all the accused should be tried together at one trial. Even if some of them were principal offenders and the others accomplices, S. 239, Cl. (b) permits them all to be tried together in one trial. *In re : Sogiamuthu Padayachi.* 27 Cr. L. J. 394 : 93 I. C. 42 : A. I. R. 1926 Mad. 638.

———S. 239 (d)—*Joint trial—Accused charged under S. 486, Penal Code, charged and tried jointly with accused charged under S. 485—No evidence connecting goods in possession of former with counterfeit die in possession of latter—Misjoinder.*

One of the accused was charged under S. 486 with having in his possession a mixture of grease and oil with the counterfeit of a trade-mark belonging to the complainant, impressed upon the tins. Accused No. 2 was charged under S. 485, I. P. C., with having in his possession a counterfeit trade-mark to be impressed on "the tins" to denote that the tins were the manufacture of the complainants. There was no evidence to connect the tins found in the possession of the accused No. 1 with the counterfeit die found in possession of accused No. 2. Both of them were charged and tried jointly with the counterfeit die found in the possession of accused No. 2 : *Held*, that the joint charge and trial could only be permissible in the case mentioned in S. 239 (d), i. e., in the case of persons accused of different offences committed in the course of the same transaction. This misjoinder rendered the trial invalid, being a disregard of an express provisions of law as to the mode of trial, and not a mere curable irregularity. *S. Pillay v. G. S. T. Shaik Thumby Sahib.*

41 Cr. L. J. 790 :

189 I. C. 705 : 13 R. Rang. 60 :

A. I. R. 1940 Rang. 113.

———S. 239 (d)—*Joint trial—Beating and wrongful confinement.*

Four persons beating and wrongfully confining complainant—Fifth accused beating complainant next day when he was taken to his house—Joint trial of all five is illegal—Illegality cannot be cured by S. 537. *Paltu v. Emperor.*

34 Cr. L. J. 863 :

144 I. C. 974 : 1933 A. L. J. 1595 :

6 R. A. 24 : A. I. R. 1933 All. 354.

———Ss. 239 (d), 537—*Joint trial—Tests—Common object.*

The question of joinder and misjoinder depends on the form of the accusation made rather than on the facts actually proved at the trial. The nature of the charge is really the crucial point. Before a joint trial can be held to be permissible or justifiable, it must be established that each one of the accused was so connected with the other accused that the act done by one of them may be said to have been done conjointly with the other. The fact that the accused are all servants of the same master and so connected with the same person, does not necessarily involve connection with each other for the purposes of

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the offences charged. Similarly common purpose would not be enough to make offences part of the same transaction, if the offenders act independently. Where the accusation does not involve anything from which it could be said that the accused are charged with different offences as forming part of the same transaction, joint trial cannot be held. *Nathu Chaudhury v. Emperor*.

41 Cr. L. J. 452 :
187 I. C. 361 : 6 B. R. 461 :
12 R. P. 615 :
A. I. R. 1940 Pat. 499.

—Ss. 239-D, 537—*Joint trial—Value of—joint trial of offences not in course of same transaction, effect of.*

A person committing theft was caught and tied down. On hearing of his condition, four of his friends came and rescued him and a fight ensued in which injuries were caused. These five persons were jointly tried for offences under Ss. 379, 225, 147, 148, 149, 325 of the Penal Code : *Held*, the joint trial was illegal inasmuch as the theft could not be said to be a part of the same transaction as the assault which subsequently ensued. *Muhammadi v. Emperor*.

28 Cr. L. J. 357 :
100 I. C. 965 : A. I. R. 1927 Lah. 274.

—S. 239 (c)—*Joint trial—Person accused of offence under S. 457, I. P. C.—Whether can be charged and tried with receiver of stolen property.*

S. 457, Penal Code, includes theft and a person accused of an offence under S. 457 can, by virtue of S. 239 (c), be legally charged and tried with persons accused of receiving or retaining stolen property. *Emperor v. Nawab*.

38 Cr. L. J. 1061 :
170 I. C. 303 : I. L. R. 1937 Lah. 62 :
39 P. L. R. 278 : 10 R. L. 100 :
A. I. R. 1937 Lah. 463.

—S. 239 (f)—*Joint trial.*

No failure of justice and no prejudice to accused—Trial is not void *ab initio* and illegal. *Bhaggan v. Emperor*.

36 Cr. L. J. 602 :
154 I. C. 901 : 1935 O. W. N. 408 :
7 R. O. 518 : A. I. R. 1935 Oudh 327.

—S. 239 Cl. (f)—*Joint trial—Receiving stolen property.*

The persons in possession of such stolen property which has been secured by means of the commission of several offences of theft or robbery, etc., cannot be tried jointly according to the provisions of Cl. (f) of S. 239. *Bhaggan v. Emperor*.

36 Cr. L. J. 602 :
154 I. C. 901 : 1935 O. W. N. 408 :
7 R. O. 518 : A. I. R. 1935 Oudh 327.

—S. 239 (f)—*Joint trial.*

Several accused can be jointly tried for offences under S. 411, Penal Code, provided the property was originally stolen on one occasion. S. 239 (f) permits such joint trial. *Emperor v. Lakha Amra*.

33 Cr. L. J. 394 :
137 I. C. 146 : 34 Bom. L. R. 301 :
I. R. 1932 Bom. 231 :
A. I. R. 1932 Bom. 201.

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—S. 239, Cl. (f)—*Joint trial, when justified.*

Separate trial is the rule and the joint trial is the exception and such a joint trial can only be justified if the provisions of S. 239 can be applied. *Bhagwan v. Emperor*.

36 Cr. L. J. 602 :
154 I. C. 901 : 1935 O. W. N. 408 :
9 R. O. 518 : A. I. R. 1935 Oudh 327.

—S. 239—*Meaning of words—"Same offence", meaning of—Application of section.*

Where two accused were tried together on a charge of having caused grievous hurt to a person and the allegation was that either one or the other committed the crime and the Magistrate discharged one of the two accused and convicted the other : *Held*, that the words "same offence" in S. 239 implied that both the accused should have acted in concert or association and did not apply to a case like the present and that the two accused ought to have been tried separately as required by the provisions of S. 233. *Azimud-Din v. Emperor*.

14 Cr. L. J. 563 :
21 I. C. 163 : 6 Bur. L. T. 191 :
7 L. B. R. 68.

—S. 239 (d)—*Non-compliance—Effect.*

Obiter.—The infringement of S. 239 (d) would, if made out, constitute an illegality, as distinguished from an irregularity, so that the conviction would require to be quashed. *Babulal Choukhani v. Emperor*. (P. C.)

39 Cr. L. J. 452 :
174 I. C. 1 : 1938 A. L. J. 382 :
19 P. L. T. 343 : 1938 I. M. L. J. 647 :
42 C. W. N. 621 : 1938 O. W. N. 416 :
1938 O. L. R. 189 : 1938 M. W. N. 505 :
4 B. R. 490 : 67 C. L. J. 161 :
40 Bom. L. R. 787 : 65 I. A. 158 :
32 S. L. R. 476 : I. L. R. 1938 2 Cal. 295 :
10 R. P. C. 250 : A. I. R. 1938 P. C. 130.

—S. 239 (f)—*Possession, meaning of.*

The phrase "possession of which has been transferred by one offence" in S. 239 (f) is a reference to the original theft of the stolen property. *Emperor v. Lakha Amra*.

33 Cr. L. J. 394 :
137 I. C. 146 : 34 Bom. L. R. 301 :
I. R. 1932 Bom. 231 :
A. I. R. 1932 Bom. 201.

—S. 239 — *Procedure—Hurt — Affray — Trial of complainant and accused together after hearing prosecution evidence.*

A was prosecuted by the Police for voluntarily causing hurt with *da* to B. The evidence for the prosecution showed that A and B had got drunk and fought with *da* in the public street, each wounding the other ; and the Magistrate, after hearing this evidence, tried both A and B together for affray without framing any charge of causing hurt : *Held*, that the Magistrate's procedure was illegal. The evidence established a *prima facie* case of causing hurt with a *da* against A, and he ought to have been tried for that, instead of for the minor offence of affray. *Emperor v. Nga Ywe*.

7 Cr. L. J. 498 :
4 L. B. R. 237.

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—S. 239—*Procedure—Separate trial of two accused persons charged with same offence—Statement made by one accused at trial of other.*

Where two persons are being separately tried for the same offence, the examination of one of them in the case against the other is irregular and is likely to prejudice the Magistrate in disposing of the charge against the former. *Ram Sarup v. Emperor.*

17 Cr. L. J. 503 :
36 I. C. 471 : 9 Bur. L. T. 135 :
A. I. R. 1916 L. Bur. 20.

—S. 239—*Same transaction.*

A series of acts, however, separated by intervals of time are not excluded from the purview of S. 239, provided that those jointly tried have been directed throughout to one and the same objective. *Muhammad Shah v. Emperor.*

23 Cr. L. J. 268 :
66 I. C. 332.

—S. 239—*Same transaction.*

Acts connected together need not be simultaneous to be parts of the same transaction within S. 239, and ordinarily theft and the disposal of the proceeds would be parts of the same transaction. *Nga Nyo Gyi v. Emperor.*

6 Cr. L. J. 28 :
U. B. R. 1907 Cr. P. Code 5 :
14 Bur. L. R. 38.

—S. 239—*Same transaction—Articles belonging to different persons, theft of—Offences, whether distinct.*

The fact that the articles stolen, happen to belong to two different persons does not make the theft two offences when it is committed in the course of one transaction. *Bhura v. Emperor.*

26 Cr. L. J. 1495 :
90 I. C. 151 : A. I. R. 1926 Nag. 89.

—S. 239—*Same transaction—Charges, joinder of—Defamation and attempt to put in fear of injury in order to commit extortion.*

During the pendency of a complaint against the accused under Ss. 211 and 500, Penal Code, the accused sent a letter to the complainant asking him to withdraw the case and give him the thing he would ask from him otherwise he should make charges against him in Court, and in the course of the case, when examined, made defamatory statements to Court against the complainant. The complainant preferred a second complaint against the accused for those charges and the Magistrate in one and the same trial convicted the accused on three charges of defamation under S. 500, Penal Code, and on a fourth charge under S. 385, Penal Code. It was contended for the accused that the trial was illegal for misjoinder of charges against the provision of S. 239: *Held*, that the contention had no force for the offences, with which the accused was charged, were committed in the same transaction. *Emperor v. Har Charan Singh.*

1 Cr. L. J. 974 :
5 P. L. R. 424 : 18 P. R. Cr. of 1904.

—S. 239—*Same transaction—Conspiracy.*

Accused persons may be charged at one trial with the offence of conspiracy said also with

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the offence alleged to have been committed in pursuance of the conspiracy because the substantive offence of conspiracy and the offences committed in pursuance thereof form one and the same transaction. *Ram Das v. Emperor.*

35 Cr. L. J. 1349 :
151 I. C. 442 : 1934 A. L. J. 852 :
7 R. A. 163 : A. I. R. 1934 All. 61.

—S. 239—*Same transaction—Conspiracy—Number of persons charged with conspiracy to commit criminal breach of trust and cheating—Each charged with some specific offences committed in pursuance of conspiracy—Misjoinder.*

Where a number of persons are charged for a conspiracy to commit a breach of trust and cheating, and each one of them is separately charged with different specific offences either relating to cheating or criminal breach of trust committed in pursuance of that conspiracy, i. e., in course of a single transaction lasting for some years, the charges are not contrary to law and there is no misjoinder of charges. *Akhil Bandhu Ray v. Emperor.*

39 Cr. L. J. 596 :
175 I. C. 409 : 1938 I. L. R. Cal. 588 :
10 R. C. 790 : A. I. R. 1938 Cal. 258.

—S. 239—*Same transaction—Defamation.*

All accused alleged to have joined to defame complainant—Printer charged under S. 501, Penal Code, and Publisher under S. 500, Penal Code—Trial held jointly—Provision of S. 239 (d), are not violated. *Parsotam Das v. Emperor.*

36 Cr. L. J. 1296 :
158 I. C. 39 : 1935 A. L. J. 1065 :
1935 A. W. R. 797 : 8 R. A. 269 :
A. I. R. 1935 All. 769.

—S. 239—*Same transaction.*

Joint trial for kidnapping and concealing kidnapped woman is legal. *Emperor v. Zamin.*

33 Cr. L. J. 275 :
136 I. C. 243 : 8 O. W. N. 1325 :
I. R. 1932 Oudh 99 :
A. I. R. 1932 Oudh 28.

—S. 239—*Same transaction—Joint trial.*

Six persons were accused of waging war under S. 121, Penal Code. The 6th accused joined the gang after 1st and 2nd accused were arrested. But the gang continued under the same leadership: *Held*, that the joint trial was not bad. *In re : Gam Mallu Dora.*

26 Cr. L. J. 1513 :
90 I. C. 297 : 48 M. L. J. 308 :
1925 M. W. N. 192 : 49 Mad. 74 :
A. I. R. 1925 Mad. 690.

—S. 239—*Same transaction—Keeping and frequenting gaming-house—Joint trial.*

Where it is found that a person has opened, kept or used his house as a common gaming-house for profit, and that other persons have used that house for the purpose of gambling and have paid charges for the same, a joint trial of such persons for offences under S. 3 and 4 of the Bengal Public Gambling Act is not illegal, as the offences are committed in the same transaction within the meaning of S. 239. *Nathu Thakur v. Emperor.*

20 Cr. L. J. 768 :
53 I. C. 496 : A. I. R. 1919 Pat. 139.

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———S. 239—*Same transaction — Keeping gaming-house and using it as such joint trial.*

The offence of keeping a common gaming house and the offence of using it as such are offences committed in the same transaction. The trial, therefore, of the owner or keeper of a common gaming-house under S. 3 of the Public Gambling Act, together with the trial of persons found gaming, or present for the purpose of gaming in such house under S. 4 of that Act in one trial is not illegal. *Ganeshi Lal v. Emperor.* 24 Cr. L. J. 155 :

71 I. C. 507 : 20 A. L. J. 967 :
A. I. R. 1923 All. 88.

———S. 239—*Same transaction, meaning of —Prejudice to the accused.*

The expression "same transaction" used in Ss. 235 and 239 has not been defined in the Code, but the illustrations to the sections make the intention of the legislature sufficiently clear. If a series of acts are so connected together by proximity of time, community of criminal intent, continuity of action and purpose, or by the relation of cause and effect, then the accused may be charged with, and tried at one trial for every offence committed in such series of acts. If more persons than one are accused of different offences, committed in a series of acts so connected, they may be tried together; (2) All the criminal acts which are by English and Indian Law regarded as subsidiary to an offence are included in the same transaction as the offence. Instances of such acts are in the case of theft, the disposing of stolen property and handing it over to a receiver, and in case of murder, the concealment of the body; (3) However, even where several criminal acts can be included in the same transaction, no joinder of charges or trials should be permitted which will result in bewildering any of the accused. *Emperor v. Ghulam.* 8 Cr. L. J. 191 :

1 S. L. R. 73.

———S. 239—"Same transaction," meaning of—*Test.*

To determine whether two or more acts constitute the same transaction within the meaning of S. 239, a good working test is the proximity of time, unity or proximity of place, continuity of action and community of purpose or design. *Banga Chandra De v. Annoda Charan Chowdhury.* 23 Cr. L. J. 685 :

69 I. C. 269 : 35 C. L. J. 527 :
A. I. R. 1922 Cal. 76.

———S. 239—"Same transaction," meaning of—*Trespass and on ejection assembling men to force entry—Joint trial.*

The act of a trespasser in entering into a factory, and, subsequent to his ejection therefrom, his act in assembling men to force an entry into it, are acts unconnected with each other and do not form part of the same transaction, within the meaning of S. 239, and a joint trial for such offences is illegal. *In re : Anantha Padiyard.* 15 Cr. L. J. 695 :

26 I. C. 143 : A. I. R. 1915 Mad. 534.

———S. 239—*Same transaction—Misjoinder of charges.*

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Some unknown persons killed N. Some time after three of the four accused came and tried to carry off N's body. On W. S. trying to prevent the accused, they caused him grievous hurt. The Magistrate committed all the four accused upon a charge of murder. The Sessions Judge, however, added the charge of grievous hurt against all, but ultimately acquitted one of them of both the charges, and convicted the remaining three of grievous hurt only : *Held*, that as the murder may have been committed by one set of men with one object and the attempt to carry of the body may have been committed by another set of men with a different object, the offences of murder and grievous hurt did not form part of the same transaction ; and that the trial was bad for misjoinder of charges. *Nawab Singh v. Emperor.* 4 Cr. L. J. 285 :

10 P. R. Cr. 1906 : 117 P. L. R. 1907.

———S. 239—*Same transaction—Murder—Omission to give information of murder—Separate transaction—Joint trial.*

Directly after a murder was committed by a person, it was discovered by his father but the latter omitted to give information in respect of it. The father and the son were tried jointly under Ss. 202 and 302, Penal Code, respectively : *Held*, that as the commission of the murder was one transaction and the omission to give information a separate transaction, the joint trial of the accused was illegal. *Ratan Singh v. Emperor.* 23 Cr. L. J. 8 :

64 I. C. 376 : 19 A. L. J. 915.

———S. 239—*Same transaction, offences committed in—Joint trial—Separate punishments.*

The two clauses of S. 239, Cr. P. C., are not mutually exclusive. A. induces B. to cheat B. attempts to cheat in consequence. A. and B. may be tried together for abetment of and attempt at cheating, respectively. If, in the course of the same transaction, A. commits the separate offence of criminal breach of trust, in furtherance of the conspiracy to cheat, A. may be charged with that offence at the same trial. And separate sentences can be passed against him on each charge. *Kali Das v. Emperor.* 12 Cr. L. J. 106 :

9 I. C. 618 : 15 C. W. N. 463 : 38 Cal. 453.

———S. 239—"Same transaction"—*Offences under S. 193, Penal Code—Joint trial.*

The words "same transaction" in S. 239 cannot be applied to a whole trial and all the evidence given in it. Hence, when several persons are accused of having given false evidence as witnesses in a case, they cannot be charged and tried together but must be charged and tried separately. *Emperor v. Shwe So.* 4 Cr. L. J. 489 :

3 L. B. R. 231.

———S. 239—*Same transaction—Penal Code (Act XLV of 1860), Ss. 395, 412—Dacoity—Dishonestly receiving stolen property—Joint trial, legality of—Charge of dacoity—Conviction under S. 412, legality of.*

None of the particulars which go to make up

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the offence of dacoity constitute by themselves the offence of dishonestly receiving stolen property. The offence of dishonestly receiving stolen property cannot, therefore, be considered a minor one as compared with that of a dacoity or of house-breaking by night. A person who has been charged with the offence of dacoity cannot consequently be convicted of an offence under S. 412 of the Penal Code. The offence under S. 412 of the Penal Code is a totally different offence from that of dacoity committed at a different time and not in the course of the same transaction within the meaning of S. 239 of the Cr. P. C. Therefore, a person cannot be tried in respect of an offence under S. 412 of the Penal Code jointly with other persons who are charged with the offence of dacoity committed at a different time and not in the course of same transaction. *Achpal v. Emperor*.

26 Cr. L. J. 1361 :

89 I. C. 449 : 1 Lah. Cas. 92 :

A. I. R. 1926 Lah. 132.

———S. 239—Same transaction.

Person escaping from lawful custody with help of others—Intention of all to secure release—Acts bringing about escape form part of same transaction—Joint trial, is legal. *Ajablal Rai v. Emperor*.

37 Cr. L. J. 240 :

160 I. C. 177 : 16 P. L. T. 748 :

2 B. R. 177 : 15 Pat. 138 : 8 R. P. 348 :

A. I. R. 1936 Pat. 20.

———S. 239—Same transaction—Question of fact—Admission of accused—Effect.

The question whether certain offences specified in different charges were or were not so connected together, that it might fairly be said that they had been committed in the course of the same transaction, within S. 239 is substantially one of fact, and an admission on such a question made by an accused person may be acted upon by the Court. *Gayan Singh v. Emperor*.

26 Cr. L. J. 29 :

83 I. C. 509 : A. I. R. 1923 All. 277.

———S. 239—Same transaction—Relevant point of time.

The relevant point of time in the proceedings at which the condition as to the sameness of transaction must be fulfilled is the time of accusation and not that of the eventual result. *Provincial Government, Central Provinces and Berar v. Dina Nath*.

41 Cr. L. J. 27 :

184 I. C. 412 : 12 R. N. 111 :

1939 N. L. J. 373 : I. L. R. 1939 Nag. 644 :

A. I. R. 1939 Nag. 263.

———S. 239—Same transaction.

Same transaction illustrated—Trespass and attack held not within common object of the assembly. *Ghazi-ud-Din Khan v. Emperor*.

34 Cr. L. J. 393 :

142 I. C. 684 : 9 O. W. N. 1109 :

I. R. 1933 Oudh 127 :

A. I. R. 1933 Oudh 19.

———S. 239—Same transaction.

S. 239 enables a joint trial to be held of several offenders or sets of offenders only if

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the offences were all committed in the same transaction. Where, however, the offences are different, falling under different sections, the dates of the offences are different, the sets of persons committing the offences are different and the persons or sets of persons against whom the offences are committed are different, they cannot, ordinarily, be held to have been committed in the same transaction. In order to constitute one transaction, there should be such unity of purpose, such continuity of action and such proximity of time in the happenings as would lead a trained judicial mind to grasp them as forming a single transaction. *Per Napier, J.*—To constitute acts as one transaction, prior conspiracy among the actors is not required. So long as the actions flow out from one another in a continuous stream, the doctrine applies. Proximity of time is one of the essentials but it is not necessary that all the acts should be completed on the same day. *Kumaramathu Pillai v. Emperor*.

20 Cr. L. J. 354 :

50 I. C. 834 : 1919 M. W. N. 199 :

25 M. L. T. 379 : 10 L. W. 239 :

A. I. R. 1919 Mad. 487.

———S. 239—Same transaction—Sudden fight—Absence of common object—Joint trial, whether legal.

The offence of hiring a person to take part in a riot is a separate and distinct offence from the riot itself and ordinarily the hiring and the riot would be separate transactions. There may, however, be circumstances in a case which might justify the Court in holding that the alleged hiring or employing and the riot were part of the same transaction. *Nayan Ullah v. Emperor*.

26 Cr. L. J. 594 (b) :

85 I. C. 818 : A. I. R. 1925 Cal. 903.

———S. 239—Same transaction.

Where offences of murder and grievous hurt are committed by the accused in the course of the same transaction, and in furtherance of the common intention, all the persons responsible for causing those injuries can be tried together in one trial. *Allah Ditta v. Emperor*.

36 Cr. L. J. 380 :

158 I. C. 441 : 8 R. Rang. 168 :

A. I. R. 1935 Rang. 299.

———S. 239—Same transaction—Tests.

In deciding whether a particular series of events do or do not form one transaction within the meaning of S. 239, the real and substantial test is whether they are so related to one another in point of purpose or as cause and effect or as principal and subsidiary acts, as to constitute one continuous action. Each event must be a link in the chain, and there must be no hiatus or rupture in the sequence. *Bishambhar Nath Tandon v. Emperor*.

26 Cr. L. J. 1602 :

90 I. C. 706 : 2 O. W. N. 760 :

A. I. R. 1926 Oudh 161.

———S. 239—Same transaction—Test.

In each case it is a question of fact whether the offences in respect of which more persons than one are charged at the same trial were

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committed in the same transaction, within the meaning of S. 239 and that question must be determined with reference to the facts of each case. *Emperor v. Madhav Laxman*.

20 Cr. L. J. 71 (b) :
48 I. C. 871 : 20 Bom. L. R. 607 :
43 Bom. 147 :
A. I. R. 1918 Bom. 117.

————S. 239—Same transaction—Test.

The foundation for the procedure laid down in S. 239 is the association of two persons concurring from start to finish to attain the same end. Community of purpose or design and continuity of action are essential elements of the connection necessary to link together different acts into one and the same transaction. In such cases, the acts alleged to be connected with each other must have been done in pursuance of a particular end in view and as accessory thereto. *Tepanidhi Gobinda Chandra v. Emperor*.

21 Cr. L. J. 161 (b) :
54 I. C. 769 : 5 P. L. J. 11 :
1 P. L. T. 180 :
A. I. R. 1920 Pat. 230.

————S. 239—Same transaction, test of.

To determine whether there is any misjoinder of charges with reference to the words "same transaction" in S. 239, tests are proximity of time, continuity of action and purpose and such subsidiary acts as would make the co-accused *particeps criminis* or an accessory after the fact. *Emperor v. Lukman*.

27 Cr. L. J. 1233 :
98 I. C. 49 : A. I. R. 1927 Sind 39.

————S. 239—Same transaction—Theft and rescue of thief—Joint trial.

A thief was captured and while he was being led by the complainants, several persons armed with deadly weapons assaulted the latter and rescued the thief. The thief and the rescuers were jointly tried, the former for theft and the latter for rioting and hurt. There was no evidence to show that the rescuers had acted in collusion with the thief in the act of theft and had stood by to rescue him; *Held*, that the joint trial was bad as there was no evidence to show that the offences of rioting and use of deadly weapons upon the complainants were part of the same transaction as the offence of theft. *Raghu Dusadh v. Emperor*.

32 Cr. L. J. 9 :
127 I. C. 571 : I. R. 1930 Pat. 715 :
A. I. R. 1930 Pat. 159.

————Ss. 239, 235—Same transaction.

Where certain volunteers picketed a liquor shop with a common purpose for a period of 14 days and they were tried in respect of three offences committed on three different dates by three different volunteers; *Held*, that the trial was not illegal. *Ganesh Prosad v. Emperor*.

32 Cr. L. J. 478 :
130 I. C. 269 : I. R. 1931 Pat. 173 :
A. I. R. 1931 Pat. 52.

————Ss. 239 (d), 537—'Same transaction'—Tests.

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Before different offences can be said to have been committed 'in the course of the same transaction' by the various persons charged with the same, it must be seen whether such persons and a common purpose resulting in actions which constitute a concatenation of events ultimately leading to the commission of such offences. The tests of unity of time and unity of place as regards the offences with which the various accused persons may be charged are not always safe criteria for the purpose of determining whether or not these offences were committed in 'the course of the same transaction.' A joint trial of several persons charged with offence not committed in the course of the same transaction is not an irregularity which is curable under S. 537 but is an illegality which vitiates the whole trial. *Muhammadi v. Emperor*.

28 Cr. L. J. 357 :
100 I. C. 965 : A. I. R. 1927 Lah. 274.

————Ss. 239 (a), 94—Same transaction—Tests.

Identity of time is not an essential element in determining whether certain events form the same transaction or not; what has to be looked to is rather continuity of action and unity of purpose. *Chhotey Mian v. Emperor*.

38 Cr. L. J. 482 :
167 I. C. 860 : 9 R. N. 228 :
I. L. R. 1937 Nag. 165 :
A. I. R. 1936 Nag. 250.

————S. 239(d)—Same transaction.

Accused opening sluice of feeder channel of tank in spite of watchman's objection once in the evening and once next morning; *Held*, the acts fell within the description of 'the same transaction.' *Sambasiva Mudali v. Emperor*.

131 I. C. 458 : 1930 M. W. N. 1041 :
3 Mad. Cr. Cas. 390 : I. R. 1931 Mad. 522 :
A. I. R. 1931 Mad. 225.

————S. 239 (d)—Same transaction—Offence of gaming and keeping common gaming-house—Joint trial.

A person accused of the offence of keeping a common gaming-house can be tried jointly with another person accused of having gambled in that house, as the offences, though distinct, are committed in the course of the same transaction, namely, gaming. *Dorab v. Emperor*.

28 Cr. L. J. 1001 :
105 I. C. 825 : 26 A. L. J. 78 :
A. I. R. 1928 All. 20.

————S. 239 (d)—Same transaction—Conspiracy—Joinder of charges.

A, B and C were charged with conspiracy to commit offences under Ss. 489-A, 489-B and 489-D read with S. 120-B of the Penal Code and alternatively with offences in the course of the same transaction under S. 489-D. A and B were further charged with offences under S. 489-A, and A was charged further with an offence under S. 489-B. B and C were wholly acquitted and A was convicted only on the last charge; *Held*, (1) that there

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was no misjoinder of charges as all the offences were committed in the course of the same transaction; (2) that the question of prejudice to A did not arise, and even if it did, A was not prejudiced and the trial was not bad. *Gopal Raghunath v. Emperor*.

30 Cr. L. J. 588 :
116 I. C. 243 : 31 Bom. L. R. 48 :
I. R. 1929 Bom. 339 : 53 Bom. 344 :
A. I. R. 1929 Bom. 128.

———S. 239 (d)—*Same transaction—Illegal possession of revolver while preparing for dacoity—Accused, if can be jointly charged and tried for offences under S. 399, Penal Code, and S. 19 (f), Arms Act.*

The offences of illegal possession of revolver is a continuing one and, therefore, having possession of such a weapon at the time of preparation for dacoity or at the time of taking part in the dacoity, would form part of the same transaction. S. 239 (d), Cr. P. C., applies to the case and the accused can be jointly charged and tried under S. 399, Penal Code, and S. 19 (f), Arms Act. *Rhazan v. Emperor*.

39 Cr. L. J. 141 :
172 I. C. 405 : 39 P. L. R. 1013 :
10 R. L. 314 : A. I. R. 1937 Lah. 793.

———S. 239 (d).

"Same transaction," meaning of—Two police officers having sexual intercourse with defenceless woman in police station one after another—Joint trial is not illegal. *Mazarali v. Emperor*.

34 Cr. L. J. 870 :
144 I. C. 985 : 35 Bom. L. R. 474 :
57 Bom. 400 : 6 R. B. 25 : A. I. R. 1933 Bom. 266.

———S. 239 (g)—*Same transaction—Joint trial.*

Joint trial of three persons—Offences under Ss. 240 and 243, Penal Code, respectively, committed by two in one place—Offence under Ss. 240, 243-109 committed by another in another place—Absence of evidence as to conspiracy—Joint trial held not legal. *Abdul Hamid v. Emperor*.

34 Cr. L. J. 1253 (2) :
146 I. C. 261 : 6 R. L. 197 :
A. I. R. 1933 Lah. 228.

———S. 239—*Scope—Joint preliminary enquiry, legality of.*

S. 200, Cr. P. C. only prohibits a joint trial and not a joint preliminary enquiry for the purpose of commitment to the Sessions. *In re : Nalluri Chenchiah*.

20 Cr. L. J. 379 :
50 I. C. 987 : 36 M. L. T. 296 :
9 L. W. 349 : 1919 M. W. N. 183 :
25 M. L. T. 356 : 42 Mad. 561.

———S. 239—*Scope—Joint trial in violation of S. 239—Prejudice.*

A joint trial in violation of the express provisions of S. 239, is not illegal or void *ab initio*, if it has not occasioned a failure of justice and has not prejudiced the accused in his defence on the merits. *Wali Jan v. Emperor*.

39 Cr. L. J. 853 (a) :
177 I. C. 74 : 1938 O. W. N. 748 :
11 R. O. 23 : 1938 O. L. R. 369 :
A. I. R. 1938 Oudh 216.

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———S. 239—*Scope.*

The foundation for the procedure sanctioned by S. 239 is the association of two or more persons concurring from start to finish to attain the same end. *Muhammad Shah v. Emperor*.

23 Cr. L. 268 :
66 I. C. 332.

———S. 239—*Scope.*

The provisions of Ss. 234, 235, 236 and 239 are mutually exclusive and the scope of S. 239 cannot be extended by use of sections not referred to in S. 239. *Janeshar Das v. Emperor*.

30 Cr. L. J. 687 :
116 I. C. 794 : I. R. 1929 All. 618 :
1929 A. L. J. 329 : 51 All. 544 :
A. I. R. 1929 All. 202.

———S. 239—*Scope.*

The provision Cls. (a) and (c) of S. 239, are intended to deal with the position as it exists at the time of charge, and not with the result of the trial. *Superintendent and Remembrancer of Legal Affairs, Bengal v. Raghu Lal*.

37 Cr. L. J. 728 :
162 I. C. 943 : 39 C. W. N. 741 :
62 Cal. 946 : 8 R. C. 675.

———Ss. 239, 234, 537—*Scope—"Offence" under S. 239 if includes minor offence—Three transactions of same kind—Their trial together—"Transaction," meaning of—Exclusive nature—Different clauses of S. 239—Trial of more than one person in one trial—One of the clauses must cover the case.*

The term "offence" under S. 239, includes minor or alternative offences within the meaning of S. 235 (2) or S. 236. Under Cl. (c) of S. 239, three offences of the same kind may be tried at once, but not three transactions of the same kind. The meaning and nature of transaction is a question which commonsense and the ordinary use of language must decide on the particular facts of the case. The causes of S. 239, are mutually exclusive, in the sense that they cannot be added one to another so as to bring some of the persons charged under one clause and some under another and so to put them upon their trial all together at one and the same time; but they are not mutually exclusive in the sense that persons accused of an offence and persons accused of abetment or of an attempt can only be tried at one trial because their case comes under Cl. (b). But if more than one person are to be tried and charged together, their case must be brought within one of the clauses of S. 239, Cr. P. C., before they can be tried together on the trial is contrary to law. *Chuharmal Nirmaldas v. Emperor*.

39 Cr. L. J. 881 :
177 I. C. 280 : 11 R. S. 53 :
A. I. R. 1938 Sind 164.

———S. 239—*Scope—S. 239 (d) is exception to S. 233—Construction of S. 239 (d)—"Same transaction," scope of—Conspiracy, whether should be found in accusation or in eventual result of trial.*

The Cl. (d) of S. 239 is expressly an exception from S. 233 and enables a plurality of

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offences to be dealt with in the same trial. But it does not import either expressly or by implication the limitation set out in S. 234 according to which not more than three offences of the same kind committed within the space of 12 months can be tried together or the limitation contained in S. 235 (1) under which more offences than one committed by the same person can only be tried together if they are in one series of acts so connected together as to form the same transaction, in which case there is no specific limit of number. Nor is there any limit of number of offences specified in S. 239 (d). The one and only limitation there is that the accusation should be of offences "committed in the course of the same transaction." Whatever scope of connotation may be included in the words "the same transaction," if several persons conspire to commit offences, and commit overt acts in pursuance of the conspiracy, these acts are committed in the course of the same transaction, which embraces the conspiracy and the acts done under it. The common concert and agreement which constitute the conspiracy, serve to unify the acts done in pursuance of it. The relevant point of time at which the condition prescribed by S. 239 (d) must be fulfilled is that of the accusation and not that of the eventual result. It is true that the opinion of the Magistrate may be wrong in law as to there being a same transaction, or the evidence which led him to think *prima facie* that this condition existed, may be insufficient or may eventually be falsified. It would result in any such events that the prosecution is enabled at the trial to join separate offences contrary to the terms of Ss. 234 and 235. And if improper advantage is taken of S. 239 (d), so as to bring into one proceeding a great number of accused, and a great multiplicity of offences, with serious hardship and injustice to the accused a ground for an amendment of the section by the Legislature, notwithstanding the warning of the High Court and their determination to see that accused are not being unfairly dealt with and to prevent any procedure by which cases which should be comparatively short and simple become unweildily complicated and lengthy. But even so that can be no ground why the Court should misconstrue the section. It must be hoped, and indeed assumed, that Magistrates will exercise their discretion fairly and honestly.

39 Cr. L. J. 452 :
174 I. C. 1 : 1938 A. L. J. 382 :
19 P. L. T. 343 : 1938 I. M. L. J. 647 :
42 C. W. N. 621 : 1938 O. W. N. 416 :
1938 O. L. R. 189 : 1938 M. W. N. 505 :
4 B. R. 490 : 67 C. L. J. 161 :
40 Bom. L. R. 787 : 65 I. A. 158 :
32 S. L. R. 476 : I. L. R. 1938 : 2 Cal. 295 :
10 R. P. C. 250 P. C. :
A. I. R. 1938 P. C. 130.

—S. 239—Scope of—Conspiracy within jurisdiction—Offence committed outside jurisdiction—Magistrate, whether can try offence.

If a conspiracy is entered into in District A and acts are committed in pursuance of that

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conspiracy in District B, the Magistrate of District A can try the conspiracy but cannot try the accused in the same trial for acts committed outside his District. Where certain offences are committed within the jurisdiction of a Magistrate and others outside his jurisdiction, the mere fact that the latter offences, if committed within his jurisdiction, could have been jointly tried by him under S. 239, Cr. P. C., along with the former does not give him jurisdiction to try them jointly, in the absence of something to be found in Chapter XV of the Code enabling him to do so. *Bissessar v. Emperor*.

26 Cr. L. J. 1161 :
83 I. C. 911 : 28 C. W. N. 975 :
A. I. R. 1924 Cal. 1034.

—S. 239—Scope of.

Unless a matter comes within the territorial jurisdiction of a Magistrate in the first instance, he cannot avail himself of S. 239, Cr. P. C., and try a person for abetment with the principal offence, when the abetment took place outside his jurisdiction. *Sachidanadam v. Sowmya Gopala Aiyangar*.

30 Cr. L. J. 1161 :
120 I. C. 75 : 57 M. L. J. 518 :
30 L. W. 501 : 1929 M. W. N. 578 :
I. R. 1929 Mad. 1035 : 52 Mad. 991 :
A. I. R. 1929 Mad. 839.

—S. 239—Separate transaction—Abduction and rape—Different accused—Joint trial—Prejudice—Force used in abduction—Separate sentences.

Where a girl is abducted by several persons and raped by one of them, the offence of rape constitutes a separate transaction from that of abduction and the person guilty of rape cannot be tried jointly with others who have taken no part in his offence. Where, however, a joint trial is held, a re-trial is not necessary when the accused has not been prejudiced and does not wish to be re-tried. Separate sentences under Ss. 147 and 366, Penal Code, are not justified, if the force used to take away the girl was a necessary ingredient for the completion of the offence under S. 366. *Khizar v. Emperor*.

25 Cr. L. J. 533 :
77 I. C. 997 : 4 L. L. J. 322 :
A. I. R. 1922 Lah. 410.

—S. 239—Separate transaction—Dacoities, several, by same persons—Separate trial for each dacoity.

Where several persons join in the commission of several dacoities within a few days of each other, each dacoity is a separate transaction and there should be a separate trial for each. It is illegal to group the accused and the dacoities together and have two trials only. *Ram Sahai v. Emperor*.

22 Cr. L. J. 397 :
61 I. C. 525 : 19 A. L. J. 610 :
A. I. R. 1921 All. 408.

—S. 239—Separate transaction—Joinder of charges receiving stolen goods from co-accused—Joint trial.

A person charged with an offence under S. 411, Penal Code, for having received a portion of stolen property from another, who was either the thief or the first receiver of the stolen property, cannot be jointly tried with the

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latter, as the first receipt or retention of the property by the latter and the act by which he handed over a portion of the stolen goods to the former can in no sense be looked upon as forming part of the same transaction. *Ram Rattan Sukul v. Emperor*. 19 Cr. L. J. 17 (a) : 42 I. C. 977 : 21 C. W. N. 1111 : A. I. R. 1918 Cal. 494.

—S. 239—*Separate transaction—Joint trial of receiver of stolen property and one who commits criminal breach of trust, legality of.*

The joint trial of a person who commits the criminal breach of trust and of another who is charged with the offence of dishonestly receiving stolen property is not unwarranted by the provisions of Cr. P. C. *Emperor v. Balabhai Hargobind*. 1 Cr. L. J. 584 : 6 Bom. L. R. 51.

—S. 239—*Separate transaction—Joint trial for two different offences—One offence committed by all the accused, the other by some.*

Where it appeared that the three accused, in the presence of *mashirs*, went into a patch of jungle and brought out a box containing aniline dyes and the accused Nos. 2 and 3 on another occasion took out of some *lai* bushes a tin of coal tar and all the accused were jointly tried and convicted under S. 411 of the Penal Code, the allegation being that both the box and the tin had been stolen from a train: *Held*, that the joint trial of the accused was illegal. *Emperor v. Umar*. 11 Cr. L. J. 4 : 4 I. C. 481 : 3 S. L. R. 136.

—S. 239—*Separate transaction—Misjoinder of charges—Joint trial of several accused persons—Theft and receiving stolen property.*

When a person charged with receiving stolen property knowing it to be stolen, was tried with another person who was found to be in possession of property alleged to have been stolen at a different time and the former was convicted and the latter acquitted: *Held*, upon appeal against the order of conviction, that the joint trial was illegal and, notwithstanding the acquittal of the other accused, the whole proceedings must be held invalid. *Bhagat Singh v. Crown*. 1 Cr. L. J. 971 : 5 P. L. R. 372.

—S. 239—*Separate transaction—Rioting and culpable homicide—Causing disappearance of dead body—Joint trial, whether legal.*

Where a riot results in the death of a person, and thereafter one of the rioters takes away the dead body and causes its disappearance, a joint trial of that rioter for an offence under S. 201, Penal Code, along with a trial of all the rioters for offence under Ss. 148 and 304 of the Code is illegal as the offence under S. 204 cannot be said to have been committed in the same transaction in which the other offences were committed. *Surendra Lal Das v. Emperor*. 26 Cr. L. J. 467 : 85 I. C. 147 : 40 C. L. J. 559 : A. I. R. 1925 Cal. 413.

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Six dacoities committed within one night—More than three cannot be tried as the dacoities do not form one transaction at one trial. Defect in trying all together is not cured by S. 537. *Ganno v. Emperor*. 35 Cr. L. J. 1048 : 149 I. C. 959 (2) : 11 O. W. N. 731 : 6 R. O. 605 : A. I. R. 1934 Oudh 325.

—S. 239—*Separate transaction—Stolen property recovered from two persons on different occasions—Separate trials.*

Where properties stolen at a burglary are recovered from the possession of two persons on different dates and at different places, they cannot be tried together for an offence under S. 411 of the Penal Code. *Ram Sarup v. Emperor*. 22 Cr. L. J. 684 : 63 I. C. 620.

—S. 239—*Separate transaction—Theft by several persons of fish from waters—Joint trial, legality of—Identity of purpose what constitutes.*

A number of persons were tried and convicted at one trial of offences of stealing fish in prohibited waters under Ss. 379 and 447, Penal Code. There was no evidence that it was done as a result of prior consultation or conspiracy though they had gathered at the same time and at the same place for a simple purpose: *Held*, that inasmuch as there was no identity of purpose or common object, the joint trial was illegal. *In re : Samiullah Sahib*. 27 Cr. L. J. 1381 : 98 I. C. 597 : 51 M. L. J. 692 : 24 L. W. 848 : 38 M. L. T. 37 : A. I. R. 1927 Mad. 177.

—Ss. 239, 439, 537—*Separate transaction—Joint trial—Offences separate—Misjoinder—Revision—Objection raised for first time.*

Two accused persons were tried jointly for an offence under S. 411, Penal Code. During the trial it was discovered that the first accused had received the stolen property and had some time afterwards sold it to the second accused: *Held*, that the acts with which the accused were charged did not form part of the same transaction and the joint trial of the accused was, therefore, illegal. Where a joint trial is bad, it is open to an accused person who has been convicted at such trial, to take the point of misjoinder in revision, even if it was not taken before in either of the Courts below, and there is no obligation on him to prove prejudice. In such a case the trial is bad and no question of prejudice arises. *Dalsukh Roy Agarwala v. Emperor*. 25 Cr. L. J. 807 : 81 I. C. 313 : A. I. R. 1925 Cal. 248.

—S. 239 (d)—*Separate transaction—Person not taking part in abduction but cheating buyer of girl—Joint trial, legality of.*

Where two persons committed abduction and a third person who had not taken any part in the abduction, proceeded to cheat by false representation as to caste, etc., of the girl, a person who bought the girl: *Held*, that the transaction could not be treated as

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the same within the meaning of S. 239 (d), and a joint trial of all the three persons was illegal. *Mangha Ram v. Emperor*.

32 Cr. L. J. 139 (a) :
128 I. C. 313 : I. R. 1932 Lah. 41 :
31 P. L. R. 811 : A. I. R. 1930 Lah. 896.

————S. 239—Same transaction—Test—Discretion of Court.

In deciding whether offences are so connected as to form one and the same transaction, the determining factor is not so much proximity in time as continuity and community of purpose and object. S. 239 is merely an enabling section and does not, in any way trammel the discretion of the Court. *Supdt. & R. L. A., B. v. Manmohan Roy*.

16 Cr. L. J. 3 :
26 I. C. 307 : 21 C. L. J. 95 :
19 C. W. N. 672 : A. I. R. 1915 Cal. 688.

————S. 239—‘Transaction,’ meaning of.

The term “transaction” in S. 239 is not synonymous with the term “offence.” A “transaction” cannot be said to be complete as soon as the offence is committed. It is clear that so long as the conspiracy continues, the transaction which began with the forming of the common intention continues. *Harsha Nath Chatterjee v. Emperor*.

16 Cr. L. J. 9 :
26 I. C. 313 : 21 C. L. J. 201 :
42 Cal. 1153 : A. I. R. 1915 Cal. 719.

————S. 240.

See Cr. P. C., 1898, Ss. 215, 235.

————S. 240—Applicability—Charged with two offences—Conviction under one—Effect.

Where a person is charged with an offence falling within the definitions of Ss. 211 and 500, Penal Code, and is convicted of one of such offences, namely, that under S. 500, he cannot be tried over again for an offence under S. 211. *Ghamandi Nath v. Babu Lal*.

30 Cr. L. J. 1089 :
119 I. C. 575 : 1929 A. L. J. 1056 :
I. R. 1929 All. 1071 :
A. I. R. 1929 All. 899.

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————S. 240—Applicability.

S. 240, Cr. P. C., is applicable only to a joinder of charges in the same case, and not to separate charges of distinct offences tried separately. *In re : Mantri Kamaraju*.

9 Cr. L. J. 495 :
2 I. C. 128.

————S. 240—Applicability.

The provisions of S. 240, Cr. P. C., apply to every grade of Court, not only to the Court of trial. *Ghamandi Nath v. Babu Lal*.

30 Cr. L. J. 1089 :
119 I. C. 575 : 1929 A. L. J. 1056 :
I. R. 1929 All. 1071 : A. I. R. 1929 All. 899.

————S. 240—Stay of trial.

Where accused was tried for separate offences and pending appeal against his conviction in one of them, the Sessions Judge stayed the trial in respect of other charges under S. 240, Cr. P. C. : *Held*, that the procedure was not warranted by the terms of S. 240, Cr. P. C., but that the Sessions Judge, could, if he chose, have adjourned the trial under S. 344 or sanctioned the withdrawal from the prosecution under S. 494. *In re : Mantri Kamaraju*.

9 Cr. L. J. 495 :
2 I. C. 128.

————S. 240—Withdrawal of charges.

Several charges of embezzlement—Conviction on three—Withdrawal of others. *Basir-ud-Din Ahmed v. Emperor*.

10 Cr. L. J. 482 :
4 I. C. 48 : 9 C. L. J. 257.

————S. 240—Withdrawal of complaint—Acquittal.

Where there is a withdrawal of a complaint with the consent of the Court, the provisions of S. 240, Cr. P. C., apply and the accused must be considered to have been acquitted of that charge. *Ghamandi Nath v. Babu Lal*.

30 Cr. L. J. 1089 :
119 I. C. 575 : 1929 A. L. J. 1056 :
I. R. 1929 All. 1071 :
A. I. R. 1929 All. 899.

